[Service Date July 8, 2005]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of	)	DOCKET NO. UT-043013
VERIZON NORTHWEST INC.	)	ORDER NO. 17
With	)	
COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON	)	ARBITRATOR'S REPORT AND DECISION
Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order	)	
. . . . .	)	

1 ***Synopsis.*** *The Arbitrator recommends resolution of 32 issues and numerous subissues that the parties to this arbitration presented for decision. The Arbitrator recommends significant changes to Verizon's proposed amendments, including consolidation of the two amendments into one amendment. Given the significant changes recommended, the Order also recommends the parties request the Commission convene a workshop to assist the parties in reaching agreement on amendment language.*

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I. BACKGROUND

A. Procedural History

2 On February 26, 2004, Verizon Northwest Inc. (Verizon) filed with the Washington Utilities and Transportation Commission (Commission) a request for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (the Act) and the Federal Communications Commission's (FCC) Triennial Review Order.[1] Verizon served the petition on all competitive local exchange carriers (CLECs) and Commercial Mobil Radio Service (CMRS) providers in Washington State that have entered into interconnection agreements with Verizon, a total of 77 carriers.

3 Verizon is an incumbent local exchange company (ILEC), as defined in 47 U.S.C. § 251(h), and provides local exchange and other telecommunications services in various local exchange areas in Washington. Verizon petitioned to amend its interconnection agreements with the 77 CLECs and CMRS providers to address changes in interconnection obligations as a result of the Triennial Review Order. The Commission has jurisdiction over the petition and the parties pursuant to 47 U.S.C. §§ 251-252 and RCW 80.36.610.

4 After Verizon filed its petition, the D.C. Circuit Court of Appeals entered a decision on March 2, 2004, vacating and remanding significant portions of the FCC's Triennial Review Order.[2] The Court stayed the effect of its decision for 60

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[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) [Hereinafter "Triennial Review Order"], *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).

[2] *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir.

days. As a result of the legal uncertainty, continuing litigation, and FCC actions arising from the D.C. Circuit's *USTA II* decision, Verizon has filed several amendments to its petition and the parties have requested several extensions of time for deadlines in the proceeding. The parties to this arbitration have also waived the statutory deadlines for arbitration under Section 252 of the Act.

5 The Commission entered an Order on Arbitration Procedure on March 15, 2004, appointing an arbitrator. The procedural order is consistent with the Commission's procedural rules governing arbitration proceedings under the Act, as codified, as well as the Commission's interpretive statements establishing guidelines for conducting such arbitrations.[3]

6 On March 17, 2004, Sprint Communications Company, L.P. (Sprint) filed with the Commission a motion to dismiss Verizon's petition.

7 On March 19, 2004, Verizon amended its petition to conform to the D.C. Circuit's decision and requested that the Commission consider the arbitration proceeding filed as of March 19, rather than February 26. On March 22, 2004, the Arbitrator granted Verizon's request in Order No. 02, and established a procedural schedule for responses to Sprint's motion.

8 After convening a prehearing conference in this docket on March 29, 2004, the Arbitrator entered Order No. 03, a prehearing conference order establishing a procedural schedule for filing responses to the amended petition, additional motions to dismiss, and responsive pleadings and scheduling a prehearing conference.

2004) [Hereinafter "*USTA II*"].

[3] WAC 480-07-630; *see also Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996*, Docket No. UT-960269, In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996 (June 28, 1996).

9 On March 31, 2004, the FCC urged carriers to begin negotiations to "arrive at commercially acceptable arrangements for the availability of unbundled network elements."[4] Based on the agreement of carriers to enter such negotiations, the FCC sought an extension of the D.C. Circuit's stay of the *USTA II* mandate. On April 13, 2004, the D.C. Circuit granted a motion filed by the FCC to extend the stay of the mandate in *USTA II* through June 15, 2004.

10 On April 6, 2004, XO Washington, Inc. (XO) and Verizon filed responses to Sprint's motion.

11 On April 13, 2004, Focal Communications Corp. of Washington (Focal), Allegiance Telecom of Washington, Inc. (Allegiance), DSL.net Communications, LLC (DSL.net), Integra Telecom of Washington, Inc. (Integra), Adelphia Business Solutions Operations, Inc. (Adelphia), Pac-West Telecomm, Inc. (Pac-West), ICG Telecom Group, Inc. (ICG), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA) (collectively the Competitive Carrier Coalition), AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle (collectively AT&T), and Eschelon Telecom of Washington, Inc. (Eschelon) filed motions to dismiss Verizon's amended petition.

12 On April 27, 2004, Verizon filed a response to the motions of the Competitive Carrier Coalition, AT&T, and Eschelon, opposing the motions.

13 On May 4, 2004, the Competitive Carrier Coalition, and Advanced Telecom Inc. (ATI), BullsEye Telecom Inc. (BullsEye), Comcast Phone of Washington LLC (Comcast), DIECA Communications Inc. d/b/a Covad Communications Company (Covad), Global Crossing Local Services Inc. (Global Crossing), KMC Telecom V Inc. (KMC), and Winstar Communications LLC (Winstar) (collectively the Competitive Carrier Group) filed with the Commission replies to Verizon's response to motions to dismiss.

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[4] Press Release of FCC Chairman Michael K. Powell, March 31, 2004.

14 On May 7, 2004, Verizon filed with the Commission a Motion to Hold Proceedings in Abeyance Until June 15, 2004, asserting that suspending the proceedings would allow the parties to focus on commercial negotiations without the distraction of simultaneous litigation. The Competitive Carrier Coalition, the Competitive Carrier Group, Sprint, MCI, XO, and AT&T filed responses opposing Verizon's motion.

15 On May 19, 2004, the Solicitor General requested, and Supreme Court Justice Rehnquist granted, an extension of the deadline for the FCC to file petitions for writ of certiorari with the United States Supreme Court until June 30.[5] The D.C. Circuit, however, refused the FCC's and other party's requests for a further extension of the stay of the *USTA II* mandate.

16 On May 21, 2004, in Order No. 04, the Arbitrator granted Verizon's request to hold proceedings in abeyance, subject to the condition that Verizon maintain the status quo under existing interconnection agreements in Washington State by continuing to offer unbundled network elements (UNEs) consistent with the agreements at existing rates pending completion of the arbitration.

17 Also on May 21, 2004, Eschelon, Integra, Pac-West, Time Warner Telecom of Washington, LLC (Time Warner), and XO (collectively the Joint CLECs) filed with the Commission a Motion for an Order Requiring Verizon to Maintain Status Quo Pending Resolution of Legal Issues. In a notice to the parties, the Commission requested comments on the differences between the status quo order granted in Order No. 04 and the Joint CLECs' motion.

18 On June 9, 2004, the Solicitor General and the FCC announced that they would not file a petition for writ of certiorari with the Supreme Court. Although other

[5] Other parties, including NARUC and AT&T, requested and were granted similar extensions of the time to file petitions for writ of certiorari.

parties filed petitions for stay with the Supreme Court on June 10, 2004, Justice Rehnquist denied the stay petitions on June 14, allowing the mandate in *USTA II* to become effective on June 15, 2004.

19 After receiving responses to the Joint CLECs' motion, and replies, on June 15, 2004, the Arbitrator entered Order No. 05, denying the motions to dismiss, and granting the Joint CLECs' motion to maintain status quo. The Order required Verizon to "continue to provide all of the products and services under existing interconnection agreements with CLECs at the prices set forth in the agreements, until the Commission approves amendments to these agreements in this arbitration proceeding or the FCC otherwise resolves the legal uncertainties presented by the effect of the mandate in *USTA II*."[6]

20 In Order No. 08, entered on August 13, 2004, the Commission denied in part Verizon's petition for review of Order No. 05. The Commission required Verizon to file copies of the individual interconnection agreements with the 77 affected CLECs to allow the Commission to determine which interconnection agreements are subject to the status quo order.

21 On August 20, 2004, the FCC issued an Interim Order and Notice of Proposed Rulemaking,[7] ordering parties to maintain the status quo as to certain UNEs in their interconnection agreements for six months or until the FCC entered final rules in response to the *USTA II* decision.

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[6] *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc. with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to 47 U.S.C. Section 252(b), and the Triennial Review Order*, Order No. 05, Order Denying Motions to Dismiss, Granting Joint CLECs' Motion; Requiring Verizon to Maintain Status Quo, WUTC Docket No. UT-043013, ¶ 55 (June 15, 2004).

[7] *Unbundled Access to Network Elements, WC Docket No. 04-313, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338*, Order and Notice of Proposed Rulemaking, FCC 04-179 (rel. August 20, 2004) [Hereinafter "*Interim Order*"].

22 Following a prehearing conference held on September 7, 2004, the Arbitrator entered Order No. 09 in this proceeding, adopting a proposed procedural schedule, and granting the parties request to enter a protective order. The Commission entered Order No. 11, Protective Order with "Highly Confidential" Provisions on September 15, 2004.

23 On September 10, 2004, Verizon filed with the Commission a revised amendment, referred to as Amendment 1.

24 On September 15, 2004, Verizon filed with the Commission its Identification of Specified Interconnection Agreements and Withdrawal of Arbitration as to Those Parties, seeking to dismiss 70 carriers from the arbitration proceeding.[8]

25 On October 1, 2004, the Commission received responses to Verizon's pleading from Sprint individually, the Joint CLECs (composed of Electric Lightwave, Inc. (ELI), Integra, Pac-West, Time Warner, and XO, and its affiliate Allegiance), the Competitive Carrier Group (composed of ATI, BullsEye, Covad, and KMC) joined by Centel Communications (Centel), and United Communications Inc. (UNICOM), and lastly the Competitive Carrier Coalition (composed of Focal and McLeodUSA).

26 On October 13, 2004, Verizon filed a reply to the various responses to its pleading.

27 On October 22, 2004, AT&T, MCI, and the Competitive Carrier Group filed proposed amendment language in response to Verizon's proposals.

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[8] Verizon sought to continue to arbitrate revised agreements with the following seven CLECs: AT&T, Comcast, Level 3 Communications, LLC (Level 3), MCI, MCImetro Access Transmission Services, LLC (MCImetro), TCG Seattle, and WilTel Local Network, LLC, f/k/a Williams Local Network Inc. (WilTel).

28 On November 4, 2004, Verizon filed with the Commission a revised amendment, referred to as Amendment 2.

29 On November 19, 2004, the Arbitrator entered Order No. 12 in this proceeding, allowing Verizon to withdraw its petition as to 52 of 77 carriers named in the petition, finding that the carriers' interconnection agreements have been terminated, do not contain UNE provisions, or otherwise justify withdrawal. The Order denied Verizon's request to withdraw the petition as to 18 CLECs,[9] finding that these CLECs had actively participated in the proceeding by filing responses to Verizon's petition and requesting consideration of additional issues.

30 On December 15, 2004, the FCC announced in a press release that permanent unbundling rules to address the D.C. Circuit's vacation and remand of the Triennial Review Order would be released in mid-January 2005.

31 Following a December 16, 2004, prehearing conference, the parties advised the Arbitrator that evidentiary hearings were not necessary to address the pending issues.

32 After numerous pleadings concerning the expected release of the FCC's new unbundling rules, the Arbitrator on January 15, 2005, established a schedule in Order No. 15 for filing simultaneous initial and responsive briefs, allowing sufficient time for the parties to address the FCC's expected order.

33 Despite negotiations, the parties have failed to reach agreement on the majority of terms for an amendment to their interconnection agreements. The parties filed a joint issues list on January 19, 2005, identifying 31 issues that remain to be resolved in this arbitration.

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[9] These 18 carriers are: Adelphia, ATI, Allegiance, BullsEye, Centel, Covad, DSL.net, Focal, Global Crossing, KMC, ICG, Integra, McLeodUSA, Pac-West, Sprint, UNICOM, Winstar, and XO.

34 On February 4, 2005, the FCC entered its Order on Remand, referred to as the Triennial Review Remand Order,[10] establishing permanent rules concerning unbundling of network elements.

35 Verizon, AT&T, MCI, Focal, the Joint CLECs (Integra, Pac-West and XO), and the Competitive Carrier Group (ATI, BullsEye, and Covad) filed simultaneous initial briefs on March 11, 2005. Verizon, AT&T, MCI, Focal, and the Joint CLECs and Competitive Carrier Group, jointly, filed simultaneous responsive briefs on April 1, 2005. AT&T, MCI, and Focal submitted revised amendment language with their initial and reply briefs.

B. Appearances.

36 Timothy J. O'Connell and John H. Ridge, Stoel Rives, LLP, Seattle, Washington, Aaron M. Panner, Scott H. Angstreich, and Stuart Buck, Kellogg, Huber, Hansen Todd, Evans & Figel, P.L.L.C., Washington, D.C., and Kimberly Caswell, Associate General Counsel, Verizon Corporation, Tampa, Florida, represent Verizon in the proceeding. Michelle Bourianoff and Letty S.D. Friesen, AT&T Law Department, Austin, Texas, represent AT&T. Russell M. Blau, Edward W. Kirsch, and Phillip Macres, Swidler Berlin LLP, Washington, D.C., represent Focal and the Competitive Carrier Coalition. John Gockely, Chicago, Illinois, represents Focal. Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents Integra, Pac-West, and XO. Michel L. Singer Nelson, Senior Regulatory Attorney, Denver, Colorado, represents MCI, Inc., through its regulated subsidiaries in Washington (MCI). Brooks E. Harlow and David L. Rice, Miller Nash LLP, Seattle, Washington, and Genevieve Morelli, Andrea P. Edmonds, and Tamara E. Conner, Kelley, Drye & Warren LLP, Washington D.C.,

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[10] *In the Matter of 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, Order on Remand, FCC 04-290 (rel. Feb. 4, 2005) [Hereinafter "*Triennial Review Remand Order*"].

represent the Competitive Carrier Group and ATI, BullsEye, and Covad. William E. Hendricks, III, Hood River, Oregon, represents Sprint.

C. Unresolved Issues

37 The parties have been unable to resolve issues through negotiation and identified 31 primary issues, and numerous sub-issues, in their January 19, 2005, Joint Issues List for decision in this arbitration. These disputed issues are identified and discussed below in Section II.D. Verizon included an additional issue, Issue 32, in its initial brief filed on March 11, 2005. Issue 32 addresses whether the Commission should adopt Verizon's proposed new rates in the Pricing Attachment to Amendment 2.

D. Resolution of Disputes and Contract Language Issues

38 This Arbitrator's Report is limited to the disputed issues presented for arbitration. *47 U.S.C. § 252(b)(4*). The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator reserves the discretion to either adopt or disregard proposed contract language in making decisions. Each decision by the Arbitrator is qualified by discussion of the issue. Contract language adopted pursuant to arbitration remains subject to Commission approval. *47 U.S.C. § 252(e).*

39 This Report is issued in compliance with the procedural requirements of the Act, and it resolves all issues that the parties submitted to the Commission for arbitration. The parties are directed to resolve all other existing issues consistent with the Arbitrator's decisions. In Section II. F.1., this Order requires parties to file a complete amendment to the parties' interconnection agreements with the Commission by August 18, 2005. In the alternative, if the parties are unable to submit a complete amendment to the parties' interconnection agreements due to lack of agreement on amendment language, the parties may request an extension

of time to file, at least 10 days prior to the filing date. As this Order requires significant changes to Verizon's proposed amendments, the Commission will, at the parties' request, convene a workshop to assist the parties in reaching agreement on amendment language. At the conclusion of this Report, the Arbitrator addresses procedures for review to be followed prior to entry of a Commission order approving an amendment to the interconnection agreements between the parties.

II. MEMORANDUM

A. The Commission's Duty Under the Telecommunications Act of 1996

40 Two central goals of the Act are the nondiscriminatory treatment of carriers and the promotion of competition. The Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act. *47 U.S.C. § 251(c)(1).* Each interconnection agreement must be submitted to the Commission for approval, whether the agreement was negotiated or arbitrated, in whole or in part. *47 U.S.C. § 252(d).*

B. Standards for Arbitration

41 The Act provides that in arbitrating interconnection agreements, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. *47 U.S.C. § 252(c).*

C. Background

42 Verizon is an incumbent provider of local exchange telecommunications services in Washington, and across the United States. Verizon is a "telecommunications company" and a "public service company," as those terms are defined in RCW 80.04.010, and an ILEC under 47 U.S.C. § 251(h). The remaining CLECs participating in the proceeding, Adelphia, ATI, Allegiance, AT&T (including TCG Seattle and Comcast), BullsEye, Centel, Covad, DSL.net, Focal, Global Crossing, KMC, ICG, Integra, Level 3, MCI (including MCImetro), McLeodUSA, Pac-West, Sprint, UNICOM, WilTel, Winstar, and XO, are competitive local exchange carriers that provide local and / or DSL telecommunications services in Washington and other states.

D. Issues, Discussion, and Decisions

43 Verizon has submitted two amendments for consideration by the Commission. The first, referred to as Amendment 1, is Verizon's proposal to amend its interconnection agreements to reflect changes in law due to the Triennial Review Order that Verizon seeks to litigate in this proceeding. The second, referred to as Amendment 2, addresses issues the CLECs have raised in the proceeding, but which Verizon asserts should be considered on a separate track from the issues in Amendment 1.[11] Verizon asserts that the issues addressed in its Amendment 2 concern factual and legal issues that will involve more time and cost to litigate, requesting that Amendment 1 and 2 issues be considered separately.[12]

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[11] Cover Letter to Verizon November 4, 2004, Amendment 2, at 1.
[12] *Id*.

44 The CLECs request that the Commission adopt a comprehensive amendment, including all of the obligations and changes of law established in the Triennial Review Order.[13]

45 This issue is resolved in favor of the CLECs. The CLECs first raised the issues addressed in Verizon's Amendment 2 in their answers to Verizon's Petition for Arbitration. Under Section 252(b)(4)(A) and (C), state commissions must consider and resolve in arbitration the issues raised in the petition and in responses to the petition. The obligations and changes of law established in the Triennial Review Order, including those identified by the CLECs, must be addressed in this arbitration proceeding. There is no need for two amendments to be developed in one arbitration proceeding: It is appropriate and more efficient to include all arbitrated provisions in one comprehensive amendment to the parties' interconnection agreements. Verizon must combine its proposed Amendments 1 and 2 into one comprehensive amendment, and must incorporate the changes recommended below.

1. ISSUE NO. 1:[14] 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?

46 This issue concerns the Commission's authority to require Verizon to include in its interconnection agreements with CLECs unbundled access to network elements pursuant to state law or other provisions of law, in particular where the FCC and the courts have found no obligation for ILECs to provide unbundled access to the elements under Section 251(c)(3) of the Act. The issue arises because the FCC's Triennial Review Order, the *USTA II* decision, and the FCC's

[13] AT&T Initial Brief, ¶ 4; Joint CLEC Initial Brief, ¶¶ 3-4.
[14] The issue numbers correspond to those designated by the parties in their Joint Issues List and briefs.

Triennial Review Remand Order remove a number of network elements from the unbundling requirements of Section 251(c)(3) and clarify or resolve issues of law.

47 Verizon seeks to limit access to UNEs under its interconnection agreements to those available under federal law. Verizon uses the term "Federal Unbundling Rules" in its proposed amendments to describe applicable federal law, which it defines as FCC requirements pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.[15] The CLECs propose language that would allow access to UNEs pursuant to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51, and "other Applicable Law," which AT&T and the Competitive Carrier Group define to include Sections 251 and 271 of the Act, rules and orders by the FCC and this Commission and orders and decisions by the courts, *i.e.*, state law.[16] The sections of the parties' proposed amendments relevant to Issue No. 1 are as follows:[17]

Verizon September 10, 2004, Amendment 1: §§ 2.1, 2.3, 3.1, 4.7.3, 4.7.6;
Verizon November 4, 2004, Amendment 2: §§ 2.1, 2.3, 2.4, 3.1, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.1.1, 3.4.1.2.1, 3.4.1.2.2, 3.4.2.1, 3.4.2.2
AT&T March 14, 2005, Amendment: §§ 1.1, 1.2, 2.0, 2.37, 3.2.1, 3.2.3.1, 3.2.3.2, 3.2.4, 3.2.5, 3.2.9, 3.2.10, 3.4, 3.4.2, 3.5.1, 3.5.3, 3.6.1, 3.6.2, 3.7.2.8, 3.8.1, 3.11.3
MCI April 4, 2005, Amendment: §§ 2.1, 2.3, 3.1, 3.2, 8.1, 11.2.4, 11.2.5, 12.7.5, 12.7.8

[15] *See* Verizon September 10, 2004, Amendment 1, § 4.7.6.
[16] *See* AT&T March 14, 2005, Amendment, § 2.0; *see also* Competitive Carrier Group October 22, 2004, Amendment, § 2.0. The Competitive Carrier Group's proposed amendment is similar to AT&T's as the parties engaged in joint efforts to draft an amendment.
[17] Verizon refers in its initial brief to language proposed by the Competitive Carrier Coalition, Sprint, and Wiltel. *See* Verizon Initial Brief at 11. According to the Commission's records, Wiltel has never filed proposed amendment language with the Commission. Sprint and the Competitive Carrier Coalition last filed proposed amendments with the Commission on April 14, 2004, but the sections to which Verizon refers do not correspond to the proposed amendments filed with the Commission. Wiltel, the Competitive Carrier Coalition, and Sprint may have provided other versions of their proposed language to Verizon, but not to the Commission. The Arbitrator can only address those proposals filed with the Commission.

48 Verizon asserts that the Commission's authority to arbitrate agreements under the Act is limited under Section 252 to implementing the unbundling obligations of Section 251(c)(3) of the Act and any FCC implementing regulations.[18] Verizon further asserts that the Commission cannot rely on the "savings clauses" in Section 251(d)(3), Section 252(e)(3), or Section 261(c) of the Act to justify imposing unbundling obligations that are more expansive or inconsistent with federal law.[19] Verizon further asserts that the Commission has already found in this proceeding that any unbundling obligations imposed by the Bell Atlantic/GTE Merger Order[20] have expired, or do not apply in Washington State.[21]

49 Verizon recognizes that states have a role in implementing the Act under Section 252, but asserts that the FCC has the exclusive authority for determining whether CLECs would be impaired without access to ILEC network elements on an unbundled basis.[22] Based on this analysis, Verizon asserts "unbundling obligations exist, if at all, by virtue of federal law."[23] Relying on the FCC's recent BellSouth Declaratory Ruling,[24] Verizon further asserts that states cannot impose, and are preempted from imposing, unbundling obligations where the FCC has not required unbundling under Section 251(c)(3) of the Act.[25] Verizon states that state decisions to unbundle network elements that the FCC has declined to

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[18] Verizon Initial Brief, ¶¶ 22, 30.
[19] *Id*., ¶¶ 31-34.
[20] Memorandum Opinion and Order, *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control*, 15 FCC Rcd 14032 (2000) [Hereinafter "*Bell Atlantic/GTE Merger Order*"].
[21] Verizon Initial Brief, ¶ 35.
[22] *Id*., ¶ 24.
[23] *Id*.
[24] Memorandum Opinion and Order and Notice of Inquiry, *In the Matter of BellSouth Telecommunications, Inc., Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to competitive LEC UNE Voice Customers,* WC Docket No. 03-251 (rel. March 25, 2005) [Hereinafter "*BellSouth Declaratory Ruling*"].
[25] Verizon Reply Brief, ¶¶ 9-13; *see also* Verizon Initial Brief, ¶¶ 25-26.

unbundle, or for which the FCC has found no impairment, 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."[26]

50 Verizon requests that the Commission reject the CLECs' requests to include in the amendment language referring to sources of law other than federal law.[27] Verizon asserts that the language in Section 2.1 of Amendment 1 restricting Verizon's obligations to "Federal Unbundling Rules" (as defined in Section 4.7.6), and in Section 3.1 of Amendment 1 providing that Verizon is not obligated to provide unbundled access to any "Discontinued Facility" (as defined in Section 4.7.3), properly reflect the current requirements of federal law.[28]

51 AT&T asserts that the Commission has authority under Section 251(e)(3) of the Act to impose and enforce state law unbundling obligations on Verizon.[29] Specifically, AT&T asserts that state commissions have authority, by regulating within the FCC's guidelines, "to determine the manner by which such UNEs should be declassified or continue to be provided."[30] AT&T also asserts that "network elements provided pursuant to state law are intrastate telecommunications services subject to the jurisdiction of the Commission," and that the Commission may include the terms and conditions of such UNEs in interconnection agreements.[31]

52 AT&T asserts that it is important for the Commission to exert its authority on this issue, as this case presents the first instance of UNEs being declassified, or removed from unbundling requirements.[32] AT&T asserts that the Commission

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[26] Verizon Reply Brief, ¶ 11, *quoting BellSouth Declaratory Ruling*, ¶ 7; *see also* Verizon Initial Brief, ¶ 28, *quoting Triennial Review Order*, ¶ 195.
[27] Verizon Initial Brief, ¶¶ 23, 37.
[28] *Id*., ¶ 36.
[29] AT&T Initial Brief, ¶ 6.
[30] *Id*.
[31] *Id*.
[32] *Id*., ¶ 7.

must ensure that, during the transition period, "CLECs and customers do not lose the competitive benefits gained over the past several years," and implores the Commission not to "immediately flash-cut [declassified UNEs] out of the parties' ICAs."[33]

53 AT&T opposes Verizon's amendment language as overbroad, asserting that it is based on the incorrect assumption that the Act and the FCC's rulings preempt state commissions from exercising state law unbundling authority.[34] AT&T asserts that the Act preempts state law that poses a barrier to entry, but allows states to adopt regulations "so long as they do not 'lower' the federal floor."[35] AT&T asserts that the Act does not preempt the field of telecommunications regulation, but establishes shared authority between the states and the FCC.[36] AT&T also asserts that neither the Triennial Review Order nor the Triennial Review Remand Order preempt state commissions from acting under state law.[37]

54 MCI opposes Verizon's amendment language, asserting that the interconnection agreement between MCI and Verizon should include obligations under Sections 251 and 252, state law, and "obligations arising from voluntary commitments made by Verizon for the benefit of MCI specifically or all CLECs generally."[38] MCI asserts that federal law does not preclude parties from having interconnection agreements that comprehensively identify all of Verizon's wholesale obligations.[39] MCI further asserts that having one agreement that addresses all aspects of the parties' commercial relationship would be beneficial.[40]

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[33] *Id*.
[34] *Id*., ¶¶ 8, 15.
[35] *Id*., ¶¶ 8-9.
[36] *Id*., ¶¶ 10-11.
[37] *Id*., ¶¶ 12-14.
[38] MCI Initial Brief at 2.
[39] *Id*.
[40] *Id*.

55 The Joint CLECs state that, prior to the passage of the Act, the Commission asserted its authority to order unbundling pursuant to RCW 80.36.140, and that the Commission retains that authority today.[41] The Joint CLECs assert that Section 251(d)(3) preserves state unbundling authority as long as it is "consistent with the Act and does not substantially prevent implementation of the requirements of [Section 251] and the purposes of [the Act]."[42] The Joint CLECs assert "the issue is whether Verizon can discontinue providing certain UNEs in the absence of federal rules requiring Verizon to continue providing them."[43]

56 The Competitive Carrier Group asserts that the amendment should reflect Verizon's ongoing obligation under state law, *i.e.*, RCW 80.36.140, to provide access to network elements on an unbundled basis.[44] The Competitive Carrier Group asserts that the Act does not preempt state authority, but allows states under Section 251(d)(3), to impose unbundling obligations consistent with the Act and state law.[45] The Competitive Carrier Group further asserts that under Section 252, states may arbitrate all "open issues," including those not resolved by the FCC.[46] The Competitive Carrier Group asserts "the 1996 Act preserves and protects the Commission's independent authority under federal law to ensure continued access to Verizon's network elements in furtherance of competition."[47]

57 In their Joint Response Brief, the Joint CLECs and the Competitive Carrier Group assert that they do not request that the Commission unbundle under state law what the FCC has determined need not be unbundled, but to preserve in the amendment the Commission's ability to "exercise its authority under state law at

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[41] Joint CLEC Initial Brief, ¶¶ 5-6, *citing WUTC v. U S WEST, et al.*, Docket Nos. UT-941464, et al., Fourth Supplemental Order, at 51 (Oct. 31, 1995).
[42] *Id.*, ¶ 7, *quoting* 47 U.S.C. § 251(d)(3).
[43] *Id.*, ¶ 6.
[44] Initial Brief of the Competitive Carrier Group, ¶ 2 [Hereinafter "CCG Initial Brief"].
[45] *Id.*, ¶ 3.
[46] *Id.*, ¶ 5.
[47] *Id.*

some future point in time."[48] The Joint CLECs and Competitive Carrier Group assert that the FCC has not found states preempted as a matter of law from regulating in the area of access to network elements.[49] The carriers further assert that the Commission should retain its authority under state law to regulate services and facilities that Verizon must make available to competitors.[50]

58 ***Discussion and Decision.*** The parties present two issues for consideration under the guise of Issue No. 1. First, may state commissions require Verizon to include in an interconnection agreement, as a requirement of state law, unbundled elements that the FCC has determined ILECs are no longer obligated to provide under Section 251(c)(3)?[51] Second, may the Commission require Verizon to include in the amendment language preserving state law authority, or other authority, to impose unbundling requirements, or in the alternative, are states preempted from adopting unbundling requirements?

59 **A. State Authority to Unbundle Where the FCC Has Spoken.** The Commission has recently addressed this very issue in the arbitration proceeding between Covad and Qwest Corporation in Docket No. UT-043045. In Order No. 06 in that proceeding, the Commission found that state commissions may not require ILECs, in arbitrating an interconnection agreement, to unbundle network elements that the FCC has "delisted" as UNEs, as such an action would be contrary to state authority under Section 251(d)(3), and would be in direct conflict with federal regulations.[52] In the Order, the Commission relied on the following finding in the Triennial Review Order:

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[48] Response Brief of Integra, Pac-West, XO, ATI, BullsEye, and Covad ¶ 8 [Hereinafter "Joint Response Brief"].
[49] *Id*., ¶ 9.
[50] *Id*., ¶ 10.
[51] While the Joint CLECs and the Competitive Carrier Group concede this point in their Joint Response Brief, AT&T and MCI continue to raise the issue.
[52] *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Order No. 06, Final Order Affirming, in Part, Arbitrator's Report and Decision; Granting, in Part, Covad's Petition for

> If a decision pursuant to state law were to require the unbundling of a network element for which the [FCC] has either found no impairment – and thus has found that unbundling that element would conflict with the limits in section 251(d)(2) – or otherwise declined to require unbundling on a national basis, *we believe it unlikely that such a decision would fail to conflict with and "substantially prevent" implementation of the federal regime*, in violation of section 251(d)(3)(C).[53]

60 The FCC's recent BellSouth Declaratory Ruling supports the Commission's decision in the Covad Arbitration. In the BellSouth Declaratory Ruling, the FCC determined that states retain limited authority to prescribe regulations relating to unbundling.[54] The FCC held that states are not precluded under the Act from adopting unbundling requirements, but that Section 251(d)(3) limits such authority to requirements that are consistent with requirements under Section 251 and do not "substantially prevent implementation of the requirements of" Section 251.[55] The FCC also found that the savings clause in Section 251(e)(3) that allows state commissions to enforce state law in reviewing interconnection agreements is constrained by the provisions of Section 251(d)(3).[56]

61 Most importantly, the BellSouth Declaratory Ruling provides that state unbundling decisions that impose on ILECs a requirement that the FCC declined to make or directly chose not to impose under Section 251 would directly conflict with and substantially prevent implementation of federal unbundling rules, and would "exceed the Acts' reservation of state authority with regard to unbundling determinations."[57]

Review; Requiring Filing of Conforming Interconnection Agreement, Docket No. UT-043045, ¶¶ 51-52, 130 (Feb. 8, 2005) [Hereinafter "*Covad Order*"].

[53] *Triennial Review Order*, ¶ 195 *(emphasis added)*.

[54] *BellSouth Declaratory Ruling*, ¶ 22.

[55] *Id*., ¶ 23.

[56] *Id*., n.74.

[57] *Id*., ¶¶ 17, 23.

62 To the extent CLECs in this proceeding propose language that implies or requires that certain "delisted" UNEs, such as mass market switching, be available pursuant to state law, the language is rejected.[58] This aspect of Issue No. 1 is resolved in favor of Verizon.

63 **B. Inclusion of State Unbundling Authority in the Amended Agreement.** The CLECs rely on the Commission's authority under RCW 80.36.140 and decisions entered prior to the 1996 Act as the basis for state law unbundling authority. The Act, however, clearly removes some authority from the states to regulate in this area.[59] Contrary to Verizon's arguments, though, neither the Act nor the FCC preempt states from prescribing or adopting unbundling requirements. The Act reserves for states limited authority to adopt unbundling requirements under Section 251(d)(3), *i.e.,* requirements that are consistent with and do not substantially prevent implementation of the requirements of Section 251, including FCC regulations on this issue.[60] The issue for arbitration, then, is not whether states retain authority to prescribe unbundling regulations, but whether states may require ILECs to include in interconnection agreements language preserving state unbundling authority.

64 Under the FCC's recent interpretation of state savings clauses in the Act, Section 252(e)(3) preserves state commission authority to enforce state laws while reviewing carriers' interconnection agreements. States are constrained, however, by the limits on state authority set forth in Section 251(d)(3).[61] Thus, state commissions may not rely on Section 252(e)(3) to impose unbundling obligations inconsistent with FCC decisions, but are not precluded or preempted from imposing other consistent unbundling obligations.

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[58] *See, e.g.,* AT&T March 14, 2005, Amendment, §§ 2.3.7, 3.5.1; *see also* MCI April 4, 2005, Amendment, § 8.1.
[59] *See AT&T v. Iowa Utilities Bd*., 525 U.S. 366, 378, n.6 (1999).
[60] *BellSouth Declaratory Ruling*, ¶¶ 22-23.
[61] *Id*., n.74.

65 Although couched as an amendment to specifically address changes in law presented by the Triennial Review Order and Triennial Review Remand Order, Verizon proposes in Sections 2.1 and 2.3 of its amendment to the interconnection agreements to address all future changes in unbundling obligations, and to limit unbundling obligations to those prescribed by Section 251 and FCC regulations. This approach is too restrictive, given the FCC's recent discussion of state unbundling authority.

66 This aspect of Issue No. 1 is resolved in favor of the CLECs as a matter of law. The more difficult question is how to implement this decision in amending the parties' agreements. Any unbundling obligations imposed by state law are, at this point, purely hypothetical, as this order does not establish state unbundling requirements. The parties are directed to work together to modify Verizon's proposed Sections 2.1, 2.3, and 3.3 consistent with this decision,[62] as well as any other sections of Verizon's proposed amendment that limit unbundling obligations to those set forth in federal unbundling rules.

67 **C. Inclusion of Section 271 Unbundling Authority in the Amended Agreement.** The CLECs also include in their proposed amendments language obligating Verizon to provide access to UNEs pursuant to Section 271 of the Act.[63] For the reasons set forth below, the CLECs' proposals are rejected.

68 The FCC determined in the Triennial Review Order that Bell Operating Companies, or BOCs, have an independent obligation under Section 271 to provide unbundled access to certain network elements identified in the Section 271 checklist.[64] Verizon, however, is not a BOC, but an ILEC operating in

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[62] The language in Sections 2.1, 2.3, and 3.3 is also considered in other issues addressed below. Verizon must modify Sections 2.1, 2.3, and 3.3 consistent with all findings and decisions in this Order.

[63] AT&T March 14, 2005, Amendment, § 2.0; MCI April 4, 2005, Amendment, § 12.7.8.

[64] *Triennial Review Order*, ¶¶ 653-55.

Washington State: Qwest is the BOC in this state. As such, Verizon has no obligation to provide unbundled access to Section 271 elements in this state.

69 Even if Verizon were the BOC in this state, the Commission has no authority under Section 252 or Section 271 of the Act to require inclusion of Section 271 unbundling obligations in the parties' interconnection agreements.[65] The FCC has the exclusive authority to act under Section 271.[66] States have authority under Section 252 to approve and arbitrate interconnection agreements that are consistent with Section 251 of the Act, not Section 271.[67] An order requiring inclusion of unbundling of Section 271 elements would conflict with the federal regulatory scheme.

2. ISSUE NO. 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?

70 While the parties' primary dispute concerns Verizon's proposals for implementing changes in law, the parties also dispute the form and timing of notice Verizon must give to CLECs when network elements are discontinued, and inclusion of terms and conditions for the transition away from discontinued network elements. These operational issues are addressed in other disputed issues below. The sections of the parties' proposed amendments relevant to Issue No. 2 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 2.1, 2.3, 3.1, 3.2, 4.7.3, 4.7.6
Verizon November 4, 2004, Amendment 2: §§ 2.1, 2.3, 2.4, 2.5, 3.5.3, 4.7.5
AT&T March 14, 2005, Amendment: §§ 1.1, 1.2, 2.0, 2.8, 2.37, 3.1, 3.11, 3.11.1
MCI April 4, 2005, Amendment: §§ 2.1, 2.3, 3.1, 3.2, 11, 12.7.5

[65] *Covad Order*, ¶¶ 41-49.
[66] *Id.*, ¶¶ 41-42.
[67] *Id.*, ¶¶ 47, 49.

71 Section 2.1 of Verizon's Amendment 1 provides:

> Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT: (a) Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs") and combinations of unbundled Network Elements ("Combinations") to [CLEC] under the terms of this Amended Agreement only to the extent required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and (b) Verizon may decline to provide access to UNEs and Combinations to [CLEC] to the extent that provision of access to such UNEs or Combinations is not required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.[68]

Section 2.3 of Verizon's Amendment 1 provides that the parties must negotiate an amendment to the interconnection agreement if Verizon is subject to new unbundling obligations. Verizon identifies routine network modifications, and commingling and combinations of UNEs, as new obligations that require further amendment.[69]

72 In defining its unbundling obligations by reference to federal law as opposed to specifically identifying its obligations and any transition rules that may apply, Verizon asserts that its proposal will allow it to discontinue access to "delisted" UNEs without amending interconnection agreements in the future.[70] Verizon asserts that its proposed language is an efficient approach that would avoid prolonged and complex proceedings such as the present proceeding.[71] Verizon seeks to ensure that interconnection agreements reflect current unbundling

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[68] Section 2.1 of Verizon's Amendment 2 includes similar language.

[69] *See* Verizon September 10, 2004, Amendment 1, § 2.3. Whether routine network modifications, commingling, and conversions are new obligations is addressed below in Issues No. 12, 13, 21, 22, and 25.

[70] Verizon Initial Brief, ¶ 38; Verizon Reply Brief, ¶ 16.

[71] Verizon Initial Brief, ¶¶ 43, 46; Verizon Reply Brief, ¶ 16.

obligations and continue to do so in the future.[72] While Verizon denies that its proposal modifies current change of law provisions, Verizon asserts that its proposed amendment "would simply bring the handful of interconnection agreements still at issue in this proceeding into line with" other Verizon interconnection agreements, which define Verizon's unbundling obligations based upon federal law.[73]

73 Verizon also asserts that its proposal recognizes the difference between FCC rules that eliminate an unbundling obligation and those that create a new obligation.[74] Verizon argues that when an ILEC's obligation to provide unbundled access to a network element is eliminated, the matter is no longer within the scope of Section 252.[75] Verizon rejects the CLECs' arguments that its proposal is unfair, asserting that its proposal will make the process more efficient by allowing it to discontinue elements after adequate notice and allow for amendment of agreements for new obligations.[76]

74 The CLECs object to Verizon's proposal as a fundamental change in the current process by which the parties negotiate and arbitrate changes in unbundling obligations.[77] The CLECs assert that Verizon's proposal is unreasonable, as only Verizon benefits from the automatic elimination of unbundling requirements and negotiation and arbitration to implement new unbundling requirements.[78] AT&T asserts that the proposed amendment would not reflect the entire agreement between the parties as the amendment would allow one party,

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[72] Verizon Reply Brief, ¶ 16.
[73] *Id*., ¶¶ 17-18.
[74] Verizon Initial Brief, ¶ 49.
[75] *Id*., *citing*, *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)*, Memorandum Opinion and Order, 17 F.C.C. Rcd 19337 [Hereinafter "*Qwest Declaratory Ruling*"]; *Coserv Ltd. Liab. Corp. v. Southwestern Bell Tel. Co*., 350 F. 3d 482, 488 (5th Cir. 2003).
[76] Verizon Reply Brief, ¶ 22.
[77] AT&T Initial Brief, ¶ 17; Joint Response Brief, ¶¶ 13-14.
[78] MCI Reply Brief, ¶ 9; Joint CLEC Initial Brief, ¶ 8; CCG Initial Brief, ¶¶ 8-9.

Verizon, to interpret and change the contractual obligations of the parties without changing the contract to reflect the change.[79]

75 The CLECs further assert that the FCC does not require parties to modify the change of law provisions in existing agreements to implement the recent changes in unbundling obligations.[80] The CLECs assert that the FCC determined in both the Triennial Review Order and Triennial Review Remand Order that the parties should follow the contractual obligations in existing interconnection agreements, including change of law provisions, in implementing changes in unbundling obligations.[81]

76 ***Discussion and Decision***. In discussing how to implement changes in unbundling obligations, the FCC determined that it was not appropriate to allow ILECs to unilaterally change interconnection agreements, and that carriers should negotiate and arbitrate new agreements following the process set forth in Section 252.[82] While Verizon seeks efficiency in implementing changes in unbundling obligations, Verizon's proposal is contrary to the FCC's direction for implementing changes in unbundling obligations and does not afford the same benefit to CLECs for new obligations.

77 The FCC cautioned carriers to negotiate in good faith and to avoid unnecessary delay in implementing the changes.[83] The delays in this proceeding, however, are due more to the uncertainties arising from litigation over the Triennial Review Order than the actions of either Verizon or the CLECs. The delays do not justify the remedy Verizon proposes.

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[79] AT&T Reply Brief, ¶ 4-5.
[80] AT&T Initial Brief, ¶ 16; MCI Initial Brief, at 3; MCI Reply Brief, ¶ 10; Joint CLEC Initial Brief, ¶ 9; CCG Initial Brief, ¶ 9.
[81] *See* MCI Initial Brief at 3, *citing Triennial Review Order*, ¶ 700; *see also* Joint CLEC Initial Brief, ¶ 9, *citing Triennial Review Order*, ¶ 701, *Triennial Review Remand Order*, ¶ 233; CCG Initial Brief, ¶¶ 7-9.
[82] *Triennial Review Order*, ¶¶ 700, 701; *Triennial Review Remand Order*, ¶ 233.
[83] *Triennial Review Order*, ¶¶ 703, 704; *Triennial Review Remand Order*, ¶ 233.

78 Although it is understandable why Verizon seeks to have consistent terms in all of its interconnection agreements, it is not necessary or required for arbitrated agreements to include the same terms. The CLECs that arbitrated agreements with Verizon that include more stringent change of law provisions are entitled to the benefit of the bargain they obtained through their initial arbitrations. There is no justification based on FCC decisions to modify the change of law provisions.

79 The fact that there are differences in change of law provisions among various agreements is not discriminatory: It reflects the variations in negotiation and arbitration of terms in interconnection agreements. The interconnection agreements are filed with the Commission and available for review. CLECs have opted into a number of agreements, including the agreement originally arbitrated by MCI.

80 The issue is resolved in favor of the CLECs. Verizon's proposed change of law language in Section 2.1 is rejected as to those that include change of law provisions such as those contained in AT&T's and MCI's agreement. As for the carriers that remain in the arbitration proceeding with interconnection agreements that contain "automatic" change of law provisions, Verizon's proposed amendment language is consistent with change of law language in the agreements and is acceptable.

3. ISSUE NO. 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?

81 This issue addresses how the amendment should implement the changes in unbundled access to local circuit switching identified in the Triennial Review

Order and Triennial Review Remand Order. The primary disagreements between the parties concern whether the FCC's transition plan for converting to alternative arrangements should be included in the amendment, and how to interpret the FCC's requirement that CLECs may not add new customers using unbundled network element platform (UNE-P) or mass market switching. The sections of the parties' proposed amendments relevant to Issue No. 3 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 3.1, 4.7.3, 4.7.13, 4.7.15
AT&T March 14, 2005, Amendment: §§ 2.8, 2.26, 2.28, 2.37, 3.1, 3.5, 3.11
MCI April 4, 2005, Amendment: §§ 8, 12.7.14, 12.7.16

82 While the Triennial Review Order determined that CLECs face no impairment in obtaining access to local circuit switching for enterprise customers,[84] the Triennial Review Remand Order eliminated the obligation to provide unbundled access to local circuit switching for mass market customers.[85] In the Triennial Review Order, the FCC established a default of four or more DS0 loops per customer in density zone one of the top fifty Metropolitan Statistical Areas, or MSAs as the appropriate cut off between the mass market and enterprise market (referred to as the "four-line carve out").[86] The applicability of "Four-Line Carve Out Switching" is addressed below in Issue No. 9. The parties appear to agree that local circuit switching includes the features, functions, and capabilities of tandem switching.[87]

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[84] *Triennial Review Order*, ¶¶ 419, 451. Enterprise customers are "medium or large business customers with high demand for a variety of sophisticated telecommunications services that use loops with DS1 capacity and above," and "customers for which it is economically feasible for a competing carrier to provide voice service with its own switch using a DS1 or above loop." *Id.*, ¶ 452 n.1376.

[85] *Triennial Review Remand Order*, ¶¶ 199, 218-220. "[M]ass market customers are analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 loops." *Triennial Review Order*, ¶ 497.

[86] *Triennial Review Order*, ¶ 497.

[87] *See* Verizon September 10, 2004, Amendment 1, §§ 4.7.12, 4.7.13, 4.7.15; AT&T March 14, 2005,

83 The FCC established a transition period of 180 days following the effective date of the Triennial Review Order for CLECs to transfer their existing enterprise customers to alternative arrangements.[88] While Verizon and the CLECs agree that enterprise switching should be defined in the amendment as a discontinued or declassified facility or element, the parties disagree over how the amendment should provide for transition of such discontinued or declassified elements.[89]

84 In the Triennial Review Remand Order, the FCC established a twelve-month transition plan for migrating the existing mass market "embedded customer base" to alternative arrangements, and set specific prices for access to local switching for embedded customers at TELRIC rates plus one dollar.[90] CLECs must migrate their existing customer base and modify their interconnection agreements by March 11, 2006, the end of the twelve-month transition period.[91] The transition plan applies only to existing embedded customers, and CLECs are not permitted to add new customers or UNE-P arrangements using unbundled access to local switching.[92]

85 Verizon asserts that its proposed Sections 3.1 and 4.7.5 appropriately account for the elimination of unbundling requirements and transition plans for enterprise and mass market switching by simply identifying mass market switching and enterprise switching as "Discontinued Facilities" and stating that Verizon has no

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Amendment, §§ 2.26, 2.28, 2.36; MCI April 4, 2005, Amendment, §§ 12.7.14, 12.7.16.

[88] *Triennial Review Order*, ¶ 532.

[89] *See* Verizon September 10, 2004, Amendment 1, §§ 3.1, 4.7.3; AT&T March 14, 2005, Amendment, §§ 2.8, 3.11; MCI April 4, 2005, Amendment, §§ 3.1, 12.7.5. Implementation of discontinued UNEs is addressed generally in Issues No. 7, 10, and 24.

[90] *Triennial Review Remand Order*, ¶¶ 199, 227, 228. The FCC provides that "UNE-P arrangements no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon the amendment of the relevant interconnection agreements, including any applicable change of law processes." *Id*., n.630. The issue of pricing for transition UNEs is addressed below in Issues No. 6 and 11.

[91] *Id*., ¶¶ 199, 227.

[92] *Id*.

obligation to provide access to such facilities."[93] Verizon asserts that there is no reason to include the specific transition provisions of the Triennial Review Remand Order in the amendment, as Verizon's proposed amendment adequately addresses the FCC's unbundling requirements.[94]

86 Verizon asserts that the FCC's decision that CLECs may not add new UNE-P customers or arrangements is effective as of March 11, 2005, and is not subject to the Section 252 process for negotiating and arbitrating interconnection agreements.[95] Verizon asserts, based on numerous state commission decisions, that the FCC's "nationwide bar" on new unbundling of local switching overrides any change of law provisions in interconnection agreements.[96] Verizon further asserts that the FCC's prohibition on adding new UNE-P customers or arrangements applies to adding new lines, moving lines, or changing features for existing customers.[97] Further, Verizon objects to AT&T's proposed Section 3.1, insofar as it conditions assessing the FCC's transition rates on Verizon allowing CLECs to commingle UNEs and UNE combinations.[98]

87 AT&T proposes language in Section 3.5 of its March 14, 2005, Amendment to address the FCC's transition plan for mass market switching.[99] AT&T proposes the language to ensure a smooth transition period and to address operational concerns, such as the continued availability of systems for submitting maintenance and repair orders and feature changes for existing customers, and preventing Verizon from unilaterally changing UNE-P arrangements prior to the end of the transition period.[100] AT&T asserts that the FCC's "no new adds"

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[93] Verizon Initial Brief, ¶ 53.
[94] Verizon Reply Brief, ¶ 23.
[95] *Id*., ¶¶ 24-36.
[96] *Id*.
[97] *Id*., ¶¶ 37-38, *citing Triennial Review Remand Order*, ¶ 227.
[98] *Id*., ¶ 39.
[99] AT&T Initial Brief, ¶ 19.
[100] *Id*., ¶¶ 25-26.

restriction does not apply to feature changes for existing customers, but would prohibit adding new UNE-P arrangements for existing customers.[101]

88 MCI proposes language in Section 8 of its April 4, 2005, Amendment to address the FCC's transition rules for mass market switching and the FCC's "no new adds" decision.[102] MCI's proposal would allow MCI to add new UNE-P customers until the effective date of the Amendment, order new lines for existing customers, and move, change or restore service to existing customers during the twelve-month transition period.[103] MCI also proposes to define enterprise switching as a discontinued element, and asserts that references to "Four-Line Carve Out Switching" are no longer necessary.[104]

89 The Joint CLECs and Competitive Carrier Group assert that provisions of the Triennial Review Order and Triennial Review Remand Order should be included in the amendment.[105] The Joint CLECs and Competitive Carrier Group suggest that the Commission not arbitrate the issue until the parties have an opportunity to negotiate appropriate language to implement the provisions of the Triennial Review Remand Order.[106] Similar to MCI, the Competitive Carrier Group asserts that Verizon may not refuse to provision UNE-P lines to new customers until the effective date of the amendment to the parties' interconnection agreements.[107] The Competitive Carrier Group asserts that the amendment should define "embedded customer base" to include any UNE-P line added, moved or changed by a CLEC at the request of a UNE-P customer served by the CLEC on or before March 11, 2005.[108]

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[101] *Id.*; *see* AT&T March 14, 2005, Amendment, §§ 3.5.1.1, 3.5.1.2.
[102] MCI Initial Brief at 4; *see also* MCI April 4, 2005, Amendment, § 8.
[103] MCI April 4, 2005, Amendment, §§ 8.1, 8.1.1.
[104] MCI Initial Brief at 4.
[105] Joint Response Brief, ¶ 16. While the Joint CLECs initially assert that the matter is not ripe for decision, they retract that position in their Joint Response Brief.
[106] *Id.*, ¶ 18.
[107] CCG Initial Brief, ¶ 12.
[108] *Id.*

90 ***Discussion and Decision.*** The amendment to the parties' interconnection agreements should include specific language implementing the FCC's transition plan for migrating the embedded customer base away from access to unbundled local switching, include a definition of "embedded customer base" and clarify the FCC's "no new adds" decision. In fact, the FCC intended that parties amend their interconnection agreements to include the changes in unbundling rules and transition plans.[109] Interconnection agreements are contracts governing the obligations and rights of the parties. As discussed above, the reference to Verizon's obligations under "Federal Unbundling Rules" does not sufficiently describe Verizon's obligations, or lack thereof, or clarify how the FCC's rules should be implemented. Including the details of the FCC's transition plans will resolve most disputes over interpretation of the requirements of the transition plan, and provide for a smoother transition from access to unbundled elements. For these reasons, the issue of whether to include the details of the FCC's transition plans in the amendment is resolved in favor of the CLECs.

91 Neither AT&T's proposed Section 3.5 nor MCI's proposed Section 8 adequately address the details of the FCC's transition plan for mass market switching. The CLECs propose that the FCC's bar on adding new UNE-P customers or arrangements not become effective until the effective date of the amendment to the interconnection agreement. The CLECs' proposal is rejected. The FCC applied the transition plan only to the embedded customer base. It is reasonable to conclude from the FCC's statements in the Triennial Review Remand Order and the text of the new FCC rules that the bar on adding new UNE-P customers or arrangements became effective on March 11, 2005, the effective date of the Order.[110] It is also reasonable to conclude that the bar against "new adds" is not subject to implementation through change of law provisions or the Section 252 process for modifying interconnection agreements. Thus, the CLECs' proposal to

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[109] *See Triennial Review Remand Order*, ¶ 227.
[110] *Id.*, ¶¶ 199, 226; *see also* 47 C.F.R. § 51.319(d)(2)(i), § 51.319(d)(2)(iii).

allow continued access to new UNE-P customers or arrangements until the effective date of the amendment is rejected.

92 In implementing the FCC's decision to bar CLECs from adding new UNE-P customers or arrangements, Verizon suggests that the Commission limit the meaning of "embedded customer base" to those end-user customers with UNE-P service who do not request any change in their service prior to March 11, 2006. Verizon requests that the Commission wait to resolve the issue until the FCC resolves a pending Petition for Reconsideration on the issue. The CLECs, on the other hand, request that the Commission find that CLECs may add a new UNE-P line to an existing UNE-P customer's service, move a UNE-P line from one location to another if the customer moves, or modify the UNE-P service upon the end-user customer's request, without violating the FCC's "no new adds" decision. The FCC did not limit its prohibition on new UNE-P provisioning just to new customers, but also limited access to "new UNE-P arrangements."[111] It is reasonable to infer from this language that CLECs may not obtain new UNE-P lines for an existing customer. Similarly, Verizon need not provide CLECs access to a new UNE-P line when an existing customer moves and seeks the same service at a new location. This situation is not substantially different from an end-user customer discontinuing service. These issues are resolved in favor of Verizon.

93 On the other hand, it is reasonable to infer from the Triennial Review Remand Order that Verizon must continue to provide CLECs access to UNE-P service for their existing customers, including performing any repairs or maintenance on the line, or adding or changing any features at the end-user's request, until the CLEC requests an alternate arrangement. The FCC specifically provided that "[d]uring the twelve-month transition period, … competitive LECs will continue to have access to UNE-P priced at TELRIC plus one dollar until the incumbent LEC successfully migrates those UNE-P customers to the competitive LECs' switches

[111] *Triennial Review Remand Order*, ¶ 227.

or to alternative access arrangements negotiated by the carriers."[112] This issue is resolved in favor of the CLECs.

94 Finally, Verizon objects to a portion of AT&T's proposed Section 3.1 placing a condition on Verizon assessing transition rates unless Verizon has complied with requirements for allowing CLECs to commingle UNEs or UNE Combinations. Verizon is correct that the FCC did not place such conditions on the implementation of transition plans or rates. To do so would be contrary to the FCC's regulations and federal law. The last sentence of AT&T's proposed Section 3.1 is rejected.

4. ISSUE NO. 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?

95 Similar to Issue No. 3 above, this issue addresses how the amendment should implement changes in unbundled access to DS1 loops, DS3 loops, and dark fiber identified in the Triennial Review Remand Order. The primary disagreements between the parties concern whether and how the FCC's transition plan for converting to alternative arrangements should be included in the amendment, the effective date of the new unbundling rules, and how to interpret the FCC's bar on adding new high-capacity loop UNEs. The sections of the parties' proposed amendments relevant to Issue No. 4 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 3.1, 3.2, 4.7.3
AT&T March 14, 2005, Amendment: §§ 2.6, 2.8, 2.12, 2.13, 2.37, 3.2, 3.11
MCI April 4, 2005, Amendment: §§ 9, 12.7.15

[112] *Id.*, ¶ 199; *see also* 47 C.F.R. § 51.319(d)(2)(iii) ("[A]n incumbent LEC shall provide access to local circuit switching on an unbundled basis for a requesting carrier *to serve its embedded base of end-user customers*." (Emphasis added)).

96 In the Triennial Review Remand Order, the FCC eliminated unbundling obligations for dark fiber loops and determined impairment for unbundled access to high-capacity DS1 and DS3 loops on a wire center basis, using as criteria the number of business lines and fiber-based collocators in wire centers.[113] The FCC also limited the number of high capacity loops a CLEC may obtain to a single building.[114] A CLEC must "undertake a reasonably diligent inquiry" into whether high capacity loops meet these criteria, and then must self certify to the ILEC that the CLEC is entitled to unbundled access.[115] The ILEC must provision the UNE and may then bring a dispute before a state commission or other authority if it contests the CLEC's access to the UNE, following the dispute resolution process in interconnection agreements.[116]

97 The FCC adopted a transition plan of 18 months for migration away from access to dark fiber loops and 12 months for migration away from access to DS1 and DS3 loops at wire centers meeting the non-impairment criteria, providing rates of 115 percent of the existing rate for the transition periods.[117] The FCC also established a "no new adds" requirement for dark fiber loops and high capacity loops meeting the criteria for non-impairment, determining that CLECs may not add new high capacity UNEs where the FCC has found no impairment.[118]

98 Similar to its position on implementing the FCC's transition plan for mass market switching, Verizon asserts that its proposals adequately address the changes in its unbundling obligations and that there is no need to incorporate

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[113] *Triennial Review Remand Order*, ¶¶ 146, 155, 166, 174, 178, 182, 195.
[114] *Id.*, ¶¶ 177, 181.
[115] *Id.*, ¶ 234.
[116] *Id*.
[117] *Id.*, ¶¶ 195-98. The FCC provides that "[h]igh-capacity loops no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon the amendment of the relevant interconnection agreements, including any applicable change of law processes." *Id.*, n.524. The issue of pricing of these transition UNEs is addressed below in Issues No. 6 and 11.
[118] *Id.*, ¶ 195.

specific language concerning transition in the parties' agreements.[119] Verizon asserts that the effective date of the FCC's decision precluding CLECs from adding new high capacity loop UNEs is March 11, 2005, not the effective date of the amendment.[120] Verizon objects to including in the agreement a list of wire centers that satisfy the non-impairment criteria for DS1 and DS3 loops, asserting that none of its wire centers in Washington meet the FCC's non-impairment criteria.[121] Likewise, Verizon opposes establishing a process for considering changes in wire center eligibility, asserting that the FCC has established a clear process for such changes.[122]

99 AT&T proposes language in Sections 3.2.1 and 3.2.5 of its March 14, 2005, proposed amendment specifically identifying the FCC's decisions and transition plans for DS1, DS3, and dark fiber loops. Based on information Verizon recently filed with the FCC, AT&T asserts that Verizon is obligated to provide unbundled access to DS1 and DS3 loops in all of its wire centers in Washington state.[123] AT&T asserts that CLECs should continue to have access to DS1 and DS3 loops at these wire centers "for the life of the agreement," and asserts that the amendment should provide for a transition period if, in the future, a wire center satisfies the non-impairment criteria.[124]

100 AT&T also requests that the amendment require Verizon to provide verifiable information to the Commission concerning the number of business lines and collocators in wire centers in Washington.[125] AT&T asserts that this information will allow AT&T and other CLECs access to the necessary information for

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[119] Verizon Initial Brief, ¶ 58; Verizon Reply Brief, ¶ 40.
[120] Verizon Initial Brief, ¶ 57; Verizon Reply Brief, ¶ 41.
[121] Verizon Reply Brief, ¶ 42.
[122] *Id*., ¶¶ 42-45.
[123] AT&T Initial Brief, ¶ 36.
[124] *Id*., ¶ 39.
[125] *Id*., ¶ 38; *see also* AT&T March 14, 2005, Amendment, § 3.9.

certifying whether unbundled access to high capacity loops is permitted at the wire center.[126]

101 MCI proposes language to implement the FCC's decisions and transition plans for high capacity loops in Section 9 of its April 4, 2005, Amendment. Unlike AT&T's proposal, MCI's language would allow CLECs access to new unbundled DS1, DS3, and dark fiber loops until the effective date of the amendment.[127] Similar to AT&T, MCI proposes language addressing specific wire centers in Washington State and whether the wire centers meet the FCC's criteria for non-impairment.[128] MCI's proposal includes quarterly filings by Verizon with an opportunity for response, and a dispute resolution process, should disputes arise over Verizon's designation of wire centers.[129]

102 The Competitive Carrier Group requests that the amendment include language identifying the FCC's transition plans and impairment criteria for high capacity loops.[130] The Competitive Carrier Group requests that the amendment include definitions of "business lines" and "fiber-based collocators" consistent with the definitions in the Triennial Review Remand Order.[131] Similar to AT&T and MCI, the Competitive Carrier Group asserts that the amendment must include a list of wire centers that satisfy the non-impairment criteria for DS1 and DS3 loops.[132]

103 The Competitive Carrier Group requests that the amendment include a process for reviewing and verifying Verizon's initial and future identification of wire

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[126] AT&T Initial Brief, ¶ 38.
[127] MCI April 4, 2005, Amendment, §§ 9.1.2.1, 9.2.2.1, 9.4.1; *see also* MCI Initial Brief at 5.
[128] MCI April 4, 2005, Amendment, § 9.3.
[129] *Id*.
[130] CCG Initial Brief, ¶¶ 14, 17.
[131] *Id*., ¶ 14. AT&T includes definitions of these terms in its proposed amendment. *See* AT&T March 14, 2005, Amendment, §§ 2.1, 2.18. These definitions will be addressed in Issue No. 9, below.
[132] CCG Initial Brief, ¶ 15.

centers where there is no impairment.[133] The Competitive Carrier Group asserts, like MCI, that the restriction against access to new high capacity loops that meet the non-impairment criteria and dark fiber loops should become effective when the Commission approves the amendment.[134] Finally, the Joint CLECs and Competitive Carrier Group suggest that the Commission not arbitrate the issue until the parties have an opportunity to negotiate appropriate language to implement the provisions of the Triennial Review Remand Order.[135]

104 ***Discussion and Decision.*** Consistent with the decision above concerning Issue No. 3, the FCC's transition plans for high capacity and dark fiber loops should be included in the amendment, as suggested by the CLECs. Similarly, for the reasons identified above, the effective date for the FCC's decision not to permit CLECs to add new high capacity loops that meet the non-impairment criteria is March 11, 2005, not the effective date of the amendment.

105 The FCC establishes a self-certification process for CLECs to obtain access to high capacity loops, and provides that ILECs must follow the dispute resolution process identified in the parties' interconnection agreements to resolve disputes over access to high capacity loop UNEs.[136] Despite the CLECs' request, there does not appear to be a need, at this point, to include a list of eligible wire centers in the amendment, as Verizon and the CLECs agree that no Verizon wire center meets the non-impairment criteria for high-capacity loops. In the future, however, the eligibility of DS1 and DS3 loops at these wire centers may change. CLEC access to accurate and verifiable information that forms the basis of self-certification would ensure more accurate self-certifications and fewer disputes.

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[133] *Id.*
[134] *Id.*, ¶ 17.
[135] Joint Response Brief, ¶ 18.
[136] *Triennial Review Remand Order*, ¶ 234.

106 It makes sense, therefore, to develop and maintain an accurate and up-to-date list of Verizon's wire centers and CLEC eligibility for access to high capacity loop UNEs at these wire centers. This list, however, need not be attached to the amendment, but can be maintained by the Commission in an easily accessible format posted to the Commission's website. Commission staff has initiated an investigation docket, Docket No. UT-053025, for the purpose of analyzing the status of the impact of the Triennial Review Remand Order on the competitive environment in Washington State. This docket would be appropriate for developing wire center lists as well as a process for updating the lists for both Verizon and Qwest. Thus, the CLECs' proposals to include a wire center list and process for updating the list in the amendment are rejected. The parties are encouraged to file comments in and participate in any workshops or proceedings in Docket No. UT-053025.

107 In addition, AT&T's proposal to make the wire center list permanent for the life of the interconnection agreement is rejected. AT&T's proposal is not consistent with the FCC's finding that carriers should include in their interconnection agreements transition mechanisms for facilities that meet the non-impairment criteria in the future.[137]

108 None of the parties' proposals adequately address the appropriate transition period for migrating to alternative arrangements should a DS1 or DS3 loop meet the nonimpairment criteria in the future. Verizon's and MCI's proposals include a 90-day notice period before discontinuing or rejecting new orders for a facility or element that becomes a "Discontinued Facility," but do not address transition for existing facilities to alternative arrangements. AT&T requests a twelve-month transition period. The FCC set a twelve-month transition period to allow CLECs and ILECs time to deploy, purchase, or lease facilities to make an orderly transition. Because the basis for the FCC's choice of a twelve-month transition period is the same for future changes to UNE eligibility, a twelve-month

[137] *Id.*, ¶ 142 n.399.

transition period is appropriate in the interim until the Commission establishes a different transition period in Docket No. UT-053025. The notice and transition period should be triggered by Commission determination that a wire center's eligibility has changed, after the ILEC files an updated list of eligible wire centers and the Commission reviews that filing.

109 Finally, the FCC suggests that parties follow the dispute resolution process in their agreements for disputes concerning eligibility of high capacity loops in a given wire center. Alternatively, given the need for swift and efficient resolution of disputes concerning CLEC self-certifications for obtaining high capacity loop UNEs, the parties should develop a specific dispute resolution process in the amendment for that purpose.

5. ISSUE NO. 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?

110 Similar to Issues No. 3 and 4 above, this issue addresses how the amendment should implement changes in unbundled access to dedicated interoffice transport identified in the Triennial Review Remand Order. As above, the primary disagreements between the parties concern whether and how the FCC's transition plan for converting to alternative arrangements should be included in the amendment, the effective date of the new unbundling rules, and how to interpret the FCC's bar on adding new transport UNEs. The sections of the parties' proposed amendments relevant to Issue No. 5 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 3.1, 3.2, 4.7.3
AT&T March 14, 2005, Amendment: §§ 2.7, 2.8, 2.9, 2.10, 2.11, 2.37, 3.6, 3.11
MCI April 4, 2005, Amendment: §§ 10, 12.7.4, 12.7.17

111 In the Triennial Review Remand Order, the FCC determined impairment for unbundled access to DS1, DS3, and dark fiber transport on the basis of routes between Tier 1, 2, or 3 wire centers, using as tier criteria the number of business lines and fiber-based collocators in the wire centers.[138] The FCC also limited the number of high capacity transport circuits a CLEC may obtain on routes for which unbundling obligations remain.[139] Similar to high capacity loops, a CLEC must "undertake a reasonably diligent inquiry" into whether transport circuits meet these criteria, and then must self-certify to the ILEC that the CLEC is entitled to unbundled access.[140] The ILEC must provision the UNE, and then, following the dispute resolution process in interconnection agreements, may bring a dispute before a state commission or other authority if it contests the CLEC's access to the UNE.[141]

112 The FCC adopted a transition plan of 18 months for migration away from access to dark fiber transport circuits meeting the non-impairment criteria and 12 months for migration away from access to DS1 and DS3 transport circuits meeting the non-impairment criteria, providing for rates of 115 percent of the existing rate for the transition periods.[142] The FCC also established a "no new adds" requirement for DS1, DS3, and dark fiber transport circuits meeting the criteria for non-impairment, determining that CLECs may not add new transport UNEs where the FCC has found no impairment.[143]

113 Verizon takes the same positions concerning amendment language for dedicated interoffice transport as it does for mass market switching and high capacity

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[138] *Id.*, ¶¶ 66, 79-80, 111, 112, 118, 123, 126, 129.
[139] *Id.*, ¶¶ 128, 131.
[140] *Id.*, ¶ 234.
[141] *Id*.
[142] *Id.*, ¶¶ 142-44. The FCC provides that "[d]edicated transport facilities no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon the amendment of the relevant interconnection agreements, including any applicable change of law processes." *Id.*, n.408. The issue of pricing of transition UNEs is addressed below in Issues No. 6 and 11.
[143] *Id.*, ¶¶ 142, 145.

transport.[144] Verizon opposes the CLECs' requests for a list of wire centers that satisfy the non-impairment criteria for DS1 and DS3 transport. Verizon asserts that it has identified only two wire centers in Washington that meet the criteria and provides on its website a public list of all wire centers that meet the criteria.[145] Consistent with its position concerning high capacity loops, Verizon insists that it will provide CLECs with the necessary information to verify Verizon's designation of wire centers and routes, and that there is no need to address this hypothetical situation in the amendment.[146]

114 AT&T and MCI propose language for the amendment specifically identifying the FCC's decisions and transition plans for DS1, DS3, and dark fiber transport.[147] The Competitive Carrier Group requests that the amendment include specific language addressing the transition.[148] AT&T, MCI, and the Competitive Carrier Group take positions similar to those expressed for high capacity loops on the issues of inclusion of transition plans and a wire center list in the amendment, the effective date of the FCC's "no new adds" decision, and a process for changes to the wire center list.

115 ***Discussion and Decision.*** Issue No. 5 is resolved consistent with Issues No. 3 and 4, above:

- The FCC's transition plans for DS1, DS3, and dark fiber transport should be included in the amendment, as suggested by the CLECs.
- The effective date of the FCC's decision to preclude CLECs from adding new DS1, DS3, and dark fiber transport circuits that meet the non-

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[144] Verizon Initial Brief, ¶¶ 59-62; Verizon Reply Brief, ¶¶ 46-47.
[145] Verizon Reply Brief, ¶ 48.
[146] *Id.*, ¶¶ 49-50.
[147] *See* AT&T March 14, 2005, Amendment, §§ 3.6, 3.9; *see also* MCI April 4, 2005, Amendment, § 10.
[148] CCG Initial Brief, ¶¶ 18-22.

impairment criteria is March 11, 2005, not the effective date of the amendment.

- AT&T's proposal to make the wire center list permanent for the life of the interconnection agreement is rejected.
- Twelve months is an appropriate transition period for future discontinued transport facilities, until the Commission establishes a different transition period.
- The notice and transition period should be triggered by a Commission determination that a wire center's eligibility has changed.
- The parties should develop a specific dispute resolution process concerning CLEC self-certification for obtaining transport UNEs.

116 The issue of a central, verifiable wire center listing requires further discussion. Verizon discounts AT&T's arguments about verifying Verizon's designations of wire centers, claiming that it is sufficient for Verizon to post a list of ineligible wire centers on its website and make verifying information available to CLECs on request.[149] AT&T asserts that it is important to correctly designate a wire center as ineligible, as once it is so designated, it will remain ineligible permanently.[150] AT&T requests the Commission conduct a generic inquiry into wire centers designated by Verizon as ineligible, resulting in the Commission certifying a list of wire center designations that would be incorporated in all interconnection agreements.[151] AT&T asserts that the Commission could resolve any disputes concerning the designation of wire centers.[152]

117 For the same reasons discussed above, this issue is resolved in favor of the CLECs, in part. As discussed above, AT&T's request to append a permanent list of eligible or ineligible wire centers to the amendment is rejected. It is crucial to

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[149] Verizon Reply Brief, ¶¶ 48-50.
[150] AT&T Initial Brief, ¶¶ 49-50.
[151] *Id*., ¶ 50.
[152] *Id*.

all parties, however, to have a central list of all ineligible wire centers, as well as pertinent information about eligible wire centers that is accurate, verified, and made available to the public. Verizon is to be commended for posting a list on its website. One problem with using Verizon's list is that each CLEC that seeks to avail itself of transport circuits using a listed wire center must request verifying information from Verizon. A more efficient process for Verizon and the CLECs would be to follow AT&T's suggestion and conduct a generic inquiry into wire centers identified by Verizon. As discussed above, Commission staff has initiated such an inquiry in Docket No. UT-053025.

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

118 This issue addresses whether and how Verizon may price facilities no longer subject to unbundling. The primary disagreements concern 1) whether Verizon may assess the transitional rates for mass market switching, high capacity loops, and dedicated interoffice transport as of March 11, 2005, or on the effective date of the amendment, and 2) whether change of law provisions in the parties' agreements govern rate changes or rate increases, generally. While the CLECs also argue that Verizon may not charge termination or non-recurring charges when converting former UNEs to alternative arrangements, this issue is addressed more fully in Issue No. 8.[153] The sections of the parties' proposed amendments relevant to Issue No. 6 are as follows:

[153] *See Id*., ¶ 52; *see also* CCG Initial Brief, ¶ 23.

Verizon September 10, 2004, Amendment 1: §§ 3.2, 3.3, 3.5
Verizon November 4, 2004, Amendment 2: § 2.5
AT&T March 14, 2005, Amendment: §§ 3.1, 3.2.1.3, 3.2.5.2, 3.5.1.2, 3.6.2.4, 3.11.1, 3.11.3
MCI April 4, 2005, Amendment: §§ 3.2, 11.2.3

119 Verizon asserts that once a network element is no longer subject to unbundling under Section 251(c)(3), the rates, terms, and conditions for providing access to the element are no longer subject to the requirements of Section 251 and 252, *i.e.*, are not subject to arbitration or inclusion in interconnection agreements, or subject to state commission review.[154] Verizon proposes to provide access to discontinued elements through access tariffs or commercial agreements negotiated outside of the Section 252 process.[155] Verizon asserts that the amendment should," for the sake of clarity," refer to the ability of parties to negotiate separate commercial agreements.[156]

120 Verizon objects to AT&T's proposed Section 3.9.5, asserting that the amendment should not include any language identifying specific terms governing Verizon's provisioning of discontinued elements.[157] Verizon argues that MCI's assertion that change of law provisions should govern any new rates or rate increases is contrary to the transitional pricing established in the Triennial Review Remand Order.[158] Verizon asserts that MCI has already had notice of the FCC's transition rates and cannot complain that Verizon has not provided notice of the new rates.[159]

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[154] Verizon Initial Brief, ¶ 63, *citing Qwest Declaratory Ruling*, ¶ 8, n.26; *see also* Verizon Reply Brief, ¶ 51.
[155] Verizon Initial Brief, ¶ 63.
[156] *Id*.
[157] *Id*.
[158] Verizon Reply Brief, ¶¶ 52-53.
[159] *Id*.

121 AT&T, MCI, the Joint CLECs, and the Competitive Carrier Group assert that, as to the three elements addressed in the Triennial Review Remand Order, Verizon must follow the FCC's transitional pricing provisions.[160] Specifically, the CLECs assert that the FCC provided that the rates in effect under the parties' interconnection agreements would apply until the agreements are amended, subject to a "retroactive true-up back to March 11, 2005."[161]

122 AT&T asserts that any other rate increases or new charges are subject to Commission review in a cost proceeding, but are not retroactive.[162] MCI objects to Verizon's proposed Section 3.5 and asserts that any rate increases or new charges are subject to the change of law provisions in the parties' agreements: Verizon cannot implement them solely by issuing a new rate schedule.[163]

123 ***Discussion and Decision.*** This issue addresses how Verizon may reprice elements that are no longer subject to unbundling obligations, both those network elements identified in the Triennial Review Remand Order, and those identified in the Triennial Review Order.

124 Verizon must follow the transitional pricing mechanisms of the Triennial Review Remand Order. The FCC removed unbundling obligations for mass-market switching, subject to a one-year transition period for the embedded customer base, and limited unbundling obligations for high-capacity loops and dedicated interoffice transport, subject to one-year and 18-month transition periods for the embedded customer bases. The FCC applied transition rates to these network elements, but provided that the transition rates do not apply until after the parties amend their interconnection agreements, subject to a true-up back to March 11, 2005.[164] Thus, Verizon may not charge CLECs the transition rate for

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[160] AT&T Initial Brief, ¶ 51; Joint CLEC Initial Brief, ¶ 14; CCG Initial Brief, ¶ 23.
[161] AT&T Initial Brief, ¶ 51; CCG Initial Brief, ¶ 23.
[162] AT&T Initial Brief, ¶ 52.
[163] MCI Initial Brief at 6.
[164] *Triennial Review Remand Order*, ¶ 145 n.408; ¶ 198 n.524; ¶ 228 n.630.

the elements delisted in the Triennial Review Remand Order until the effective date of the amendment to the parties' interconnection agreements.[165] This issue is resolved in favor of the CLECs.

125 Consistent with the decisions in Issues No. 3, 4, and 5 above, however, Verizon is not obligated to provide access to new mass market switching, dark fiber loops, or high-capacity loops and transport that meet the FCC's non-impairment standards. As access to and rates for these elements are no longer governed by Section 251, or subject to the Section 252 process, Verizon may establish by appropriate tariff or commercial arrangements the price for these delisted elements. Repricing for these elements is not subject to the change of law provisions of interconnection agreements. This issue is resolved in favor of Verizon.

126 As to elements not addressed in the Triennial Review Remand Order, the FCC has provided that ILECs and CLECs must negotiate and arbitrate new agreements under the Section 252 process to implement changes in unbundling obligations.[166] Thus, ILECs must continue to provide the element as provided under the agreement, including provisioning at TELRIC prices, until the parties' agreement is amended to remove the obligation. Consistent with the decisions in Issue No. 2, above, where a CLEC's agreement contains change in law provisions similar to AT&T's agreement, Verizon may not implement changes in unbundling obligations or reprice elements until the effective date of the amendment, unless the parties have reached agreement as to an alternative effective date in a separate commercial agreement.

127 Verizon's proposed language in Sections 3.1, 3.2, and 3.5 of its Amendment 1 does not adequately address the decisions on this issue. Verizon does not

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[165] As discussed above in Issue No. 2, those CLECs with automatic elimination provisions are subject to the transition pricing as of March 11, 2005.
[166] *Triennial Review Order*, ¶¶ 700, 701; *Triennial Review Remand Order*, ¶ 233.

distinguish transition elements or transition pricing under the Triennial Review Remand Order, or allow for other changes to become effective on the effective date of the amendment. Verizon treats all "Discontinued Facilities" as if the obligations to provide access to and TELRIC rates for UNEs are removed as of the effective date of the FCC's decisions. Unless the FCC has stated otherwise, as it has in the Triennial Review Remand Order, changes in unbundling obligations and the TELRIC rates for unbundled elements must be modified through the Section 252 process.

128 AT&T's proposed provisions governing application of transition rates (Sections 3.2.1.3, 3.2.5.2, 3.5.1.2, 3.6.2.4) are appropriate, as they follow the FCC's guidelines in the Triennial Review Remand Order. However, AT&T's proposed Section 3.1 applies conditions not imposed by the FCC for application of transition rates. Similarly, AT&T's proposed transition provisions for "Declassified Network Elements" in Section 3.11 are not appropriate. Where ILECs no longer have unbundling obligations to provide access to an element, the parties must negotiate a separate commercial agreement to address provisioning of the element. The ILEC, however, must continue to provision the element under the terms of the agreement and at TELRIC prices until the parties' interconnection agreements are amended to remove the obligation.

7. ISSUE NO. 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?

129 The parties dispute Verizon's proposed language in Section 3.1 of Amendment 1 concerning when and how Verizon may discontinue providing UNEs following the removal of unbundling requirements. The CLECs repeat concerns expressed above in Issue No. 2. The sections of the parties' proposed amendments relevant to Issue No. 7 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 3.1, 4.7.3
AT&T March 14, 2005, Amendment: §§ 3.11
MCI April 4, 2005, Amendment: §§ 3.1, 12.7.5

130 Verizon proposes language in Section 3.1 of Amendment 1 to the effect that Verizon may issue a notice of discontinuance in advance of the effective date of the amendment, that it has already provided 90-days notice to CLECs of discontinuance of certain "Discontinued Facilities," and that that Verizon will only provide the facility through the effective date of the notice of discontinuance, *i.e.*, the effective date of the FCC's decision to remove the unbundling obligation.[167] Verizon asserts that this language is necessary to avoid any further delay in implementing the FCC's changes to unbundling obligations.[168]

131 Verizon asserts that it is reasonable to rely on notices of discontinuance issued prior to the amendment's effective date.[169] Verizon states that the CLECs have had ample notice of the changes in unbundling rules: The FCC provides advance notice of changes in unbundling rules through press releases issued prior to the date the order is entered, and the order and new rules are not effective until 30 days after publication in the Federal Register.[170] Verizon notes that the FCC issued a press release concerning the Triennial Review Order on February 20, 2003, and released the Order on August 21, 2003, with an October 2, 2003, effective date.[171] Likewise, the FCC issued a press release announcing the Triennial Review Remand Order on December 15, 2004, and released the Order on February 4, with an effective date of March 11, 2005.[172]

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[167] Verizon September 10, 2004, Amendment 1, § 3.1; *see also* Verizon Initial Brief, ¶ 64.
[168] Verizon Initial Brief, ¶ 64.
[169] *Id*., ¶ 66.
[170] *Id*., ¶ 65.
[171] *Id*.
[172] *Id*.

132 Verizon asserts that it has given CLECs 90-days written notice of discontinuance of various elements for which unbundling obligations were removed.[173] Verizon has discontinued providing unbundled access to elements to CLECs whose interconnection agreements allow discontinuance without an amendment.[174] Verizon has not discontinued such elements where a CLEC's interconnection agreement has a change of law provision that requires amendment.[175]

133 Verizon objects to the CLECs' proposal that Verizon provide notice of discontinuance only after the effective date of the amendment.[176] Verizon asserts that its proposed Section 3.1 "properly reflects the requirements of federal law and is in no way inconsistent with the parties' existing change-of-law procedures."[177] Verizon asserts that AT&T's proposal to identify specific circuits being discontinued would delay implementation, and that the parties can work out the details of implementation after Verizon provides notice of discontinuance.[178]

134 AT&T refers to its position on Issue No. 2 concerning modification of the parties' change of law provisions.[179] AT&T asserts that Verizon should be required to provide notice of discontinuance only after the effective date of the amendment, and then must provide specific notice of the particular circuits or elements being discontinued.[180]

135 MCI suggests that Verizon's term "Discontinued Facility" should be replaced with "Discontinued Element," noting that the term refers to UNEs that have been

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[173] *Id.*, ¶ 66.
[174] *Id*.
[175] *Id*.
[176] *Id.*, ¶ 67; *see also* Verizon Reply Brief, ¶ 57.
[177] Verizon Reply Brief, ¶ 57.
[178] *Id.*, ¶ 59.
[179] AT&T Initial Brief, ¶ 53; *see also* AT&T Reply Brief, ¶¶ 1-3.
[180] AT&T Initial Brief, ¶ 53.

removed from FCC rules, and that Verizon has offered to maintain existing facilities, but at a higher price.[181] MCI does not object to the part of Verizon's proposed Section 3.1 that provides 90 days notice before discontinuing provisioning of specific Discontinued Elements.[182]

136 MCI objects to Verizon's definition of "Discontinued Facility" asserting that it improperly modifies the change of law provisions in interconnection agreements by addressing UNEs that might be removed from unbundling requirements in the future.[183] MCI proposes changes to the definition and suggests deleting a sentence in Section 3.1 allowing Verizon to provide notice of discontinuance in advance of the effective date of the removal of unbundling requirements.[184] MCI also opposes language in Verizon's Sections 3.1 and 3.4 that would preserve any rights Verizon may have under the agreement, any Verizon tariff or SGAT to stop providing a discontinued element. MCI asserts that interconnection agreements address the parties' rights and obligations, not tariffs or SGATs, and that such tariffs or SGATs could not override the agreement.[185] MCI also objects to the intent of the language to address future changes of law.[186]

137 As with MCI, the Joint CLECs and Competitive Carrier Group assert that Verizon's proposed language would permit Verizon to discontinue UNEs resulting from current and future changes in law without amending their interconnection agreements in accordance with change of law provisions.[187] The carriers assert that Verizon proposes a double standard: Verizon's language would allow Verizon to provide notice of discontinuance prior to the effective date of a new rule such that Verizon could immediately discontinue the UNE on

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[181] MCI Initial Brief at 7.
[182] *Id*.
[183] *Id*. at 7-8; MCI Reply Brief, ¶¶ 7-11.
[184] MCI Initial Brief at 8.
[185] *Id*. at 8-9.
[186] *Id*.
[187] Joint CLEC Initial Brief, ¶ 15; CCG Initial Brief, ¶ 24.

the effective date, whereas Verizon could delay implementation of new obligations by requiring negotiation and arbitration pursuant to Section 252.[188] The Competitive Carrier Group asserts that providing notice of discontinuance in advance of amending the parties' agreements is contrary to the FCC's requirement that agreements be amended in accordance with change of law provisions.[189]

138 ***Discussion and Decision.*** Two proposed sections of Verizon's Amendment 1—Sections 3.1 and 4.7.3—are at issue: Section 4.7.3, the definition of "Discontinued Facility," provides:

> Any facility that Verizon, at any time has provided or offered to provide to [CLEC] on an unbundled basis pursuant to the Federal Unbundling Rules (whether under the Agreement, a Verizon tariff, or a Verizon SGAT), but which by operation of law has ceased or ceases to be subject to an unbundling requirement under the Federal Unbundling Rules. By way of example and not by way of limitation, Discontinued Facilities include the following, whether as stand-alone facilities or combined with other facilities: (any Entrance Facility (b) Enterprise Switching; (c) Four-Line Carve Out Switching; (d) OCn Loops and OCn Dedicated Transport; (e) the Feeder portion of a Loop; (f) Line Sharing; (g) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with [CLEC]'s use of Verizon's Mass Market Switching; (h) Signaling or Shared Transport that is provisioned in connection with [CLEC]'s use of Verizon's Enterprise Switching or Four-Line Carve Out Switching; (i) FTTP Loops (lit or unlit); (j) Hybrid Loops (subject to exceptions for narrowband services, i.e., equivalent to DS0 capacity): and [(k)] any other facility or class of facilities as to which the FCC has not made a finding of impairment that remains effective or otherwise

[188] Joint Response Brief, ¶¶ 21-22.
[189] CCG Initial Brief, ¶ 15.

> addressed in the Interim Rules Order or similar order, or as to which the FCC has made a finding of nonimpairment.[190]

139 Section 3.1 provides, in full:

> Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, Verizon shall not be obligated to offer or provide access on an unbundled basis at rates prescribed under Section 251 of the Act to any facility that is or becomes a Discontinued Facility, whether as a stand-alone UNE, as part of a Combination, or otherwise. To the extent Verizon has not already ceased providing a particular Discontinued Facility to [CLEC], Verizon, provided it has given at least ninety (90) days written notice of discontinuance of such Discontinued Facility, will continue to provide such Discontinued Facility under the Amended Agreement only through the effective date of the notice of discontinuance, and not beyond that date. To the extent a facility is (or becomes) a Discontinued Facility only as to new orders that [CLEC] may place for such a facility, Verizon, to the extent it has not already discontinued its acceptance of such new orders and provided it has given at least ninety (90) days written notice of its intention to do so, may reject such new orders on the effective date of the notice of discontinuance and thereafter. Verizon may, but shall not be required to, issue the foregoing notice in advance of the date on which the facility shall become a Discontinued Facility as to new orders that [CLEC] may place, so as to give effect to Verizon's right to reject such new orders immediately on that date. The parties acknowledge that Verizon, prior to the Amendment Effective Date, has provided [CLEC] with all required notices of discontinuance of certain Discontinued Facilities, and that Verizon, to the extent it has not already done so pursuant to a preexisting or independent right it may have under the Agreement, a Verizon SGAT or tariff, or otherwise, may, at any time, and without further notice to [CLEC], cease providing any such Discontinued Facilities. This Section 3.1 is intended to limit any obligation Verizon might

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[190] Verizon September 10, 2004, Amendment 1, § 4.7.3.

> otherwise have to provide to [CLEC] (or to notify [CLEC] of the discontinuance of) any facility that is or becomes a Discontinued Facility and nothing contained in this Section 3.1 or elsewhere in this Amendment shall be deemed to establish in the first instance or to extend any obligation of Verizon to provide any facility or Discontinued Facility. This Section 3.1 shall apply notwithstanding anything contained in the Agreement, this Amendment, or any Verizon tariff or SGAT, but without limiting any other right Verizon may have under the Agreement, this Amendment or any Verizon tariff or SGAT to cease providing a facility that is or becomes a Discontinued Facility.[191]

140 Consistent with the decisions in Issues No. 2 and 6 above, the language in Sections 3.1 and 4.7.3 that purport to allow Verizon to discontinue unbundled elements in the future, without following change of law provisions or the Section 252 process, are not appropriate and are rejected.[192] Future changes in unbundling rules must be implemented through the Section 252 process, unless the parties' interconnection agreement allows discontinuance after notice. If Sections 3.1 and 4.7.3 are modified, consistent with MCI's proposal, to address specific "Discontinued Elements," and to limit advance notification to these specific "Discontinued Elements," the language in the sections would be consistent with the requirements of federal law. Specific language concerning the FCC's transition plans and rates for mass market switching, high-capacity loops, and dedicated interoffice transport will provide the terms for discontinuing for these elements, if applicable.

141 As to the specific elements identified in Verizon's definition of "Discontinued Facility," it is appropriate, given the length of time since the Triennial Review Order's effective date, to allow Verizon to discontinue providing the elements on the effective date of the amendment. The CLECs have had ample notice of the

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[191] *Id.*, § 3.1.

[192] For those agreements that do not contain change of law provisions requiring amendment of agreements before discontinuance, Verizon's language is appropriate.

discontinuance of these elements, both from the FCC, Verizon, and through litigation. There is no need for further notice, guidelines, or conditions before transitioning away from use of these elements, as AT&T suggests in its proposed Section 3.11.

8. ISSUE NO. 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?

142 The parties dispute whether Verizon may assess or impose one-time charges when discontinuing a UNE arrangement or changing the UNE arrangement to an alternative service. Verizon does not propose a specific disconnection charge, but does propose a "Circuit Retag" fee in Section 3.4.2.4 of its Amendment 2 if conversion of a circuit from UNE to access requires the circuit to be retagged. The CLECs propose language to prohibit Verizon from imposing termination, disconnection, or reconnection charges when disconnecting or changing a UNE to an alternative arrangement. The sections of the parties' proposed amendments relevant to Issue No. 8 are as follows:

Verizon November 4, 2004, Amendment 2: §§ 3.4.2.4, 3.4.2.5
AT&T March 14, 2005, Amendment: § 3.7.2.2
MCI April 4, 2005, Amendment: §§ 3.2, 5.3, 8

143 Verizon asserts that it does not propose rates in its Amendment 2 to recover the costs of discontinuing or establishing alternative services, such as service orders, and asserts the Commission should not decide the issue until Verizon proposes specific charges.[193] Verizon asserts, however, that it is entitled to recover legitimate costs.[194] Verizon insists that the Commission may not limit or constrain its ability to negotiate or impose non-recurring costs in the context of

[193] Verizon Initial Brief, ¶ 69; Verizon Reply Brief, ¶ 62.
[194] Verizon Initial Brief, ¶ 69.

commercial agreements, as these agreements are not subject to the requirements of Sections 251 or 252.[195]

144 In response to CLEC proposals to prohibit charges for disconnection of UNEs, Verizon asserts that the Commission has "approved several instances in which Verizon assesses a non-recurring charge for disconnect orders on existing lines."[196] Verizon asserts that the CLECs claim that Verizon is the cost causer and should bear the cost of disconnection or transfer of UNEs is nonsense.[197] Verizon asserts that CLECs have no right to access Verizon's network at reduced prices, and if they choose to do so, any costs are caused by the CLECs.[198]

145 The CLECs argue that Verizon should not be able to assess non-recurring charges to discontinue an eliminated UNE or transition that UNE to an alternative arrangement, such as changing UNE-P to resale.[199] MCI further asserts that no disconnect charge should apply where the UNE loops are disconnected as a part of a group or batch request or as a result of the Triennial Review Remand Order, rather than "normal market driven, customer churn."[200] Some CLECs assert that the disconnection of UNEs is an activity caused by Verizon, not the CLEC, and any costs should be born by Verizon.[201]

146 The CLECs assert that the transition from UNEs to alternative arrangements should be governed by the principles the FCC identifies for conversion of wholesale services to UNEs in 47 C.F.R. §§ 51.316(b) and (c).[202] These rules

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[195] *Id*.
[196] *Id*., ¶ 70, *citing* Commission Docket Nos. UT-960369, UT-960370, and UT-960371, and Verizon tariff, WN U-21, Section 5; *see also* Verizon Reply Brief, ¶ 61.
[197] Verizon Reply Brief, ¶ 60.
[198] *Id*.
[199] AT&T Initial Brief, ¶ 54; MCI Initial Brief at 9-10; Joint CLEC Initial Brief, ¶ 16; CCG Initial Brief, ¶ 25.
[200] MCI Initial Brief at 9-10.
[201] AT&T Initial Brief, ¶ 55; Focal Initial Brief, ¶ 4; CCG Initial Brief, ¶ 26.
[202] AT&T Initial Brief, ¶ 57; *see also* Joint CLEC Initial Brief, ¶ 16.

require ILECs to perform the conversions without adversely affecting end-user customers, and without imposing termination charges, disconnect fees, reconnect fees, or first-time service charges.[203] AT&T and Focal further assert that switching customers to an alternative arrangement would involve no technical work, and would simply require a billing change, similar to the FCC's discussion of conversions of Enhanced Extended Links, or EELs.[204]

147 ***Discussion and Decision.*** While Verizon insists that it has not proposed charges for setting up alternative services, and that it would be premature to decide the issue,[205] Verizon proposes language in Sections 3.4.2.4 and 3.4.2.5 of its Amendment 2 addressing charges for conversions, including conversions from UNE to wholesale.[206] Section 3.4.2.5 provides that:

> All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. If such change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as specified in the pricing attachment.

The pricing attachment, Exhibit A, identifies a charge of $59.43 for each Circuit Retag. Verizon does not define the term "conversion" in either Amendment 1 or 2.[207]

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[203] *See* 47 C.F.R. §§ 51.316(b) and (c); *see also* AT&T Initial Brief, ¶ 57.
[204] AT&T Initial Brief, ¶ 56, *citing Triennial Review Order*, ¶ 588; *see also* Focal Initial Brief, ¶ 5. EELS, or Enhanced Extended Links, are combinations of unbundled loops with unbundled dedicated transport, *i.e.*, long loops that extend from an ILEC wire center to a CLEC location. *See* AT&T Initial Brief, *¶ 118*. EELs, and their conversion, are discussed further below in Issues No. 12, 13, and 21.
[205] Verizon Initial Brief, ¶ 69; Verizon Reply Brief, ¶ 62.
[206] Verizon November 4, 2004, Amendment 2, §§ 3.4.2.4 and 3.4.2.5; *see also* Exhibit A to Amendment 2.
[207] The appropriate definition of "conversion" is addressed below in Issue No. 9.

148 To the extent that this conversion fee applies to transitioning UNEs to alternative arrangements, Verizon's proposal is rejected. Verizon has provided no back-up information or cost model to supports its proposal for a Circuit Retag charge. Without more support from Verizon, and given the FCC's rules and discussion governing conversions from wholesale to UNEs, the CLECs' argument that conversion requires only a billing change is persuasive.

149 Where the CLEC chooses to disconnect a UNE rather than convert to an alternative arrangement, Verizon has not yet proposed a charge in Exhibit A to Amendment 2. Verizon is correct that there is no need to address a hypothetical rate. Verizon may not, however, charge the disconnect fee established in Docket Nos. UT-960369, UT-960370, and 960371, without further demonstration that the disconnect fee is applicable to the present situation. Verizon must file a tariff or propose a change to Exhibit A prior to charging disconnection or other charges, and must allow CLECs and the Commission an opportunity to address the proposal.

150 Verizon's argument that disconnect or conversion charges are outside of the scope of Section 251 and 252, and thus state commission review, is rejected. As is discussed above concerning Issue No. 2, the Commission specifically provided that the parties address through the Section 252 process the transition away from provisioning elements on an unbundled basis that the FCC has determined are no longer required to be unbundled.[208] If demonstrated as appropriate, disconnection and conversion charges applicable to the transition may be included in the amendment.

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[208] *Triennial Review Order*, ¶¶ 700, 701; *Triennial Review Remand Order*, ¶ 142 n.399, ¶ 198 n.524, ¶ 228 n.630, ¶ 233.

9. ISSUE NO. 9: What terms should be included in the Amendments' Definitions Section and how should those terms be defined?

151 This issue concerns whether specific definitions should be included in the amendment. While the parties appear to agree on a few definitions, Verizon proposes a number of definitions that the CLECs oppose, and the CLECs propose other definitions that Verizon opposes. The sections of the parties' proposed amendments relevant to Issue No. 9 are as follows:

Verizon November 4, 2004, Amendment 1: § 4.7
AT&T March 14, 2005, Amendment: § 2
MCI April 4, 2005, Amendment: § 12.7
Focal March 11, 2005, Amendment: §§ 5.2, 5.3

The Order addresses the proposed definitions below in alphabetical order.

152 ***Applicable Law.***[209] AT&T proposes that the amendment include the term "Applicable Law," defined as "All laws, rules, and regulations, including, but not limited to, the Communications Act of 1934, as amended, ('the Act') (including, but not limited to 47 U.S.C. § 251), effective rules, regulations, decisions and orders of the FCC and the Commission, and all orders and decisions of courts of competent jurisdiction."[210] Verizon objects to AT&T's definition as seeking a broad definition to support the argument that the Commission may impose UNE obligations that the FCC has eliminated.[211]

153 This issue is discussed above in Issue No. 1 in great detail. While state commissions may not impose unbundling obligations that conflict with federal law, the FCC has not preempted state commissions from imposing unbundling

[209] AT&T March 14, 2005, Amendment, § 2.0.
[210] *Id*.
[211] Verizon Initial Brief, ¶ 114.

obligations that are consistent with the federal regulatory scheme.[212] The Arbitrator directs the parties to work together to modify Sections 2.1, 2.3, and 3.3 of Verizon's proposed amendments consistent with this decision. Thus, AT&T's proposed definition is rejected, subject to the parties working to modify Verizon's proposed language.

154 ***Business Switched Access Line.***[213] AT&T includes a definition of "Business Switched Access Line" in its proposed amendment. Like AT&T, the Joint CLECs and the Competitive Carrier Group support including the term, as used and defined by the FCC in the Triennial Review Remand Order.[214] AT&T's proposed definition should be included in the amendment. It is consistent with the FCC's definition in 47 C.F.R. § 51.5, and it will be necessary in modifying the amendment consistent with decisions above concerning Issues No. 4 and 5.

155 ***Circuit Switch.***[215] AT&T includes the following definition of "Circuit Switch" in its proposed amendment: "A device that performs, or has the capability of performing, switching via circuit technology. The features, function, and capabilities of the switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and lines to trunks."[216] Verizon opposes including the term and the definition, asserting that the term is unnecessary and that the definition is intended to allow unbundled access to packet switching.[217]

156 The definition appears necessary only, as Verizon asserts, to allow CLECs unbundled access to packet switches that may include circuit switching capabilities. As discussed below, AT&T's proposal concerning packet switching is rejected. AT&T's definition of "Circuit Switch" is not necessary and is rejected.

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[212] *See supra*, ¶¶ 59-60, 64.
[213] AT&T March 14, 2005, Amendment, § 2.1.
[214] AT&T Initial Brief, ¶ 58; Joint CLEC Initial Brief, ¶ 17; CCG Initial Brief, ¶ 27.
[215] AT&T March 14, 2005, Amendment, § 2.3.
[216] *Id*.
[217] Verizon Initial Brief, ¶ 115.

157 ***Combination.***[218] AT&T and MCI include the term "Combination" in their proposed amendments, defined as the provision of UNEs in combination with each other, including, but not limited to the loop and switching combination, referred to as UNE-P, and the loop and dedicated transport combination, referred to as an EEL.[219] Verizon objects to these definitions as incorrectly assuming the continued availability of UNE-P.[220] Verizon also asserts that there is no need to include the definition in the amendment as neither the Triennial Review Order nor the Triennial Review Remand Order substantively altered the definition of "Combinations."[221]

158 This issue is resolved in favor of Verizon. As discussed above, the FCC has eliminated the availability of new UNE-P arrangements. In addition, there is no need to include AT&T and MCI's proposed definition in the amendment, as the FCC has not modified its definition of "Combinations."

159 ***Commingling.***[222] AT&T and MCI propose the following definition for the term "Commingling":

> The connecting, attaching, or otherwise linking of a Network Element, or a Combination of Network Elements, to one or more facilities or services that [CLEC] has obtained at wholesale from Verizon pursuant to any other method other than unbundling under Section 251(c)(3) of the Act, or the combining of a Network Element, or a Combination, with one or more such facilities or services. "Commingle" means the act of Commingling.[223]

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[218] AT&T March 14, 2005, Amendment, § 2.4; MCI April 4, 2005, Amendment, § 12.7.2.
[219] *Id*.
[220] Verizon Initial Brief, ¶ 117.
[221] *Id*.
[222] AT&T March 14, 2005, Amendment, § 2.5; MCI April 4, 2005, Amendment, § 12.7.3; Focal Initial Brief, ¶ 7.
[223] AT&T March 14, 2005, Amendment, § 2.5; MCI April 4, 2005, Amendment, § 12.7.3.

Focal proposes a similar definition:

> Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or combination of unbundled network elements, or Section 271 Network Elements purchased from Verizon to any one or more facilities or services (other than unbundled network elements) that CLEC has obtained from Verizon, or the combining of an unbundled network element, or combination of unbundled network elements, or Section 271 Network Elements with one or more such facilities or services. Commingle means the act of Commingling.[224]

160 Verizon asserts that the definitions are inappropriate as they allow CLECs to commingle UNEs with Section 271 elements, which Verizon asserts are not available in Washington.[225] Verizon also objects to Focal's proposal that Verizon allow commingling of UNEs with network elements made available pursuant to the terms of the Bell Atlantic/GTE Merger Order.[226]

161 The FCC defines commingling in the Triennial Review Order as:

> the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services."[227]

AT&T's definition is the most consistent with the FCC's definition, and should be included in the amendment, modified as follows:

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[224] Focal Initial Brief, ¶ 7.
[225] Verizon Initial Brief, ¶ 119.
[226] Verizon Reply Brief, ¶ 65.
[227] *Triennial Review Order*, ¶ 579.

> The connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that [CLEC] has obtained at wholesale from Verizon pursuant to any ~~other~~ method other than unbundling under Section 251(c)(3) of the Act, or the combining of an Unbundled Network Element, or a Combination, with one or more such facilities or services. "Commingle" means the act of Commingling.

This definition cannot be interpreted to include Section 271 network elements, as Verizon is not obligated to provide Section 271 network elements in Washington State.

162 ***Conversion.***[228] Focal proposes the following definition of "Conversion":

> Conversion means all procedures, processes and functions that Verizon and CLEC must follow to Convert any Verizon facility or service other than an unbundled network element (e.g., special access services) or group of Verizon facilities or services to the equivalent UNEs or UNE Combinations or Section 271 Network Elements, or the reverse. Convert means the act of Conversion.

Verizon objects to the definition of "Conversion" as it includes a reference to Section 271 Elements.[229]

163 Because both Verizon and the CLECs address conversions in their proposed amendments,[230] it is appropriate to include a definition in the amendment. Consistent with the discussion above in Issue No. 1, Focal's proposed definition

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[228] Focal Initial Brief, ¶ 7.
[229] Verizon Initial Brief, ¶ 142; Verizon Reply Brief, ¶ 65.
[230] Verizon November 4, 2004, Amendment 2, §§ 3.4.2.1, 3.4.2.4, 3.4.2.5, 3.4.2.6; AT&T March 14, 2005, Amendment, § 3.7; MCI April 4, 2005, Amendment, § 5; Focal March 11, 2005, Amendment, § 2.3.

is appropriate, except the definition should exclude the reference to Section 271 Network Elements.

164 ***Dark Fiber Loop.***[231] Verizon asserts that its proposed definition best captures the FCC's definitions of "loop" and "dark fiber," and opposes AT&T's proposed definition as redundant and for including the term "Applicable Law."[232]

165 AT&T asserts that its proposed definitions more properly reflect the terms of the Triennial Review Order and Triennial Review Remand Order and are more complete and comprehensive than Verizon's proposed definitions.[233] MCI asserts that its proposed definitions more appropriately track federal law.[234]

166 Verizon's proposed definition appears to properly track the FCC's definitions of "loop" and "dark fiber" in 47 C.F.R. §§ 51.319(a) and (a)(6)(i). AT&T modifies Verizon's basic definition by including language addressing use of dark fiber through routine network modifications, and further clarifying the forms of dark fiber to be made available.[235] MCI includes a reference to dark fiber in its definition of "Loop." The parties should include Verizon's definition in the amendment. It adequately describes what dark fiber is without adding terms or conditions for availability, *i.e.*, what is available or required through routine network modifications. While MCI's definition of loop may be correct and efficient, a definition of dark fiber loop is appropriate given the decisions in Issue No. 4 above requiring the amendment to specify the FCC's Triennial Review Remand Order transition plans.

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[231] Verizon November 4, 2004, Amendment 2, § 4.7.2; AT&T March 14, 2005 Amendment, § 2.6; *see* MCI April 4, 2005, Amendment, § 12.7.15 (Loop).
[232] Verizon Initial Brief, ¶¶ 72-73.
[233] AT&T Initial Brief, ¶ 58.
[234] MCI Initial Brief at 10-11.
[235] AT&T March 14, 2005, Amendment, § 2.6.

167 ***Dark Fiber Transport.***[236] Verizon asserts that its proposed definition best captures the FCC's intent, and opposes AT&T's proposed definition for including the term "Applicable Law," as well as for being wordy and redundant.[237] Verizon also opposes the Competitive Carrier Group's inclusion of "Verizon switching equipment located at CLEC's premises" as unnecessary, asserting that there are no such arrangements.[238] AT&T asserts that its proposed definition more properly reflects the terms of the Triennial Review Order and Triennial Review Remand Order and is more comprehensive than Verizon's proposed definition.[239]

168 Dark fiber transport is essentially dedicated transport provided by dark fiber. Consistent with the use of the terms "DS1 Dedicated Transport" and "DS3 Dedicated Transport" below, the term "Dark Fiber Dedicated Transport" should be used in the amendment. Based upon the discussion below concerning the definition of "Dedicated Transport," Verizon's proposed definition appropriately describes "Dark Fiber Dedicated Transport," but should not include the reference to entrance facilities, as this describes terms and conditions. Verizon's definition should include the Competitive Carrier Group's reference to reverse collocation as discussed below concerning the definition of "Dedicated Transport" and in Issue No. 19.

169 ***Dedicated Transport.***[240] Verizon asserts that its proposed definition is consistent with the FCC's definition, and opposes AT&T's definition for including reverse collocation, *i.e.*, transmission paths that connect Verizon switching located on AT&T's premises.[241] Verizon asserts that such language is unnecessary as there

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[236] Verizon November 4, 2004, Amendment 2, § 4.7.3; AT&T March 14, 2005, Amendment, § 2.7; CCG Amendment, § 2.5.
[237] Verizon Initial Brief, ¶¶ 75-76.
[238] *Id.*, ¶ 76.
[239] AT&T Initial Brief, ¶ 58.
[240] Verizon November 4, 2004, Amendment 2, § 4.7.4; AT&T March 14, 2005, Amendment, § 2.9.
[241] Verizon Initial Brief, ¶¶ 77-78.

are no such arrangements.[242] AT&T asserts that its proposed definitions more properly reflect the terms of the Triennial Review Order and Triennial Review Remand Order and are more complete and comprehensive than Verizon's proposed definitions.[243]

170 The FCC defines "Dedicated Transport" as:

> [I]ncumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LECS and switches owned by requesting telecommunications carriers, including, but not limited to DS1-, DS3, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.[244]

The FCC also provides that ILECs are not obligated to provide unbundled access to dedicated transport that does not connect a pair of ILEC wire centers, which service the FCC defines as "entrance facilities."[245]

171 Verizon's and MCI's definitions combine the FCC's definitions of Dedicated Transport and Entrance Facilities, while AT&T's definition more accurately tracks the FCC's definition of "Dedicated Transport." The amendment should include AT&T's definition, as terms and conditions concerning dedicated transport should not be included in the definition. Consistent with the discussion below in Issue No. 19, the obligation to provide transport when an ILEC reverse collocates is appropriate to include in the definition, regardless of whether such arrangements currently exist.

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[242] *Id.*, ¶ 78.
[243] AT&T Initial Brief, ¶ 58.
[244] 47 C.F.R. § 319(e)(1).
[245] 47 C.F.R. § 319(e)(2)(i).

172 ***Discontinued Facility/Discontinued Element/Declassified Network Elements.***[246] As discussed above in Issue No. 6, Verizon's proposed definition includes ten specific elements that are no longer subject to unbundling requirements, but also includes elements that the FCC may determine in the future are no longer required to be unbundled.[247] Verizon opposes the CLECs' proposed definitions for limiting the definition to elements already eliminated, for not allowing for future elimination of UNEs, and for including language allowing elements to be unbundled pursuant to state law or under Section 271.[248] Verizon also opposes AT&T's shortened list of four elements: Enterprise Switching, OCn Loops and Transport, Feeder Loop, and Packet Switching.[249]

173 AT&T objects to Verizon's inclusion of Four-Line Carve Out Switching, Entrance Facilities, and other elements available under Section 252(c)(2).[250] AT&T also objects to the catch-all phrase at the end and the rolling nature of declassification in Verizon's proposed definition.[251]

174 For the reasons discussed above and in Issue No. 1, the term "Applicable Law" should not be applied to allow unbundled access to elements that the FCC has determined should not be available as unbundled elements. For the reasons set forth above in Issue No. 6, MCI's proposed term "Discontinued Element" should be used in the amendment. MCI's definition best captures the concept that certain identified network elements were eliminated as unbundled network elements in the Triennial Review Order, and that the transition for these elements is identified in the amendment to the interconnection agreement. Consistent with the decisions above in Issues No. 2 and 6, Verizon's proposal to

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[246] Verizon September 10, 2004, Amendment 1, § 4.7.3; Verizon November 4, 2004, Amendment 2, § 4.7.5; AT&T March 14, 2005, Amendment, § 2.8 (Declassified Network Elements); MCI April 4, 2005, Amendment, § 12.7.5 (Discontinued Elements).
[247] Verizon Initial Brief, ¶ 79.
[248] *Id.*, ¶ 80.
[249] *Id.*, ¶ 81.
[250] AT&T Initial Brief, ¶ 59.
[251] *Id.*

discontinue future elements is rejected. Finally, for the reasons discussed below, it is appropriate to include the reference in the definition to "Four-Line Carve Out Switching." AT&T's limitation to four specific elements cannot be justified.

175 ***DS1 Loop/DS3 Loop.***[252] Verizon and AT&T both assert that their proposed definitions more accurately track the FCC's definitions.[253] Similar to the discussion above concerning "Dark Fiber Loop," Verizon's and AT&T's definitions contain the same core definition of "DS1 Loop" and "DS3 Loop." Verizon refers in its definition to a separate document, Verizon's TR 72575, a technical reference, whereas AT&T defines the loops as "including any necessary Routine Network Modifications."[254]

176 Similar to the discussion above concerning the definition of "Dark Fiber Loop," we reject MCI's proposal for a consolidated definition of "Loop" and reject AT&T's proposal to include a reference to routine network modifications. While it is generally not advisable to include references in interconnection agreements to documents controlled solely by Verizon, the technical reference document identified in the proposed definition appears to serve as a "blueprint" for industry standards.[255] The amendment should include Verizon's proposed definition.

177 **Enhanced Extended Link (EEL) Combination.**[256] AT&T proposes a definition of "Enhanced Extended Link (EEL) Combination" in its proposed amendment. AT&T uses the term in its definition of "Combination" as well as in Section 3.7 of its proposed amendment, discussing commingling, conversions, and

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[252] Verizon November 4, 2004, Amendment 2, §§ 4.7.8, 4.7.9; AT&T March 14, 2005, Amendment, §§ 2.12, 2.13; MCI April 4, 2005, Amendment, § 12.7.15.
[253] Verizon Initial Brief, ¶ 85; AT&T Initial Brief, ¶¶ 58, 61.
[254] Verizon November 4, 2004, Amendment 2, §§ 4.7.8, 4.7.9; AT&T March 14, 2005, Amendment, §§ 2.12, 2.13.
[255] Verizon Initial Brief, ¶ 87 n.51.
[256] AT&T March 14, 2005, Amendment, § 2.14.

combinations. Consistent with the decisions below in Issue No. 21, AT&T's proposed definition is appropriate and should be included.

178 ***Enterprise Switching.***[257] The definitions of Enterprise Switching proposed by Verizon, AT&T, and MCI are almost identical, except that MCI deletes the reference to "tandem switching" from the definition.[258] MCI defines "Local Circuit Switching" to include tandem switching, whereas Verizon and AT&T define local switching and tandem switching separately. While it may appear redundant to refer to tandem switching and local circuit switching in the definitions of enterprise and mass market switching, both switching technologies and functions are used in enterprise and mass market switching. Verizon and AT&T's definitions are appropriate, and should be included in the amendment.

179 ***Entrance Facility.***[259] Verizon's proposed definition describes an Entrance Facility as "[A] transmission facility (lit or unlit) or service provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of [CLEC] or a third party."[260] AT&T's proposed definition adds the following phrase at the end of Verizon's proposed definition: "but excluding any facilities used for interconnection or reciprocal compensation purposes provided pursuant to 47 U.S.C. § 251(c)(2)."[261] For the reasons discussed below, the amendment should include AT&T's proposed definition.

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[257] Verizon September 10, 2004, Amendment 1, § 4.7.4; Verizon November 4, 2004, Amendment 2, § 4.7.10; AT&T March 14, 2005, Amendment, § 2.15; MCI April 4, 2005, Amendment, § 12.7.6.
[258] Verizon September 10, 2004, Amendment 1, § 4.7.4; Verizon November 4, 2004, Amendment 2, § 4.7.10; AT&T March 14, 2005, Amendment, § 2.15; MCI April 4, 2005, Amendment, § 12.7.6.; *see also* Verizon Initial Brief, ¶ 87.
[259] Verizon Amendment 1, § 4.7.5; Verizon Amendment 2, § 4.7.11; AT&T March 14, 2005, Amendment, § 2.16.
[260] Verizon Initial Brief, ¶ 88; Verizon September 10, 2004, Amendment 1, § 4.7.5; Verizon November 4, 2004, Amendment 2, § 4.7.11.
[261] AT&T March 14, 2005, Amendment, § 2.16.

180 The FCC defines entrance facilities, generally, as "transmission facilities that connect competitive LEC networks with incumbent LEC networks."[262] In the Triennial Review Order, the FCC eliminated entrance facilities as UNEs, removing entrance facilities from the definition of "Dedicated Interoffice Transport."[263] In the Triennial Review Remand Order, the FCC modified the definition of "Dedicated Interoffice Transport" to include entrance facilities, but found no impairment in CLECs' access to entrance facilities, removing the obligation for ILECs to provide unbundled access.[264]

181 AT&T's language relies on portions of the FCC's orders which provide that ILECs are obligated under Section 251(c)(2) of the Act to provide access to facilities necessary for interconnection, *i.e.*, transmission and routing of telephone exchange service and exchange access service "at cost-based rates."[265] While Verizon's proposed definition captures the FCC's intent in the Triennial Review Order and Triennial Review Remand Order to eliminate unbundled access to entrance facilities at TELRIC rates, AT&T's proposed definition appropriately includes Verizon's obligation to continue to provide access to entrance facilities for interconnection. These interconnection facilities must be provided at "cost-based rates," which may be TELRIC rates, but are not market rates. It is appropriate under Section 252(c)(1) to include this language in an arbitrated amendment to the parties' interconnection agreement, as the obligation falls under Section 251(c)(2).

182 ***Federal Unbundling Rules.***[266] Verizon uses the term "Federal Unbundling Rules" in its proposed amendment to refer to:

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[262] *Triennial Review Remand Order*, ¶ 136.
[263] *Triennial Review Order*, ¶ 366 n.1117.
[264] *Triennial Review Remand Order*, ¶ 137; *see also* 47 C.F.R. § 51.319(e)(2)(i).
[265] *Triennial Review Order*, ¶ 366; *Triennial Review Remand Order*, ¶ 140.
[266] Verizon September 10, 2004, Amendment 1, § 4.7.6; MCI April 4, 2005, Amendment, § 12.7.8.

> Any lawful requirement to provide access to unbundled network elements that is imposed upon Verizon by the FCC pursuant to both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or pursuant to the Interim Rules Order (but only once effective and only to the extent not stayed, vacated, reversed, modified, or otherwise rendered ineffective by the FCC or a court of competent jurisdiction). Any reference in this Amendment to "Federal Unbundling Rules" shall not include an unbundling requirement if the unbundling requirement does not exist under both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or under the Interim Rules Order.

MCI modifies Verizon's proposed definition as follows:

> Any ~~lawful~~ requirement to provide access to unbundled network elements that is imposed upon Verizon by the FCC pursuant to both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and in Verizon service territories where applicable, 47 U.S.C. § 271(b)~~or pursuant to the Interim Rules Order (but only once effective and only to the extent not stayed, vacated, reversed, modified, or otherwise rendered ineffective by the FCC or a court of competent jurisdiction). Any reference in this Amendment to "Federal Unbundling Rules" shall not include an unbundling requirement if the unbundling requirement does not exist under both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or under the Interim Rules Order.~~

183 For the most part, MCI's proposed changes to the definition are appropriate. The FCC's Interim Order is now moot with the issuance of permanent unbundling rules in the Triennial Review Remand Order and the last sentence of Verizon's proposed definition is redundant and unnecessary. Consistent with the decision above in Issue No. 1, however, there is no need for a reference to elements available under Section 271 in Washington State. MCI's proposed definition should be included in the agreement, without the phrase "and in Verizon service territories where applicable, 47 U.S.C. § 271(b)."

184 As discussed above under Issue No. 1 and the definition of "Applicable Law," however, the parties must work together to modify the term "Federal Unbundling Rules" and the definition, as well as other provisions proposed by Verizon, to reflect that states are not preempted from imposing unbundling obligations consistent with the federal regulatory scheme.

185 ***Fiber-Based Collocator.***[267] AT&T includes a definition of "Fiber-Based Collocator" in its proposed amendment. Like AT&T, the Joint CLECs and the Competitive Carrier Group support inclusion of the term, as used and defined by the FCC in the Triennial Review Remand Order.[268] AT&T's proposed definition should be included in the amendment, with the following modifications:

> A fiber-based collocator is any carrier, unaffiliated with Verizon, that maintains a collocation arrangement in a Verizon Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the Wire Center; (2) leaves the Verizon Wire Center premises; and (3) is owned by a party other than Verizon or any affiliate of ~~the incumbent LEC~~ Verizon, except as set forth in ~~this paragraph~~ 47 C.F.R. § 51.5.

This definition is consistent with the FCC's definition of "fiber-based collocator" in 47 C.F.R. § 51.5, and the definition is necessary in modifying the amendment consistent with the decisions above concerning Issues No. 4 and 5.

186 ***Four-Line Carve Out Switching.***[269] Verizon proposes a definition for "Four-Line Carve Out Switching," while AT&T and MCI propose deleting the definition from the amendment. As discussed above in Issue No. 3, the FCC determined that where CLECs serve customers with four or more DS0 loops in density zone

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[267] AT&T March 14, 2005, Amendment, § 2.18.
[268] AT&T Initial Brief, ¶ 58; Joint CLEC Initial Brief, ¶ 17; CCG Initial Brief, ¶ 27.
[269] Verizon September 10, 2004, Amendment 1, § 4.7.8; Verizon November 4, 2004, Amendment 2, § 4.7.13.

1 of the top fifty MSAs, and the ILECs provide access to EELs, the customers are not mass market customers subject to unbundling.[270] In the Triennial Review Order, the FCC did not change this decision, but allowed states to consider the appropriate number of DS0 lines that distinguish the mass market from the enterprise market.[271] The *USTA II* decision vacated this delegation to the states, and the issue of the appropriate "four – line carve out" was made moot by the FCC's decision in the Triennial Review Remand Order to eliminate mass market switching as a UNE.

187 Thus, the issue is whether "Four-Line Carve Out Switching" is subject to the transition rules of the Triennial Review Remand Order for DS0 or mass market switching, or whether it may be terminated on the effective date of the amendment. Verizon recognizes that the matter is moot, but retains the definition in its proposed amendment, presumably because Verizon includes "Four-Line Carve Out Switching" as a "Discontinued Facility" that may be terminated after the effective date of the amendment.[272] MCI removes the term from its definition of "Discontinued Elements," presumably to ensure that it is included in the transition plan for DS0 level mass market switching. Given that the FCC retained the "Four-Line Carve Out Switching" rule pending state decisions on the matter, it appears that Verizon is correct that DS0 switching subject to the "Four-Line Carve Out Switching" rule should be included in the amendment and in the definition of "Discontinued Element." This issue is resolved in favor of Verizon.

188 ***FTTP Loop / FTTH Loop.***[273] Verizon proposes two different definitions for "FTTP Loop" ("Fiber-to-the Premises" Loop) in its proposed definitions sections in

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[270] *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C. Rcd 3696, ¶¶ 253, 278, 291, 293-94, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (1999) [Hereinafter "*UNE Remand Order*"].
[271] *Triennial Review Order*, ¶ 497.
[272] Verizon Initial Brief, ¶ 89; *see also* Verizon September 10, 2004, Amendment 1, §§ 4.7.3, 4.7.8.
[273] Verizon September 10, 2004, Amendment 1, § 4.7.9; Verizon November 4, 2004, Amendment 2,

Amendments 1 and 2. This discussion focuses only on the more recent definition in Amendment 2.

189 Verizon's definition of "FTTP Loop" combines the FCC's definitions of fiber-to-the-home (FTTH) loops and fiber-to-the-curb (FTTC) loops established in an Order on Reconsideration following the Triennial Review Order.[274] MCI proposes a definition of "FTTP Loop" modeled on Verizon's proposed Amendment 1 definition, which Verizon presumably drafted prior to the FCC's MDU Reconsideration Order.[275] AT&T proposes a definition for "FTTH Loop" that, like Verizon, includes the FCC's definitions of FTTH and FTTC loops, but provides that FTTH Loops do not include fiber-to-the node (FTTN) or fiber-to-the-building (FTTB) loops.[276]

190 Verizon objects to earlier versions of AT&T and MCI's proposed definitions and asserts that its definition is consistent with federal law.[277] AT&T objects to the acronym FTTP, asserting that the FCC uses only the terms FTTH and FTTC in its rules.[278] AT&T also asserts that intermediate fiber in the loop architectures (FTTN and FTTB) are Hybrid Loops, and that excluding them from the definition of FTTH Loop is consistent with the Triennial Review Order.[279] MCI proposes to remove the term "or beyond" from Verizon's definition.[280]

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§ 4.7.14; AT&T March 14, 2005, Amendment, § 2.19; MCI April 4, 2005, Amendment, § 12.7.11.
[274] Verizon Initial Brief, ¶¶ 90-91; *see also In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-098, 98-147, Order on Reconsideration, FCC 04-248, App. B (rel. October 18, 2004) [Hereinafter "*MDU Reconsideration Order*"].
[275] *See* MCI April 4, 2005, Amendment, § 12.7.11.
[276] *See* AT&T March 14, 2005, Amendment, § 2.19; *see also Triennial Review Order*, n.811.
[277] Verizon Initial Brief, ¶¶ 92-93.
[278] AT&T Initial Brief, ¶¶ 78-79.
[279] *Id*., ¶ 58.
[280] MCI April 4, 2005, Amendment, § 12.7.11.

191 In the Triennial Review Order, the FCC determined that FTTH loops were not subject to unbundling, except under certain conditions for fiber deployed parallel to existing copper, referred to as overbuild deployment.[281] The FCC excluded certain "intermediate fiber deployment architectures," such as FTTC, FTTN, and FTTB loops, from the definition of FTTH loops.[282] In two orders on reconsideration following the Triennial Review Order, the FCC further modified its definition of FTTH loops, determined that FTTH rules would apply to multiple dwelling units, or MDUs, that are primarily residential, and determined that the unbundling requirements for FTTH loops also applied to FTTC loops.[283]

192 Verizon and AT&T disagree about the proper term to be included, FTTH or FTTP Loop, whether FTTN and FTTB loops are considered to be subject to the rules governing FTTH loops, and whether FTTN and FTTB Loops are hybrid loops. MCI seeks to remove certain language. First, FTTP Loop is not an appropriate term to describe the combination of FTTH and FTTC loops. The FCC does not use the term in its definition. In addition, while the FCC has applied the same unbundling rules to the two architectures, the term FTTP encompasses both FTTH and FTTB architectures.[284] FTTB loops are loops connected to multi-unit premises, but can include non-residential premises. Newton's Telecom Dictionary does not include FTTC in its definition of FTTP, and defines a FTTC loop as a hybrid loop that involves copper or coaxial cable to the premises,[285] Thus, Verizon's proposal to include FTTC and FTTH loops in the term, "FTTP Loop," is not acceptable. It is appropriate, however, to refer to both architectures in the amendment as FTTH loops.

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[281] *Triennial Review Order*, ¶¶ 275-76.
[282] *Id.*, n.811.
[283] *MDU Reconsideration Order*, ¶¶ 1, 4; *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-098, 98-147, Order on Reconsideration, FCC 04-191, ¶¶ 1, 14 (rel. Aug. 9, 2004) [Hereinafter "*FTTC Reconsideration Order*"].
[284] Newton's Telecom Dictionary, 19th Ed. (2003), at 344.
[285] *Id.*, at 343.

193 The FCC considers FTTC and FTTN loops to be hybrid loops, but has applied its unbundling rules for FTTH loops to FTTC loops.[286] As discussed above, FTTB loop architecture is similar, or identical, to FTTH architecture, but extends to non-residential buildings, which are not subject to the FCC's MDU Reconsideration Order.[287] While the FCC applies its unbundling rules for FTTH loops to FTTC loops, it has not done so for FTTB loops. FTTN, or fiber-to-the-node or neighborhood, loops include more copper than FTTC architecture, and are considered a hybrid loop architecture.[288] It seems appropriate, then, to exclude FTTN and FTTB loops from the definition of FTTH Loop, as AT&T suggests.

194 Finally, MCI's proposal to exclude the words "or beyond" from the portion of the definition addressing MDUs is not consistent with the FCC's discussion of the issue in the Triennial Review Order.[289] MCI's proposal is rejected.

195 Based on the discussion above, the term, "FTTH Loop" should be used to refer to the combination of FTTH and FTTC loops, and Verizon's combined definition of FTTH and FTTC loops should be included in the amendment with AT&T's proviso.

196 ***Hot Cut.***[290] AT&T proposes, without any discussion in its brief, the following definition of "Hot Cut" in its proposed amendment: "The transfer of a loop from one carrier's switch to another carrier's switch or from one service provider to another service provider."[291] The definition is a part of AT&T's hot cut proposal.

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[286] *See Triennial Review Order*, n.832; *see also FTTC Reconsideration Order*, ¶ 1.
[287] Newton's, at 343.
[288] *Id*., at 343-44.
[289] *Triennial Review Order*, n.1012.
[290] AT&T March 14, 2005, Amendment, § 2.20.
[291] *Id*.

Verizon opposes including the definition in the amendment, asserting that hot cuts are not part of the ILECs' unbundling obligations.[292]

197 In the Triennial Review Order, the FCC imposed a requirement that states develop "batch hot cut" processes to ensure a swift and efficient process for transitioning from UNE-P or unbundled local circuit switching to self-deployed switching.[293] The FCC based its decision on a finding that the lack of low cost and efficient batch cut processes contributed to a finding of impairment to access of mass-market switching.[294] As discussed above, the D.C. Circuit vacated the FCC's rules governing mass-market switching, finding that the FCC's delegation of authority to the states was not authorized.[295] Consistent with a recent decision in Michigan, states do not have authority to require ILECs to develop the hot cut processes required by the Triennial Review Order, as these provisions were vacated.[296] In addition, as Verizon notes, the FCC found in the Triennial Review Remand Order that Verizon's batch hot cut processes were sufficient.[297] Based on this analysis, AT&T's definition is rejected.

198 ***House and Riser Cable / Inside Wire Subloop.***[298] Verizon asserts that its Amendment 2 defines "House and Riser Cable" as "[a] distribution facility in Verizon's network, other than FTTP Loop, between the minimum point of entry ('MPOE') at a multiunit premises where an end user customer is located and the Demarcation Point for such facility, that is owned and controlled by Verizon."[299] Verizon asserts that the proposed definition is consistent with the FCC's

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[292] Verizon Initial Brief, ¶ 121.
[293] *Triennial Review Order*, ¶ 460.
[294] *Id.*, ¶ 459.
[295] *USTA II*, 359 F.3d at 566, 568.
[296] *Michigan Bell Tel. Co. v. Lark*, Case No. 04-60128, Opinion and Order Granting Plaintiff's Motion for Summary Judgment (E.D. Mich., So. Div., Jan. 6, 2005).
[297] *Triennial Review Remand Order*, ¶ 293.
[298] Verizon November 4, 2004, Amendment 2, § 4.7.15; AT&T March 14, 2005, Amendment, § 2.22.
[299] Verizon Initial Brief, ¶ 94. As the most recently filed version of Verizon's Amendment 2 states only that the section is intentionally left blank, this discussion assumes that Verizon has added the language after further discussions with the parties.

definition of "inside wire" in the Triennial Review Order, and the FCC's determination that FTTH loops include fiber loops deployed to the MPOE of Multiple Dwelling Units (MDUs), regardless of who owns the inside wire.[300]

199 AT&T proposes the following definition for the term "Inside Wire Subloop":

> The Inside Wire Subloop network element, as set forth in FCC Rule 51.319(b), is defined as any portion of the loop that is technically feasible to access at a terminal in the incumbent LEC's outside plant at or near a multiunit premises, e.g., inside wire owned or controlled by the incumbent LEC between the premises minimum point of entry (MPOE), as defined in FCC Rule 68.105 and the incumbent LEC's demarcation point as defined in FCC Rule 68.3.[301]

AT&T objects to Verizon's use of the term "House and Riser Cable," asserting that the FCC's decisions in the Triennial Review Order made the term obsolete.[302]

200 AT&T is correct that the proper term for the network element is "Inside Wire Subloop." The FCC clarified in the Triennial Review Order that "the 'inside wire' on the incumbent LEC network side of the demarcation point, *i.e.*, between the MPOE and the demarcation point" should be referred to as the "Inside Wire Subloop," declining to refer to the wiring as "intra-building network cabling."[303] The FCC did not modify the rules governing "the inside wire on the non-network side of the demarcation point, either inside the subscriber's suite or under the control of the premises owner."[304]

201 The FCC requires ILECs to provide unbundled access to subloops, including the Inside Wire Subloop, used to access customers in multiunit premises.[305] The FCC

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[300] *Id., citing FTTC Reconsideration Order*, ¶¶ 1, 4.
[301] AT&T March 14, 2005, Amendment, § 2.22.
[302] AT&T Initial Brief, ¶ 60.
[303] *Triennial Review Order*, n.1021.
[304] *Id*.
[305] *Id.*, ¶¶ 348, 351 n. 1035.

defines "inside wire subloop" as "all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in §68.105 of this chapter and the point of demarcation of the incumbent LEC's network as a defined in § 68.3 of this chapter."[306] As discussed above in paragraph 191, however, the FCC has determined that ILECs have no obligation to provide unbundled access to FTTH or FTTC loops. Given this definition and the FCC's determination concerning FTTH and FTTC loops, Verizon's proposed definition should be included in the amendment, as modified: "~~A distribution facility in Verizon's network, other than FTTP Loop,~~ All loop plant owned or controlled by Verizon at a multiunit customer premises between the minimum point of entry ("MPOE") ~~at a multiunit premises where an end user customer is located~~ and the Demarcation Point ~~for such facility~~ of Verizon's network, other than FTTH Loop ~~that is owned and controlled by Verizon~~.

202 ***Hybrid Loop.***[307] Verizon defines a "Hybrid Loop" as "[a] local Loop composed of both fiber optic cable and copper wire or cable," and adds the proviso that "[a]n FTTP Loop is not a Hybrid Loop."[308] MCI proposes the same definition, without the proviso.[309] AT&T proposes the following definition: "Any local loop composed of both fiber optic cable and copper wire or cable, including such intermediate fiber-to-the-loop architectures as FTTN and FTTB. FTTH Loops are not Hybrid Loops."

203 The dispute between AT&T and Verizon concerns whether FTTN and FTTB loops are subject to the FTTH/FTTC rules or whether they are considered hybrid loops. Given the discussion above concerning the terms "FTTP Loop," "FTTH Loop," "House and Riser Cable," and "Inside Wire Subloop," AT&T's definition

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[306] 47 C.F.R. § 51.319(b)(2).
[307] Verizon September 10, 2004, Amendment 1, § 4.7.10; Verizon November 4, 2004, Amendment 2, § 4.7.16; AT&T March 14, 2005, Amendment, § 2.21; MCI April 4, 2005, Amendment, § 12.7.12.
[308] Verizon November 4, 2004, Amendment 2, § 4.7.16; Verizon Initial Brief, ¶ 97.
[309] MCI April 4, 2005, Amendment, § 12.7.12.

more closely follows the FCC's intent concerning FTTN and FTTB loops and should be included in the amendment.

204 ***Interim Rule Facilities.***[310] Verizon proposes a definition for "Interim Rule Facilities" that identifies the following network elements: "Mass Market Switching, Other DS0 Switching, DS1 Loops (including DS1 Hybrid Loops), DS3 Loops (including DS3 Hybrid Loops), Dark Fiber Loops, DS1 Dedicated Transport, DS3 Dedicated Transport, and Dark Fiber Transport."[311] Verizon's definition is rejected. Given that the FCC has entered the Triennial Review Remand Order, the Interim Order is now moot, and this decision recommends including the FCC's transition plans in the amendment, there is no need for such a term in the amendment.

205 ***Line Conditioning.***[312] AT&T includes the following definition of "Line Conditioning" in its proposed amendment: "The removal from a copper loop or copper Subloop of any device that could diminish the capability of the loop or Subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders."[313] Verizon opposes the definition, asserting that the FCC did not adopt any new line conditioning rules in the Triennial Review Order.[314] As discussed below under Issue No. 14(g), the FCC has adopted new rules governing line conditioning in the Triennial Review Order, specifically rejecting Verizon's arguments against line conditioning. Given the FCC's action, the issue is resolved in favor of AT&T: AT&T's proposed definition should be included in the amendment.

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[310] Verizon November 4, 2004, Amendment 2, § 4.7.17.
[311] *Id*.
[312] AT&T March 14, 2005, Amendment, § 2.23.
[313] *Id*.
[314] Verizon Initial Brief, ¶¶ 129, 187.

206 ***Line Sharing.***[315] Verizon, AT&T and MCI propose similar definitions for "Line Sharing" in their proposed amendments, except that AT&T and MCI include the following phrase at the end of the definition: "and includes the high frequency portion of any inside wire (including Inside Wire Subloop) owned or controlled by Verizon.[316] In the Triennial Review Order, the FCC eliminated the requirement for ILECs to provide access to the high-frequency portion of the loop, subject to a three-year transition period, while grandfathering existing line sharing arrangements.[317] The parties appear to agree that the core definition of "Line Sharing" should be included in the amendment. Given the discussion above concerning the terms "FTTH Loop" and "Inside Wire Subloop," it is appropriate to include AT&T and MCI's proviso, only if it also includes the phrase, "other than FTTH Loop."

207 ***Line Splitting.***[318] AT&T and MCI propose a similar definition of "Line Splitting" in their proposed amendments. AT&T's definition, for illustrative purposes, is as follows: "The process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop."[319] Verizon opposes including the definition in the amendment, asserting that the FCC's rules governing line splitting pre-date the Triennial Review Order, and that there is no change in law requiring the amendment to include provisions relating to line splitting, or definitions.[320] As discussed below under Issue No. 14(a), the FCC adopted new rules governing line splitting in the Triennial Review Order. For this reason, AT&T's proposed definition for line splitting is appropriate to include in the amendment.

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[315] Verizon September 10, 2004, Amendment 1, § 4.7.11; Verizon November 4, 2004, Amendment 2, § 4.7.18; AT&T March 14, 2005, Amendment, § 2.24; MCI April 4, 2005, Amendment.
[316] Verizon September 10, 2004, Amendment 1, § 4.7.11; Verizon November 4, 2004, Amendment 2, § 4.7.18; AT&T March 14, 2005, Amendment, § 2.24; MCI April 4, 2005, Amendment.
[317] *Triennial Review Order*, ¶¶ 213, 248, 264-69.
[318] AT&T March 14, 2005, Amendment, § 2.25; MCI April 4, 2005, Amendment, §12.7.13.
[319] AT&T March 14, 2005, Amendment, § 2.25.
[320] Verizon Initial Brief, ¶ 130.

208 ***Local Switching / Local Circuit Switching.***[321] Verizon proposes to use the term "Local Switching," to define local circuit switching while AT&T and MCI propose to use the term "Local Circuit Switching." Verizon proposes a definition that includes "[t]he line-side and trunk-side facilities associated with the line-side port, on a circuit switch in Verizon's network (as identified in the LERG), plus the features, functions and capabilities of that switch," and then lists several features including local switching.[322] Verizon asserts that its definition is most consistent with the FCC's definition of local circuit switching and the FCC's determinations concerning unbundled access to packet switching.[323]

209 Both AT&T and MCI propose definitions of "Local Circuit Switching" that identify specific vertical features provided by the switch, and specify that Local Circuit Switching is a function provided by circuit and packet switches, or "the circuit switching functionalities of any switching facility regardless of the technology used."[324] The first two paragraphs of MCI's definition are identical to the FCC's definition of "local circuit switching."

210 The appropriate term to be included in the amendment is "Local Circuit Switching." The FCC uses this term, and it should be used in the amendment to avoid any future confusion. While MCI and AT&T's proposed amendments use the FCC's exact language identifying the vertical features the switch is capable of providing, Verizon's proposed language, "line and line group features (including all vertical features and line blocking options the switch and its associated deployed switching software are capable of providing that are provided to

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[321] Verizon September 10, 2004, Amendment 1, § 4.7.12; Verizon November 4, 2004, Amendment 2, § 4.7.19; AT&T March 14, 2005, Amendment, § 2.26; MCI April 4, 2005, Amendment, § 12.7.14.
[322] Verizon Initial Brief, ¶ 99; Verizon September 10, 2004, Amendment 1, § 4.7.12; Verizon November 4, 2004, Amendment 2, § 4.7.19.
[323] Verizon Initial Brief, ¶¶ 101, 188-91.
[324] *See* AT&T March 14, 2005, Amendment, § 2.26; MCI April 4, 2005, Amendment, § 12.7.14(ii), (iii).

Verizon's local exchange service Customers served by that switch," is acceptable and consistent with the FCC's definition.

211 AT&T and MCI's proposals concerning packet switching are rejected. AT&T seeks to maintain its access to UNE-P customers served by switches that provide both packet switching and circuit switching functions.[325] This issue has been addressed in this proceeding and in the related enforcement docket, Docket No. UT-041127, to address Verizon's conversion of a circuit switch to a packet switch. The issues address not only ILEC obligations under federal law, but also Verizon's obligations under its current interconnection agreements. This proceeding addresses only whether and how the parties' interconnection agreements should be amended to address changes in federal law.

212 As to packet switching, the FCC has consistently determined, most recently in the Triennial Review Order, that ILECs are not obligated to provide unbundled access to packet switches or the features and functions of packet switching.[326] The FCC determined that there were no exceptions to its decision not to unbundle packet switching, finding that ILECs are not required to provide unbundled access to voice grade service provided by a packet switch.[327] The purpose of this proceeding is to amend the parties' interconnection agreements to be consistent with the FCC's recent decisions on unbundling. While the parties' have argued that their current agreements may be interpreted to allow unbundled access to the circuit switching functions of a packet switch, the agreements must be amended to preclude such unbundled access as of the effective date of the amendment.

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[325] AT&T Initial Brief, ¶ 86.
[326] *UNE Remand Order*, ¶ 306; *Triennial Review Order*, ¶¶ 448, 535, 537-39.
[327] *Triennial Review Order*, ¶ 540 n.1649; *see also In the Matter of the Joint Petition for Enforcement of Interconnection Agreements with Verizon Northwest, Inc.*, Order No. 03, WUTC Docket No. UT-041127, ¶¶ 62-63 (Feb. 22, 2005).

213 ***Loop.***[328] MCI includes the following definition of "Loop" in its proposed amendment:

> A transmission facility between a distribution frame (or its equivalent) in Verizon's wire center and the loop demarcation point (marking the end of Verizon's control of the Loop) at a customer premises, including inside wire owned by Verizon. The Loop includes all features, function, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, all electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises.

214 Verizon asserts that the Triennial Review Order did not substantively change the pre-existing definition of "loop" in 47 C.F.R. § 51.319(a), and that there is no need to modify the agreements to add or amend the current definition.[329] A comparison of MCI's definition with the FCC's definition of "local loops" in 47 C.F.R. § 51.319(a) shows that MCI's definition is significantly different from the FCC's definition. Even if the FCC modified its definition of "local loop" in the Triennial Review Order, MCI has not demonstrated in brief why a new definition is warranted. MCI's proposed definition is rejected.

215 ***Loop Distribution.***[330] AT&T proposes the following definition of "Loop Distribution":

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[328] MCI April 4, 2005, Amendment, § 12.7.15.
[329] Verizon Initial Brief, ¶ 133.
[330] AT&T March 14, 2005, Amendment, § 2.27.

> The portion of a loop in Verizon's network that is between the point of demarcation at an end user customer premises and Verizon's feeder/distribution interface. It is technically feasible to access any portion of a loop at any terminal in Verizon's outside plant, or inside wire owned or controlled by Verizon, as long as a technician need not remove a splice case to access the wire or copper of the subloop; provided, however, near Remote Terminal sites, Verizon shall, upon site specific request by AT&T, provide access to a Subloop at a splice.

Verizon objects to AT&T's proposed definition as describing unbundling obligations, rather than defining a term.[331]

216 AT&T's proposed definition is really one of a distribution subloop, or the inside wire subloop discussed above. As such, it does not appear necessary to the amendment. In addition, a definition should not include terms and conditions, but only a description of a term. AT&T's definition is rejected.

217 ***Mass-Market Switching.***[332] Verizon proposes the following definition of "Mass Market Switching": "Local Switching or Tandem Switching that, if provided to [CLEC], would be used for the purpose of serving [CLEC] end user customers with three or fewer DS0 Loops."[333] Verizon includes the proviso: "Mass Market Switching does not include Four-Line Carve Out Switching."[334] AT&T's proposed definition is consistent with Verizon's, but excludes the reference to "Four-Line Carve Out Switching."[335] MCI's proposed definition excludes both

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[331] Verizon Initial Brief, ¶ 135.
[332] Verizon September 10, 2004, Amendment 1, § 4.7.13; Verizon November 4, 2004, Amendment 2, § 4.7.20; AT&T March 14, 2005, Amendment, § 2.28; MCI April 4, 2005, Amendment, § 12.7.16.
[333] Verizon September 10, 2004, Amendment 1, § 4.7.13; Verizon November 4, 2004, Amendment 2, § 4.7.20; Verizon Initial Brief, ¶ 102.
[334] Verizon September 10, 2004, Amendment 1, § 4.7.13; Verizon November 4, 2004, Amendment 2, § 4.7.20.
[335] AT&T March 14, 2005, Amendment, § 2.28.

the reference to tandem switching and "Four-Line Carve Out Switching."[336] MCI also proposes to remove the reference to "three or fewer DS0 Loops," and suggests that the definition refer only to "serving a CLEC end user customer over DS0 Loops."[337]

218 As discussed above concerning the definition of Enterprise Switching, MCI's proposal to exclude tandem switching from the definitions of Enterprise and Mass Market Switching is not appropriate, and is rejected. Further, given the discussion above concerning the definition of "Four-Line Carve Out Switching," Verizon's proviso is appropriate and should be included. As discussed below concerning the term "Other DS0 Switching," MCI's proposal to modify Verizon's definition to refer to "serving a [CLEC] end user customer over DS0 Loops" is appropriate.

219 ***Other DS0 Switching.***[338] Verizon proposes the following definition for "Other DS0 Switching": "Local Switching or Tandem Switching that, if provided to [CLEC], would be used for the purpose of serving [CLEC] end user customer with four or more DS0 Loops. Other DS0 Switching does not include Four-Line Carve Out Switching."[339] The other parties do not include such a definition in their proposed amendments.

220 If the amendment includes Verizon's proposed definition for "Four-Line Carve Out Switching," as discussed above, and Verizon's definition for "Mass-Market Switching" as discussed above, there is no need for Verizon's proposal for "Other DS0 Switching." The definition of "Mass Market Switching" excludes "Four-Line Carve Out Switching." Verizon indicates that the issue is moot, but

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[336] MCI April 4, 2005, Amendment, § 12.7.16.
[337] *Id*. (Emphasis added).
[338] Verizon November 4, 2004, Amendment 2, § 4.7.21.
[339] *Id*.; *see also* Verizon Initial Brief, ¶ 105.

does not demonstrate why the definition is necessary.[340] Verizon's proposal for a definition of "Other DS0 Switching" is rejected.

221 ***Packet Switch / Packet Switched / Packet Switching.***[341] Verizon proposes a definition for the term "Packet Switched," while AT&T proposes definitions for the terms "Packet Switch" and "Packet Switching." Verizon asserts that its definition is quoted from the FCC's rules.[342] Verizon objects to AT&T's definition of "Packet Switching" as omitting a portion of the FCC's definition to allow greater unbundling rights than the FCC has allowed.[343] Verizon also objects to AT&T's definition of "Packet Switch" as contrary to federal law.[344]

222 After reviewing the FCC's definition of "packet switching capability" in 47 C.F.R. § 51.319(a)(2)(i), the term used in the amendment should be consistent with that used by the FCC, and the definition should be consistent with the FCC's rules and consistent with this analysis and the discussion below in Issue No. 14(h). Therefore, the term used in the amendment should be "Packet Switching" and Verizon's proposed definition should be included in the amendment, except that the definition must be modified to mirror the FCC's definition. The first sentence of the definition must be modified to read: "Routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells, or other data units, ~~or~~ and the functions …".

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[340] Verizon Initial Brief, ¶ 105.
[341] Verizon November 4, 2004, Amendment 2, § 4.7.22; AT&T March 14, 2005, Amendment, §§ 2.29, 2.30.
[342] Verizon Initial Brief, ¶ 106, *citing* 47 C.F.R. § 51.319(a)(2)(i).
[343] *Id.*, ¶ 107.
[344] *Id.*, ¶¶ 138-40.

223 ***Route.***[345] MCI and AT&T propose a similar definitions of "Route" in their proposed amendments, based upon the FCC's definition of "route" in 47 C.F.R. § 51.319(e).[346] Verizon opposes inclusion of the definition, asserting that AT&T does not use the term in its proposed amendment.[347] Verizon also prefers citing to the rule, rather than quoting it, noting that the FCC may change the rule.[348]

224 AT&T uses the term "Route" in Section 3.6 of its March 14, 2005, version of its proposed amendment. That section describes the transition plan and rules for unbundled access to dedicated transport. Similarly, MCI uses the term in Section 10 of its April 4, 2005, proposed amendment.

225 The following definition should be included in the amendment:

> A transmission path between one of Verizon's wire centers or switches and another of Verizon's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more Verizon intermediate wire centers or switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate Verizon wire centers or switches, if any.

This definition is consistent with the FCC's definition of "route" in 47 C.F.R. § 51.319(e), and the definition is necessary in modifying the amendment consistent with the decisions above concerning Issue No. 5.

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[345] AT&T March 14, 2005, Amendment, § 2.31; MCI April 4, 2005, Amendment, § 12.7.17.
[346] AT&T March 14, 2005, Amendment, § 2.31; MCI April 4, 2005, Amendment, § 12.7.17; *see also* 47 C.F.R. § 51.319(e).
[347] Verizon Initial Brief, ¶ 131.
[348] *Id*.

226 ***Routine Network Modifications.***[349] AT&T and the Competitive Carrier Group include definitions for "Routine Network Modifications" in their proposed amendments. Both definitions include the following: "Routine Network Modifications are those prospective or reactive activities that Verizon is required to perform for [CLEC] and that are of the type that Verizon regularly undertakes when establishing or maintaining network connectivity for its own retail customers."[350] The Competitive Carrier Group's definition further describes the types of routine network modifications that are included in the definition.[351] While Verizon does not object to addressing routine network modifications in the amendment (Verizon includes language on the issue in its Amendment 2), Verizon opposes AT&T and CCG's proposed definitions as inconsistent with the FCC's rules governing "routine network modifications."[352]

227 The FCC describes "routine network modifications" as "an activity that the incumbent LEC regularly undertakes for its own customers."[353] The FCC identifies in its rule certain activities that are considered to be routine network modifications, including certain of the activities identified in the CCG's definition.[354] Given the discussion below in Issue No. 22, the FCC's full definition of "Routine Network Modifications," including examples, should be included in the amendment.

228 ***Single Point of Interconnection (SPOI).***[355] AT&T includes a definition of "Single Point of Interconnection (SPOI)" in its proposed amendment, without any discussion in brief. The definition relates to Section 3.4.5 of AT&T's proposed amendment, which proposes that Verizon provide a single point of

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[349] AT&T March 14, 2005, Amendment, § 2.32; CCG October 22, 2004, Amendment, § 2.27.
[350] *Id*.
[351] CCG October 22, 2004, Amendment, § 2.27
[352] Verizon Initial Brief, ¶ 132.
[353] 47 C.F.R. § 51.319(a)(8)(ii).
[354] *Id*.
[355] AT&T March 14, 2005, Amendment, § 2.34.

interconnection for interconnection or access to unbundled Inside Wire Subloops, at multiunit premises.

229 Consistent with the decision below in Issue No. 18, the amendment must address terms and conditions for access to Inside Wire Subloops at multiunit premises. The parties must work together or in a Commission-sponsored workshop to develop language addressing such access, including a definition of Single Point of Interconnection. AT&T's particular proposal is rejected, although a definition of the term should be included in the amendment.

230 ***Subloop Distribution Facility.***[356] The CCC proposes a definition for "Subloop Distribution Facility" that Verizon does not oppose.[357] The proposed definition is acceptable if the parties determine, after revising the amendment consistent with this decision, that the definition should be included.

231 ***Sub-Loop for Multiunit Premises Access.***[358] Verizon proposes the following definition for "Sub-Loop for Multiunit Premises Access":

> Any portion of a Loop, other than an FTTP Loop, that is technically feasible to access at a terminal in Verizon's outside plant at or near a multiunit premises. It is not technically feasible to access a portion of a Loop at a terminal in Verizon's outside plant at or near a multiunit premises if a technician must access the facility by removing a splice case to reach the wiring within the cable.[359]

Verizon's definition should be included in the amendment, although the term "FTTP Loop" should be changed to "FTTH Loop." The definition is consistent

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[356] CCC April 13, 2004, Amendment, § 2.24.
[357] Verizon Initial Brief, ¶ 136.
[358] Verizon November 4, 2004, Amendment 2, § 4.7.24.
[359] *Id*.

with the FCC's rules governing subloop access to multiunit premises,[360] as well as the FCC's decisions concerning access to FTTH and FTTC Loops.[361]

232 ***Sub-Loop.***[362] AT&T proposes the following definition of "SubLoop":

> A subloop (including Inside Wire Subloops, defined above) is a portion of a copper loop, or hybrid loop, between any technically feasible point in Verizon's outside plant, including inside wire owned, controlled or leased by Verizon, and the end-use customer premises. A subloop includes all intermediate devices (e.g. repeaters and load coils), and includes the features, functions, and capabilities of the loop. A subloop includes two-wire and four-wire analog voice grade subloops and two-wire and four-wire subloops conditioned for digital service, regardless of whether the subloops are in service or held as spares.

This definition is consistent with the FCC's definition of "copper subloops."[363] Given the discussion below in Issues No. 18 and 27, a definition of subloop is appropriate. AT&T's proposed definition should be included in the amendment.

233 ***Tandem Switching.***[364] AT&T includes the following definition of "Tandem Switching" in its proposed amendment: "Tandem Switching creates a temporary transmission path between interoffice trunks that are interconnected at a Verizon tandem switch for the purpose of routing a call. A tandem switch does not provide basic functions such as dial tone service."[365] Verizon's proposed definition includes this same language, but provides, at the beginning:

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[360] 47 C.F.R. §§ 51.319(b)(2), 51.319(a)(2)(i).
[361] *MDU Reconsideration Order*, ¶¶ 1, 4.
[362] AT&T March 14, 2005, Amendment, § 2.35.
[363] *See* 47 C.F.R. § 51.319(b)(1).
[364] Verizon September 10, 2004, Amendment 1, §4.7.15; Verizon November 4, 2004, Amendment 2, § 4.7.25; AT&T March 14, 2005, Amendment, § 2.36.
[365] AT&T March 14, 2005, Amendment, § 2.36.

> The trunk-connect facilities on a Verizon circuit switch that functions as a tandem switch, plus the functions that are centralized in that switch, including the basic switching function of connecting trunks to trunks, unbundled from and not contiguous with loops and transmission facilities.[366]

234 AT&T's proposed definition should be included in the amendment. Verizon's additional language does not just define the term, it includes terms and conditions inappropriate to the definition.

235 ***Transitional Declassified Network Elements.***[367] AT&T proposes a definition of the term "Transitional Declassified Network Elements" to address those network elements for which the FCC established transition plans in the Triennial Review Remand Order. AT&T uses the definition in Section 3.10 of its proposed amendment to address conversion to alternative arrangements. The definition is not necessary, given the decisions above in Issues No. 3 through 5, and below in Issue No. 28.

236 ***UNE-P.***[368] AT&T includes the following definition of "UNE-P" in its proposed amendment: "UNE-P consists of a leased combination of the loop, local switching, and shared transport UNEs."[369] Verizon opposes including the term in the amendment, asserting that the FCC did not change the definition of UNE-P in the Triennial Review Order or Triennial Review Remand Order, and the FCC has eliminated the ILECs' obligation to provide UNE-P.[370]

237 AT&T uses the term in defining the term "Combination." Consistent with the discussion above concerning the term "Combination," there is no need for a definition of UNE-P. The FCC eliminated in the Triennial Review Remand Order

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[366] Verizon November 4, 2004, Amendment 2, § 4.7.25.
[367] *Id*., § 2.37.
[368] *Id*., § 2.38.
[369] *Id*.
[370] Verizon Initial Brief, ¶ 141.

the obligation for ILECs to provide unbundled access to local circuit switching, and thus UNE-P. In addition, the existing agreements or amendments likely contain a definition of UNE-P. AT&T's proposed definition is rejected.

238 ***Wire Center.***[371] AT&T and MCI include definitions of the term "Wire Center" in their proposed amendments. AT&T proposes the following definition: "A wire center is the location of a Verizon local switching facility containing one or more central offices, as defined in 47 C.F.R. Part 51.5. The wire center boundaries define the area in which all customers served by a given wire center are located."[372] MCI proposes to define the term as "[a] Verizon switching office that terminates and aggregates loop facilities."[373]

239 The term "Wire Center" should be included in the amendment as it is necessary to implement the decisions above concerning Issues No. 4 and 5. AT&T's definition more closely follows the FCC's definition in 47 C.F.R. § 51.5, and should be included.

240 ***Other Terms.*** Verizon contests in its Initial Brief certain definitions proposed by the Competitive Carrier Coalition: Enterprise and Mass Market Customer, Section 271 Network Elements, and Shared Transport.[374] Neither Verizon, AT&T, nor MCI include these terms in their proposed agreements. As the Competitive Carrier Coalition did not file amendment language more recently than October 2004, and appears to have worked closely with AT&T in developing amendment language, this Order does not address these definitions.

241 The parties appear to agree to the following definitions included in Verizon's amendments: Call Related Databases,[375] DS1 Dedicated Transport / DS3

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[371] AT&T March 14, 2005, Amendment, § 2.39; MCI April 4, 2005, Amendment, § 12.7.19.
[372] AT&T March 14, 2005, Amendment, § 2.39.
[373] MCI April 4, 2005, Amendment, § 12.7.19.
[374] Verizon Initial Brief, ¶¶ 143-46.
[375] Verizon September 10, 2004, Amendment 1, § 4.7.1; Verizon November 4, 2004, Amendment 2,

Dedicated Transport,[376] Feeder,[377] and Signaling.[378] These uncontested definitions should be included in the amendment.

10. ISSUE NO. 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?

242 This issue addresses many of the same issues addressed above in Issues No. 2 through 7 concerning the process for modifying interconnection agreements. No provisions of the parties' recently proposed amendments are relevant to this issue.

243 Verizon asserts that the provisions of the FCC's Triennial Review Remand Order, including the "no-new adds" provisions and transition rates and plans, should take effect as of March 11, 2005, and that the parties should work to modify their interconnection agreements pursuant to change of law provisions during the transition period.[379] Verizon asserts that changes in law decided in the Triennial Review Order should be implemented through this arbitration proceeding, without additional negotiations.[380] As to establishing rates, terms, and conditions for new UNEs, UNE combinations or commingling, Verizon asserts that the FCC

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§ 4.7.1; AT&T March 14, 2005, Amendment, § 2.2; MCI April 4, 2005, Amendment, § 12.7.1 (Verizon's and MCI's version is appropriate).

[376] Verizon November 4, 2004, Amendment 2, §§ 4.7.6, 4.7.7; AT&T March 14, 2005, Amendment, §§ 2.10, 2.11; MCI April 4, 2005, Amendment, § 12.7.4.

[377] Verizon September 10, 2004, Amendment 1, § 4.7.7; Verizon November 4, 2004, Amendment 2, § 4.7.12; AT&T March 14, 2005, Amendment, § 2.17; MCI April 4, 2005, Amendment, § 12.7.9 (Verizon's and MCI's version is appropriate).

[378] Verizon September 10, 2004, Amendment 1, § 4.7.14; Verizon November 4, 2004, Amendment 2, § 4.7.23; AT&T March 14, 2005, Amendment, § 2.33; MCI April 4, 2005, Amendment, § 12.7.18.

[379] Verizon Initial Brief, ¶ 149-52; Verizon Reply Brief, ¶ 68.

[380] Verizon Initial Brief, ¶¶ 153-57; Verizon Reply Brief, ¶ 69.

did not establish any new UNEs in the Triennial Review Order or Triennial Review Remand Order.[381] Verizon asserts that its proposed amendment addresses implementation and pricing if the Commission interprets the FCC's orders as establishing new UNEs.[382]

244 Adding to their arguments concerning Issue No. 2, above, AT&T, MCI, the Joint CLECs and the Competitive Carrier Group assert that the Triennial Review Order and Triennial Review Remand Order provide that parties must follow the negotiation and arbitration process under Section 252 of the Act to implement changes of law in the FCC's orders.[383] The CLECs assert that Verizon must invoke and comply with the change of law provisions and dispute resolution processes under the parties' agreements.[384]

245 ***Discussion and Decision.*** For the reasons described above under Issues No. 2 through 7, Verizon must follow the change of law provisions in its interconnection agreements to implement the provisions of the Triennial Review Order and Triennial Review Remand Order, and the instant proceeding provides the appropriate process to do so. No further negotiation or arbitration proceeding is required. In addition, as discussed in Issues No. 3 through 6, the "no new adds" and transition rate provisions of the Triennial Review Remand Order are effective as of March 11, 2005, the effective date of the order. However, as to the transition rates discussed under Issue No. 6, if a carrier has change of law provisions in an agreement requiring negotiation or arbitration prior to changes becoming effective, the transition rates will be come effective on the effective date of the amendment to the parties' interconnection agreements, subject to true-up back to March 11, 2005.[385] The issue of including new UNEs,

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[381] Verizon Initial Brief, ¶ 158.
[382] *Id*.; Verizon Reply Brief, ¶ 70.
[383] AT&T Initial Brief, ¶ 62; MCI Initial Brief at 11; Joint CLEC Initial Brief, ¶¶ 18-23; CCG Initial Brief, ¶ 28.
[384] AT&T Initial Brief, ¶ 62; Joint CLEC Initial Brief, ¶¶ 18-19.
[385] *See*, *supra*, ¶ 124; *see also Triennial Review Remand Order*, ¶ 145 n.408; ¶ 198 n.524; ¶ 228 n.630.

commingling, and combinations will be addressed below in Issues No. 12, 13, and 14.

11. ISSUE NO. 11: How should any rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented?

246 This issue addresses, as in Issues No. 6 and 10 above, how current and future rate changes determined by the FCC should be implemented. The sections of the parties' proposed amendments relevant to Issue No. 11 are as follows:

Verizon September 10, 2004, Amendment 1: § 3.5
Verizon November 4, 2004, Amendment 2: § 2.5
AT&T March 14, 2005, Amendment: §§ 3.1, 3.2.1.3, 3.2.5.2, 3.5.1.2, 3.6.2.4, 3.9.5, 3.10.3,
MCI April 4, 2005, Amendment: §§ 8.1.1, 9.1.2, 9.2.2, 9.4.1, 10.1.3, 10.2.3, 10.3.2.

247 Verizon asserts that its provisions in Amendments 1 and 2 governing implementation of FCC rate changes are appropriate.[386] The provisions allow Verizon to issue a schedule of rates to CLECs to implement FCC rate changes. Verizon acknowledges that the FCC allows for the true-up of rates to March 11, 2005, if the rates are implemented through change of law provisions, but asserts that this should not prevent Verizon from implementing the rates by notice through a rate schedule on the date the rates are effective.[387]

248 AT&T, MCI, the Joint CLECs, and the Competitive Carrier Group assert that the Triennial Review Remand Order establishes the rates and the process for the

[386] Verizon Initial Brief, ¶ 160.
[387] *Id*.

rates to be implemented, *i.e.*, by following the change of law provisions in the parties' interconnection agreements.[388]

249 ***Discussion and Decision.*** Similar to the decisions above concerning Issues No. 2 though 7 and 10, Verizon must follow the change of law provisions in its interconnection agreements in implementing rate changes determined by the FCC. If a CLEC has change of law provisions similar to AT&T and MCI, then Verizon must modify the affected interconnection agreements to reflect the new rates set by the FCC in the Triennial Review Remand Order, but the effective date of those new rates is the effective date of the amendment, not the effective date of the FCC's decision. Thus, Verizon must modify its proposed Section 3.5 of Amendment 1 and Section 2.5 of Amendment 2 to address this decision. As to interconnection agreements that do not contain such change of law provisions, Verizon's proposed language is acceptable.

12. ISSUE NO. 12: Should the interconnection agreements be amended to address changes arising from the TRO with respect to commingling of UNEs with wholesale services, EELs, and other combinations? If so, how?

250 This issue addresses, generally, whether and how the amendment should implement the FCC's decision in the Triennial Review Order to permit commingling, *i.e.*, the connecting, attaching, or otherwise linking of UNEs, or UNE combinations, with non-section 251(c)(3) wholesale facilities or services. The parties disagree over the rates and charges to be applied, the appropriate eligibility criteria, the nature of CLEC self-certification, standards for audits, whether service performance standards are appropriate, and the nature of conversion of UNEs to wholesale facilities and services. Conversions are addressed generally in Issue No. 13, while the details of implementing commingling and conversions, in particular for high-capacity EELs, are

[388] AT&T Initial Brief, ¶¶ 64-66; MCI Initial Brief at 11-12; Joint CLEC Initial Brief, ¶ 24; CCG Initial Brief, ¶ 29.

addressed further below in Issues No. 17 and 21. The sections of the parties' proposed amendments relevant to Issue No. 12 are as follows:

Verizon November 4, 2004, Amendment 2: § 3.4
AT&T March 14, 2005, Amendment: §§ 2.5, 3.7
MCI April 4, 2005, Amendment: § 4
Focal March 11, 2005, Amendment: §§ 2, 5.2
CCG October 22, 2004, Amendment: §§ 2.4, 3.7

251 Verizon proposes language in Section 3.4 of Amendment 2 concerning commingling and combinations. Verizon argues that its proposed language is consistent with the rules adopted in the Triennial Review Order.[389] Specifically, Verizon is willing to perform the functions necessary to allow CLECs to engage in commingling or to combine UNEs with wholesale services.[390] Verizon uses the terms "Qualifying UNE" and "Qualifying Wholesale service" to refer to those facilities and services available for commingling.[391] Verizon asserts that the FCC requires certification on a circuit-by-circuit basis.[392] Verizon also provides language addressing charges for conversions, and standards for audits.[393] Finally, Verizon asserts that it should be able to exclude its performance from standard provisioning measures and remedies, if any, as these measures and remedies were established before Verizon became subject to the new commingling requirements and the prior measures and standards do not account for the additional time and activities associated with those requirements.[394]

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[389] Verizon Initial Brief, ¶ 162, *citing Triennial Review Order*, ¶¶ 581-582; 47 C.F.R. § 51.315.
[390] Verizon Initial Brief, ¶ 162; *see also* Verizon November 4, 2004, Amendment 2, § 3.4.1.1.
[391] Verizon November 4, 2004, Amendment 2, § 3.4.1.2.
[392] Verizon Initial Brief, ¶ 163, *citing Triennial Review Order*, ¶ 599; *see also* Verizon November 4, 2004, Amendment 2, §§ 3.4.2.1, 3.4.2.3.
[393] Verizon November 4, 2004, Amendment 2, §§ 3.4.2.3 – 3.4.2.7.
[394] Verizon Initial Brief, ¶ 162; *see also* Verizon November 4, 2004, Amendment 2, § 3.4.1.1.

252 Verizon proposes to apply the rates, terms, and conditions of the applicable access tariff or separate non-section 251 agreement to the wholesale services.[395] Verizon proposes a non-recurring charge for each UNE circuit that is part of a commingled arrangement, asserting the charge is necessary to offset Verizon's costs of implementing and managing commingled arrangements.[396] Verizon's proposal prohibits "ratcheting," which Verizon describes as charging CLECs a single, blended rate for the commingled facilities, rather than the charges for its component parts.[397] Verizon asserts it has not proposed specific rates for commingling, and that the amendment should not foreclose the possibility of appropriately justified charges.[398]

253 In response to the Joint CLECs' objections to Verizon's use of the term "Qualifying UNEs," Verizon argues that limiting the availability of commingling to 'Qualifying UNEs" 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-[section] 251 agreement."[399] Verizon asserts that its language "correctly reflects 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'."[400]

254 The CLECs agree with Verizon that the amendment should include provisions to implement changes of law concerning commingling. The CLECs, however, oppose significant portions of Verizon's proposed language, and assert that their language is more consistent with the FCC's discussion of commingling in the Triennial Review Order.

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[395] Verizon Initial Brief, ¶ 162.
[396] *Id.*
[397] *Id.*
[398] Verizon Reply Brief, ¶ 74.
[399] Verizon Reply Brief, ¶ 73; *see also* Verizon Amendment 2, § 3.4.1.1.
[400] Verizon Reply Brief, ¶ 73, *citing Triennial Review Order*, ¶ 579.

255 AT&T and the Competitive Carrier Group propose identical language governing commingling, conversions, and combinations in Sections 3.7 of their proposed amendments.[401] AT&T proposes that the commingling requirement apply to UNEs and UNE combinations, as well as to "Declassified Network Elements."[402] AT&T proposes that Verizon provide commingling and conversions without imposing policies or practices that place unreasonable or undue disadvantage upon CLECs.[403] AT&T proposes that the rates, terms and conditions of access tariffs apply to wholesale services, while the rates, terms and conditions of the amended agreement or UNE tariff apply to UNEs and combinations.[404] AT&T agrees with Verizon that ratcheting is not required under the amendment.[405] AT&T proposes that Verizon provision commingled arrangements in a way that will not operationally impede CLECs in implementing commingling arrangements, and to ensure that Verizon does not affect the end user's service quality.[406] Finally, AT&T proposes that Verizon conform the amendment to its wholesale and access tariffs, and not modify these tariffs to impact the availability of commingling under the amendment.[407]

256 MCI includes language in Section 4 of its proposed amendment that is similar, in many respects, to AT&T's proposal. MCI includes language concerning the commingling obligation, the appropriate rates to apply, the need to ensure that an end user's service quality is not affected, and that Verizon must not amend its wholesale and access tariffs contrary to the amendment provisions governing commingling.[408] MCI does not propose, however, that Verizon allow commingling of Discontinued Elements with wholesale facilities or services.

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[401] As AT&T and the Competitive Carrier Group's language is identical, the discussion will refer only to AT&T's most recent language.
[402] AT&T March 14, 2004, Amendment, § 3.7.1.
[403] *Id*.
[404] *Id*.
[405] *Id*.
[406] *Id*.
[407] *Id*.
[408] MCI April 4, 2005, Amendment, § 4.1.

Like AT&T, MCI agrees that ratcheting is not required.[409] MCI proposes that Verizon's performance in providing commingling be subject to performance measures and provisioning intervals, and provides that Verizon may not deny access to UNEs or Combinations under certain circumstances.[410]

257 Focal includes language governing commingling, conversions and combinations in Section 2 of Exhibit 1 to its Initial Brief. Focal also includes language similar to AT&T's concerning service quality to the end user, modification of access and wholesale tariffs, and the applicable rates, terms and conditions under wholesale and access tariffs.[411] Focal further provides that Verizon may not assess charges to commingle.[412]

258 The CLECs generally complain that Verizon's proposal does not comply with the requirements of the Triennial Review Order, and will impede the CLECs' ability to compete through efficiently commingling facilities.[413]

259 AT&T, Focal, and the Competitive Carrier Group assert that Verizon must permit commingling as of the Triennial Review Order's effective date, October 3, 2003.[414]

260 Focal, the Competitive Carrier Group, and the Joint CLECs oppose Verizon's use of the terms "Qualifying UNE" and "Qualifying Wholesale Services."[415] Focal asserts that Verizon inappropriately limits commingling to UNEs obtained under 47 U.S.C. § 251(c)(3) or a Verizon UNE tariff with wholesale services obtained

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[409] *Id*.
[410] *Id*.
[411] Focal March 11, 2005, Amendment, §§ 2.1, 2.1.1.
[412] *Id*., § 2.1.1.
[413] AT&T Initial Brief, ¶ 70; Focal Initial Brief, ¶¶ 11-13; Joint CLEC Initial Brief, ¶¶ 25-26.
[414] AT&T March 14, 2005, Amendment, § 3.7.1; AT&T Initial Brief, ¶ 69, *citing Triennial Review Order*, ¶ 589; 47 C.F.R. § 51.318; Focal March 11, 2005, Amendment, § 2.1; Focal Initial Brief, ¶ 12; CCG Initial Brief, ¶ 30.
[415] Focal Initial Brief, ¶ 13; Joint CLEC Initial Brief, ¶ 25; CCG Initial Brief, ¶ 31.

from Verizon under a Verizon access tariff or separate non-section 251 agreement.[416] Focal asserts that the amendment need not specify the exact scope of non-section 251 obligations, but should permit commingling of UNEs made available pursuant to other applicable law such as Section 271, conditions identified in the Bell Atlantic/GTE Merger Order, or state law.[417] Focal also objects to the terms as outdated, as the FCC rejected use of the terms in the Triennial Review Remand Order.[418]

261 The Joint CLECs and Competitive Carrier Group CCG assert that the term "Qualifying UNEs" may exclude current and future UNEs that have been declassified without amending the parties' interconnection agreements.[419] The CLECs assert that the term circumvents change of law provisions, and is inconsistent with the Triennial Review Order and the Triennial Review Remand Order requirements that changes in federal law are subject to the Section 252 process and change of law provisions in the parties' interconnection agreements.[420]

262 AT&T objects to the "re-certification process" in Verizon's proposed Section 3.4.2.1 as an illegitimate, unjustified, make-work process.[421] AT&T asserts that it has already established eligibility for existing circuits and that repeating the process will increase costs unnecessarily.[422] AT&T also objects to Verizon's proposal to recertify on a circuit-by-circuit basis rather than through the use of a single written or electronic request, proposing that CLECs should be allowed to re-certify all prior conversions in one batch.[423] AT&T also proposes that CLECs

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[416] Focal Initial Brief, ¶ 13.
[417] *Id*.
[418] *Id*.
[419] Joint CLEC Initial Brief, ¶ 25; CCG Initial Brief, ¶ 31.
[420] Joint CLEC Initial Brief, ¶ 25; CCG Initial Brief, ¶ 31.
[421] AT&T Initial Brief, ¶ 71.
[422] *Id*.
[423] *Id*.

be allowed to certify future requests on a batch, rather than an individual, basis.[424]

263 AT&T and Focal object to Verizon's proposal to limit or exclude commingled facilities from its performance obligations.[425] AT&T asserts that the commingled arrangements CLECs may order include UNEs already subject to such metrics and remedies, and there is no reason to exclude commingled UNEs from the metrics simply because they are provided in combination with other wholesale services.[426] AT&T asserts that performance metrics and remedies give ILECs the incentive to provide service in a timely and efficient manner.[427]

264 AT&T, MCI, Focal, and the Joint CLECs oppose any charges for commingling other than the current charges in access and wholesale tariffs and the interconnection agreements for access to UNEs and wholesale facilities and services.[428] Specifically, AT&T and Focal object to Verizon's proposed "retag"charge asserting the FCC determined that there should be no charge for conversions of special access facilities to commingled UNE EELs:

> Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions.[429]

265 Focal further opposes such conversion charges based upon the FCC's finding that ILECs have an incentive to impose "wasteful and unnecessary charges, such

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[424] *Id*.
[425] *Id*., ¶ 72; Focal Initial Brief, ¶ 13.
[426] AT&T Initial Brief, ¶ 72.
[427] *Id*.
[428] *Id*., ¶¶ 73-74; MCI Reply Brief, ¶¶ 3-6; Focal Initial Brief, ¶ 11; Joint CLEC Initial Brief, ¶ 26.
[429] AT&T Initial Brief, ¶ 73, *quoting Triennial Review Order*, ¶ 587; Focal Initial Brief, ¶¶ 11, 19.

as termination charges, re-connect and disconnect fees, or non-recurring charges" and that such charges could deter legitimate commingling of wholesale services and UNEs or UNE combinations, or could unjustly enrich an incumbent LEC.[430] Focal requests the Commission reject Verizon's proposals for commingling charges, including Verizon's proposed nonrecurring charges on each UNE circuit that is part of a commingled arrangement.[431]

266 The Joint CLECs assert the Commission's currently approved nonrecurring charges for processing UNE orders are sufficient to address the commingling of UNEs with special access facilities or other tariffed services.[432] Likewise, MCI asserts that the Commission has approved TELRIC rates that allow Verizon to recover the total costs of provisioning UNEs.[433] MCI asserts that Verizon has had sufficient time since the effective date of the Triennial Review Order to develop a cost study to support its proposed rates for commingling and conversions, but has not done so.[434]

267 AT&T objects to Verizon's proposal for assessing the costs of service eligibility audits.[435] AT&T asserts that Verizon should be allowed to pass along the total cost of an audit only if the independent auditor concludes that the CLEC failed to comply with the service eligibility criteria "in all material respects."[436] AT&T asserts that Verizon should have to pay the CLEC's costs of complying with any requests of the independent auditor if the auditor finds the CLEC is materially in compliance with the service eligibility criteria.[437]

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[430] Focal Initial Brief, ¶ 11, *citing Triennial Review Order*, ¶ 587.
[431] *Id*., ¶¶ 11, 13.
[432] Joint CLEC Initial Brief, ¶ 26.
[433] MCI Reply Brief, ¶ 3.
[434] *Id*., ¶¶ 4-6.
[435] AT&T Initial Brief, ¶ 75.
[436] *Id*.
[437] *Id*.

268 Focal objects to Verizon's proposed reservation of rights language in Section 3.4.2.2, asserting that Verizon may cease providing a UNE without first seeking a contract amendment.[438]

269 ***Discussion and Decision.*** The parties' interconnection agreements should be amended to address changes arising from the Triennial Review Order with respect to the commingling of UNEs with wholesale services, EELs, and other combinations. In the Triennial Review Order, the FCC eliminated a restriction against commingling that it earlier imposed in its *Supplemental Order Clarification*[439] and applied to stand-alone loops and EELs.[440] The FCC modified its rules to affirmatively permit requesting carriers to commingle UNEs and UNE Combinations with non-section 251(c)(3) wholesale facilities and services, and to require ILECs to perform the necessary functions to commingle upon request.[441] In addition, ILECs are required to permit commingling with any services offered for resale pursuant to section 251(c)(4) of the Act.[442] The amended rule provides, in appropriate part:

> (e) Except as provided in § 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.
>
> (f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

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[438] Focal Initial Brief, ¶ 13.
[439] *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183, ¶¶ 22, 28 (rel. June 2, 2000) [Hereinafter "*Supplemental Order Clarification*"].
[440] *Triennial Review Order*, ¶¶ 579, 581.
[441] *Id.*, ¶ 579.
[442] *Id.*, ¶ 584.

> (g) An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements:
>
> (1) Is connected to, attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or
>
> (2) Shares part of the incumbent LEC's network with access services or inputs for mobile wireless services and/or interexchange services.[443]

270 As discussed above in Issue No. 9, the amendment should include the following definition of commingling, modeled after the FCC's definition in the Triennial Review Order:

> The connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that [CLEC] has obtained at wholesale from Verizon pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of an Unbundled Network Element or Unbundled Network Element Combination with one or more such wholesale services. "Commingle" means the act of Commingling.

271 Verizon's proposed language in Sections 3.4.1.1 and 3.4.1.2 is not consistent with this definition of commingling as Verizon refers to "Qualifying UNEs," and "Qualifying Wholesale Services" rather than UNEs and wholesale services. Verizon defines the term "Qualifying UNE" to exclude "Interim Rule Facilities" that Verizon must provide until the FCC establishes final unbundling rules. When the FCC issued the Triennial Review Remand Order, Verizon's reference to "Interim Rule Facilities" became moot. Thus, Verizon must delete the word "Qualifying" when it appears before the acronym "UNE" and the term

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[443] 47 C.F.R. § 51.309(e) through (g), as modified by the *Triennial Review Remand Order*.

"Wholesale Services" in Section 3.4 of Verizon's proposed amendment, and delete the definition of "Qualifying UNEs" in Section 3.4.1.2.1.

272 Instead of referring to ratcheting in Section 3.4.1.1 as "the term is defined by the FCC," Verizon should state: "Ratcheting, i.e., a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate, shall not be required."

273 In Section 3.4.1.1 of its proposed amendment, Verizon states that UNEs that are commingled with Qualifying Wholesale Services are not included in the shared use provisions of the applicable tariff. The FCC requires incumbent LECs to commingle circuits by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations, and by establishing penalties for non-compliance.[444] Verizon's FCC tariff concerning commingling repeats the same limitation concerning commingling and shared use proposed in Section 3.4.1.1, but Verizon clarifies in the FCC tariff that the commingled UNE elements are not eligible for adjustment of charges under such provisions.[445] Verizon should include similar clarifying language to ensure consistency between the amendment and FCC tariff concerning commingling.

274 In the last sentence of Section 3.4.1.1 of its proposed amendment, Verizon proposes to "exclude its performance in connection of commingled facilities and services from standard provisioning intervals and from performance measures and remedies, if any, contained in the Amended Agreement or elsewhere." Consistent with the discussion below in Issue No. 17, there is no need to include any language in the amendment concerning performance measures, as Verizon is not currently subject to performance measures in Washington.

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[444] *Triennial Review Order*, ¶ 581 n.1792.

[445] *See* Verizon's Tariff FCC No. 1, Original Page 2-11.1, ¶ 2.2.3, effective October 17, 2003.

275 Based on the discussion below in Issues No. 21(b)(2), 25, and 32, Verizon may not impose charges for commingling or conversion other than those in existing interconnection agreements or wholesale tariffs until Verizon demonstrates the need for additional charges.

276 Considering the analysis above, Verizon's proposed Section 3.4.1.1 should be amended as follows:

> 3.4.1.1. Verizon will not prohibit the commingling of an unbundled Network Element or a combination of unbundled Network Elements obtained under the agreement or Amended Agreement pursuant to 47 U.S.C. §251(c)(3) and 47 C.F.R. Part 51, or under a Verizon UNE tariff ~~("Qualifying UNEs" as defined further in Section 3.4.1.2 below)~~, with wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement ("~~Qualifying~~ Wholesale Services"), but only to the extent and so long as commingling and provision of such Network Element (or combination of Network Elements) is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Moreover, to the extent and so long as commingling and provision of such Network Element (or combination of Network Elements) is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 ~~(subject to Section 3.4.1.2 below),~~ Verizon shall, upon request of ***CLEC Acronym TXT***, perform the functions necessary to commingle or combine ~~Qualifying~~ UNEs with ~~Qualifying~~ Wholesale Services. The rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the ~~Qualifying~~ Wholesale Services, and the rates, terms and conditions of the Amended Agreement or the Verizon UNE tariff, as applicable, will apply to the ~~Qualifying~~ UNEs~~; provided however that a nonrecurring charge will apply for each UNE circuit that is part of a commingled arrangement as set forth in the Pricing Attachment to the is Amendment. This charge is intended to offset Verizon's costs of implementing and managing commingled arrangements~~. "Ratcheting," ~~as that term is defined by the FCC~~ i.e., billing a single circuit at multiple rates to develop a

> single, blended rate, shall not be required. ~~Qualifying~~ UNEs that are commingled with ~~Qualifying~~ Wholesale Services are not included in the shared use provisions of the applicable tariff, and are therefore not eligible for adjustment of charges under such provisions. ~~Verizon may exclude its performance in connection of commingled facilities and services from standard provisioning intervals and from performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.~~"

277 As discussed above, Section 3.4.1.2.1 of Verizon's proposed amendment should be deleted. Section 3.4.1.2.2 of Verizon's proposed amendment should also be modified, as follows to delete references to Interim Rule Facilities:

> ~~"¶3.4.1.2.2~~ "¶3.4.1.2.1 Section 3.4 is intended only to address the Parties' rights and obligations as to the combining and/or commingling of UNEs that Verizon is already required to provide to ***CLEC Acronym TXT*** under the Amended Agreement, 47 U.S.C. §251(c)(3), and 47 C.F.R. Part 51. Nothing contained in Section 3.4 shall be deemed ~~(a) to establish any obligation of Verizon to provide ***CLEC Acronym TXT*** with access to any Interim Rule Facility or other facility that Verizon is not required to provide to ***CLEC Acronym TXT*** on an unbundled basis under the Amended Agreement, 47 U.S.C. §251(c)(3), and 47 C.F.R. Part 51, or (b)~~ to limit any right of Verizon under the Amended Agreement any Verizon tariff or SGAT, or otherwise, to cease providing a facility that is or becomes a Discontinued ~~Facility~~ Element.

13. ISSUE NO. 13: Should the interconnection agreements be amended to address changes arising from the TRO with respect to conversion of wholesale services to UNES/UNE combinations? If so, how?

278 This issue addresses whether the amendment should include a provision governing conversions, and if so, what terms and conditions concerning conversions should be included. The parties dispute the terms and conditions

for conversion, specifically the rates and charges and effective dates for billing changes, eligibility criteria for EELs, conversion guidelines, audit procedures, and service performance. Aside from the issue of conversion guidelines, the terms and conditions for conversions are primarily addressed below under Issue No. 21. The sections of the parties' proposed amendments relevant to Issue No. 13 are as follows:

Verizon November 4, 2004, Amendment 2: §§ 3.4.2.1, 3.4.2.4, 3.4.2.5, 3.4.2.6
AT&T March 14, 2005, Amendment: §§ 3.7
MCI April 4, 2005, Amendment: § 5
Focal March 11, 2005, Amendment: §§ 2.3, 5.3
CCG October 22, 2004, Amendment: §§ 3.7

279 Verizon includes language addressing conversions in Section 3.4 of its amendment. At issue is whether the process and procedures for conversions should be included in the amendment or in Verizon's "conversion guidelines," a document Verizon has developed separate from the amendment. Verizon asserts that the reference in Section 3.4.2.6 to its "conversion guidelines" is appropriate, asserting that "it is common for operational matters … to be covered in ancillary documents."[446] Verizon asserts that these operational matters do not affect underlying legal obligations and that the guidelines are subject to minor modification to reflect evolving circumstances and technology.[447]

280 AT&T, MCI, Focal, the Joint CLECs, and the Competitive Carrier Group concur that the amendment should include the Triennial Review Order's requirement that ILECs allow conversion of special access and wholesale services to UNEs.[448] The CLECs generally object to Verizon's language and assert that their proposals

[446] Verizon Reply Brief, ¶ 95.
[447] *Id*.
[448] AT&T Initial Brief, ¶ 76; MCI April 4, 2005, Amendment, § 5; Focal March 11, 2005, Amendment, § 2.3; Joint CLEC Brief, ¶ 27; CCG Initial Brief, ¶¶ 32-33.

more accurately reflect the FCC's decisions concerning conversions.[449] Verizon notes that the CLECs do not propose any alternative language, and assert that the Commission could address any objections to Verizon's conversion guidelines "in due course."[450]

281 AT&T asserts that the Triennial Review Order allows retroactive conversions, as well as conversions in the future.[451] AT&T and the Joint CLECs oppose any charges for conversion, asserting that the Triennial Review Order provides that conversions are essentially a billing change.[452] AT&T asserts that Verizon should make the conversions to UNEs and UNE rates effective with the next month's billing.[453]

282 MCI objects to Verizon's proposal to charge new and additional rates contained in its Pricing Attachment to its Amendment 2 for activities related to conversions.[454] MCI urges the Commission to reject Verizon's proposal to charge those rates on an interim basis, as Verizon has provided no cost support and has had ample time to prepare a cost study.[455]

283 The Joint CLECs and Focal object to Verizon's "minimal language" governing conversions, as well as Verizon reference to its own "conversion guidelines" as the terms and conditions for conversions.[456] The CLECs are concerned that Verizon may unilaterally modify these conversion guidelines.[457] Focal is concerned that Verizon might circumvent decisions made in this arbitration through use of its conversion guidelines and "impose an undue gating

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[449] *See* CCG Initial Brief, ¶ 33, Joint CLEC Initial Brief, ¶ 27.
[450] *Id*.
[451] AT&T Initial Brief, ¶ 76.
[452] *Id*.; *see also* Joint CLEC Brief, ¶ 27.
[453] AT&T Initial Brief, ¶ 76.
[454] MCI Reply Brief, ¶ 3.
[455] *Id*., ¶¶ 1, 6.
[456] Joint CLEC Initial Brief, ¶ 27; Focal Initial Brief, ¶ 16.
[457]Joint CLEC Initial Brief, ¶ 27; Focal Initial Brief, ¶ 16.

mechanism that could delay the initiation of the ordering or conversion process."[458]

284 ***Discussion and Decision.*** The FCC determined in the Triennial Review Order that CLECs may convert wholesale services (*e.g.*, special access services offered pursuant to interstate tariff) to UNEs or UNE combinations (including EELs), and the reverse, *i.e.*, converting UNEs or UNE combinations to wholesale services.[459] The FCC did not adopt rules governing the processes and procedures for conversions, however, allowing carriers to establish these procedures through the Section 252 process.[460] The FCC provided, however, that conversions between wholesale services and UNEs or UNE combinations "should be a seamless process that does not affect the customer's perception of service quality."[461] The FCC further provided that conversions should be performed expeditiously, with the parties identifying timeframes in their interconnection agreements.[462]

285 The FCC provided that CLECs may convert UNEs and UNE combinations to wholesale services and the reverse, as long as the CLEC meets the applicable eligibility criteria.[463] If the CLEC does not meet these criteria, the ILEC may convert the UNE or UNE combination to the equivalent wholesale service following the conversion procedures established by the parties.[464]

286 The FCC also found that conversion "is largely a billing function" and that any pricing changes should be reflected in the next billing cycle after the conversion request.[465] The FCC did not require retroactive billing for any conversion

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[458] Focal Initial Brief, ¶ 16, *citing Triennial Review Order*, ¶ 623.
[459] *Triennial Review Order*, ¶ 585 n. 1808.
[460] *Id*.
[461] *Id.*, ¶ 586.
[462] *Id*., ¶ 588.
[463] *Id*., ¶ 586.
[464] *Id*.
[465] *Id*.

requests pending on the effective date of the Triennial Review Order.[466] The FCC further found that ILECs need not allow CLECs to supersede or dissolve existing long term contracts, but held that termination charges, reconnect and disconnect fees, or non-recurring charges are inappropriate as they could deter legitimate conversions.[467] The FCC also found these charges inconsistent with the duty to provide nondiscriminatory access to UNEs and UNE combinations, as ILECs are not required to perform conversions for their own customers.[468]

287 Given the FCC's decisions concerning conversions, the interconnection agreements should be amended to address the conversion of wholesale services to UNEs and UNE combinations and the reverse, and should include processes and procedures governing conversions. This discussion focuses only on the appropriate processes for conversion, *i.e.*, the issue of Verizon's "conversion guidelines." All other issues concerning conversions, including rates and charges, service eligibility criteria, effective dates, and audits, are discussed in greater detail below in Issue No. 21.

288 Section 3.4.2.6 of Verizon's Amendment 2 states "All requests for conversions will be handled in accordance with Verizon's conversion guidelines." On May 12, 2005, the Arbitrator issued Bench Request No. 1, requesting a copy of the referenced "conversion guidelines," or, in the alternative, an Internet universal resource locator (URL) identifying where the document can be reviewed online and/or downloaded. Verizon provided the information requested and identified that the guidelines are also available at http:///www22.verizon.com/wholesale/local/order/ordering_une/1,,,00.html.

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[466] *Id.*, ¶ 589.
[467] *Id.*, ¶ 587.
[468] *Id.*

289 Verizon's guidelines, titled "Guidelines for Converting Eligible Special Access Services to UNE Transport and Loop Transport Combinations," are dated September 2004. The guidelines include terms and conditions governing eligibility criteria, required certification information, minimum service period charges, project planning calls, ASR requirements, and a form certification letter. Many of these terms and conditions are in dispute in this arbitration proceeding.

290 When visiting the site or the guidelines, viewers receive a notice that the information may not have been updated to include requirements of the FCC's Triennial Review Remand Order, as well as the following notice: "These guidelines do not establish any rights or obligations upon Verizon or upon any other carrier with respect to conversions of special access services to unbundled network elements (UNEs) or combinations of UNEs. These guidelines are subject to change by Verizon from time to time."

291 The content of the guidelines, and the notices in the guidelines and internet version, raise concerns about the reliability of Verizon's conversion guidelines as a separate document, as opposed to memorializing suitable guidelines in the amendment. ILECs, including Verizon, have strongly contested the ability of CLECs to convert wholesale services to UNEs, especially to create high-capacity EELs.[469] The FCC specifically prohibited "gating mechanisms" or practices that would make it more difficult or burdensome for CLECs to convert wholesale services to UNEs, or EELs.[470] On a legal and practical basis, it is inappropriate to reference the conversion guidelines in the amendment, or to allow its terms and conditions to govern the amendment despite any decisions in this arbitration. Further, it is not acceptable that terms and conditions in an interconnection agreement be subject to change solely at Verizon's direction when change of law provisions in the agreement would otherwise govern. Accordingly, the first

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[469] *See Triennial Review Remand Order*, ¶¶ 229-31.
[470] *See Triennial Review Order*, ¶ 623.

sentence of Section 3.4.2.6 of Verizon's Amendment No. 2 is rejected and should be deleted.

14. ISSUE NO. 14: Should the interconnection agreements be amended to address changes, if any, arising from the TRO with respect to:

(a) Line splitting;

(b) Newly built FTTP, FTTH or FTTC loops;

(c) Overbuilt FTTP, FTTH or FTTC loops;

(d) Access to hybrid loops for the provision of broadband services;

(e) Access to hybrid loops for the provision of narrowband services;

(f) Retirements of copper loops;

(g) Line conditioning;

(h) Packet switching;

(i) Network interface Devices (NIDs);

(j) Line sharing.

292 This issue addresses whether the Triennial Review Order established changes of law concerning the elements or services identified above, and whether and how the parties' interconnection agreements should be modified to address the changes. In general, Verizon opposes modifying agreements in this arbitration to address any matters it asserts are not addressed in the Triennial Review Order, *i.e.*, line splitting, line conditioning, and NIDs.[471] Verizon proposes to address these matters by negotiating appropriate provisions outside of this arbitration, or allowing CLECs to adopt Verizon's standard language on the issue.[472] In general, the CLECs support including language in the amendment to address each of the identified issues.

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[471] Verizon Initial Brief, ¶ 167.

[472] *Id.*, ¶¶ 167, 169.

(a) Line Splitting.

293 While neither AT&T nor MCI address the issue in brief, AT&T and MCI include language in the following sections of their proposed amendments both defining line splitting and identifying the terms and conditions for provisioning:

AT&T March 14, 2005, Amendment: §§ 2.25, 3.2.10
MCI April 4, 2005, Amendment: §§ 6, 12.7.13

The Joint CLECs and Competitive Carrier Group assert that all changes of law from the Triennial Review Order should be included in the amendment, including any change of law concerning line splitting.[473]

294 Verizon opposes including language in the amendment addressing line splitting, asserting that ILEC obligations regarding line splitting have not changed due to the Triennial Review Order or Triennial Review Remand Order.[474]

295 ***Discussion and Decision.*** In the Triennial Review Order, the FCC reaffirmed ILEC obligations to provide requesting carriers with the ability to provide line splitting, but also adopted new rules specifically governing line splitting.[475] While line splitting is clearly not a new UNE, the amendment should reflect the new FCC rules governing and clarifying ILEC obligations concerning line splitting. This issue is resolved in favor of the CLECs.

296 MCI's proposed language is not acceptable as it provides for Verizon to provide access to combinations of DSL-compatible loops with unbundled switching and transport, *i.e.*, UNE-P.[476] As discussed above in Issue No. 3, ILECs are not

[473] Joint CLEC Initial Brief, ¶ 28; CCG Initial Brief, ¶ 34.
[474] Verizon Initial Brief, ¶¶ 168-69.
[475] *Triennial Review Order*, ¶¶ 251-52; *see also* 47 C.F.R. § 51.319(a)(1)(ii).
[476] MCI April 4, 2005, Amendment, § 6.

obligated to provide access to new UNE-P customers or arrangements. AT&T's proposed language refers to Verizon's obligations under "other Applicable Law."[477] AT&Ts language should be included in the amendment without the reference to "other Applicable Law."

(b) Newly built FTTP, FTTH, or FTTC Loops.

297 The parties propose language addressing newly built FTTP, FTTH, or FTTC loops in the following sections of their proposed agreements:

Verizon September 10, 2004, Amendment 1: §§ 4.7.3, 4.7.9
Verizon November 4, 2004, Amendment 2: §§ 3.1, 4.7.14
AT&T March 14, 2005, Amendment: §§ 2.19, 3.2.2
MCI April 4, 2005, Amendment: §§ 7.1, 7.3, 12.7.11

298 AT&T and MCI propose language providing that CLECs are not entitled to and that Verizon has no obligation to provide access to newly built FTTH loops.[478] AT&T, however, disputes Verizon's proposal to use the term "FTTP," rather than "FTTH."[479]

299 Verizon proposes similar language to AT&T and MCI, asserting that the FCC has determined that CLECs are not impaired without unbundled access to FTTP loops.[480] Verizon asserts that the FCC has found no impairment for newly deployed or greenfield fiber loops, and has applied the rules governing FTTH loops to FTTC loops.[481] As above, concerning the definition of FTTP loops,

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[477] AT&T March 14, 2005, Amendment, § 3.2.10.
[478] *Id*., § 3.2.2.1; MCI April 4, 2004, Amendment, § 7.1.
[479] AT&T Initial Brief, ¶ 78.
[480] Verizon November 4, 2004, Amendment 2, § 3.1; *see also* Verizon Initial Brief, ¶ 170.
[481] Verizon Initial Brief, ¶ 170.

Verizon asserts that the term FTTP Loop properly describes the combination of FTTH and FTTC Loops.[482]

300 ***Discussion and Decision.*** The FCC determined in the Triennial Review Order that ILECs are not obligated to provide CLECs with unbundled access to FTTH loops, and are not obligated to provide access to newly-deployed, or greenfield, fiber loops, including the narrowband portion of the loop.[483] As described in Issue No. 9, above, the FCC has applied the rules governing FTTH loops to FTTC loop architecture. Consistent with our discussion above in Issue No. 9, Verizon must change the term "FTTP Loop" to FTTH Loop. With this change, Verizon's and MCI's proposals concerning Verizon's obligations to provide access to newly-deployed FTTH Loops should be included in the amendment.

(c) Overbuilt FTTP, FTTH, or FTTC Loops.

301 The parties propose language addressing access to overbuilt FTTP, FTTH, and FTTC Loops in the following sections of their proposed amendments:

Verizon September 10, 2004, Amendment 1: §§ 4.7.3, 4.7.9
Verizon November 4, 2004, Amendment 2: §§ 3.1, 4.7.14
AT&T March 14, 2005, Amendment: §§ 2.19, 3.2.2.2 – 3.2.2.5
MCI April 4, 2005, Amendment: §§ 7.1, 12.7.14

302 Verizon proposes that if Verizon deploys an FTTP Loop that replaces a copper loop used to serve an end-user customer premises and Verizon retires the copper loop, Verizon will provide CLECs with "nondiscriminatory access on an unbundled basis to a transmission path capable of providing DS0 voice grade service to that end user customer's premises" if there are no other copper or

[482] Verizon Reply Brief, ¶ 78.
[483] *Triennial Review Order*, ¶¶ 211, 273, 275.

hybrid loops available to serve the end user customer.[484] MCI's proposal is consistent with Verizon's proposed language.[485]

303 Verizon asserts that its language is consistent with the FCC's decision to allow unbundled access to narrowband service over FTTH loops built alongside existing copper loops if the ILEC has retired the copper loop facilities.[486] Verizon requests the Commission reject Sprint's proposed amendment concerning retirement of copper facilities, asserting that such language should not be included in a section referring to FTTP Loops.[487]

304 AT&T describes Verizon's obligations consistent with the FCC's decision in the Triennial Review Order.[488] As described above, AT&T objects to Verizon's use of the term "FTTP Loop," asserting that the proper term is "FTTH Loop."[489] In addition, AT&T proposes that Verizon maintain the existing copper facilities to the customer premises unless Verizon retires the copper loop (Section 3.2.2.3), and that Verizon must restore an existing unused copper loop to serviceable condition after receiving a CLEC request for unbundled access to the loop (Section 3.2.2.4). AT&T further proposes in Section 3.2.2.8 that the process for changes to or retirement of an existing copper loop be implemented through change management procedures.

305 ***Discussion and Decision.*** The FCC determined in the Triennial Review Order that ILECs must offer unbundled access only for narrowband service over overbuilt fiber loops, and only where the ILEC has retired existing copper loops.[490] The FCC allows the ILEC the choice of keeping the existing copper loop

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[484] Verizon November 4, 2004, Amendment 2, § 3.1.
[485] MCI April 4, 2004, Amendment, § 7.1.
[486] Verizon Initial Brief, ¶¶ 172-73.
[487] *Id*., ¶ 174.
[488] AT&T Initial Brief, ¶ 79.
[489] *Id*.
[490] *Triennial Review Order*, ¶¶ 273, 276-77.

in place or retiring the copper loop after deploying the fiber loop.[491] If the ILEC chooses to keep the copper loop in service, the ILEC need not incur rehabilitation costs for the loop, unless a CLEC requests access to the loop, and it is placed in service.[492]

306 Verizon's language in Section 3.1 appropriately addresses its obligations to provide access to FTTH Loops under the Triennial Review Order. Verizon must change the term "FTTP" to "FTTH." In addition, the amendment should include AT&T's proposed Sections 3.2.2.3 and 3.2.2.4, although the language in Section 3.2.2.3 should be modified to provide that Verizon retains the option of keeping or retiring copper loops.

(d) Access to Hybrid Loops for Broadband Services.

307 The parties propose language addressing access to Hybrid Loops for broadband services in the following sections of their proposed amendments:

Verizon September 10, 2004, Amendment 1: §§ 4.7.3, 4.7.10
Verizon November 4, 2004, Amendment 2: §§ 3.2.2, 4.7.16
AT&T March 14, 2005, Amendment: §§ 2.21, 3.2.3.1

308 AT&T does not address the issue in brief, but includes language in Section 3.2.2 of its proposed amendment.

309 Verizon proposes language providing for access to broadband services over Hybrid Loops only to:

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[491] *Id.*, ¶ 277.
[492] *Id.*

> The existing time division multiplexing features, functions, and capabilities of that Hybrid Loop (but no features, functions, and capabilities used to transmit packetized information) to establish a complete time division multiplexing transmission path between the main distribution frame (or equivalent) in a Verizon wire center and an end user to the demarcation point at the end user's customer premises.[493]

Verizon includes additional language addressing the treatment of DS1 and DS3 hybrid loops, should the FCC enter an order addressing their treatment after September 2004.[494]

310 Verizon objects to AT&T's proposal for referring to "other Applicable Law," for not limiting Verizon's obligations to those under Section 251(c)(3) and FCC rules, and for omitting the FCC's limitation that ILECs unbundle only existing time division multiplexing (TDM) features.[495] Verizon also objects to AT&T not including conditions on the use of UNEs.[496]

311 ***Discussion and Decision.*** In the Triennial Review Order, the FCC relieved incumbent LECs of unbundling requirements for the next generation, *i.e.*, packetized, capabilities of Hybrid Loops, but required ILECs to allow unbundled access to broadband services over Hybrid Loops, but only over the TDM features, functions and capabilities of the Hybrid Loops.[497] The FCC did not preclude access to DS1 or DS3 services provided over Hybrid Loops.[498] The FCC further provided that ILECs may not engineer "the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs …

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[493] Verizon November 10, 2004, Amendment 2, § 3.2.2.
[494] *Id.*; Verizon Initial Brief, ¶ 177.
[495] Verizon Initial Brief, ¶ 178.
[496] *Id*.
[497] *Triennial Review Order*, ¶¶ 286, 288.
[498] *Id.*, ¶ 294.

provided to competitive LECs."[499] The FCC clarified in its MDU Reconsideration Order that the ILEC obligation to provide unbundled access to the TDM capability of hybrid loops extends only to existing hybrid loops, not to "new packet-based networks or into existing packet-based networks that never had TDM capability."[500]

312 While Verizon's proposed language is most consistent with the FCC's decisions concerning access to hybrid loops for broadband service, Verizon's proposed language concerning DS1 and DS3 services should be deleted. Verizon's Section 3.1 of Amendment 2 should be modified, as follows:

> Broadband Services. Notwithstanding any other provision of the Amended Agreement ~~(but subject to and without limiting Section 2 above)~~ or any Verizon Tariff or SGAT, when [CLEC] seeks access to a Hybrid Loop for the provision of "broadband services," as such term is defined by the FCC, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide [CLEC] with unbundled access under the Amended Agreement to the existing time division multiplexing features, functions, and capabilities of that Hybrid Loop, (including DS1 and DS3 capacity (when impairment has been met), but no features, functions or capabilities used to transmit packetized information) to establish a complete time division multiplexing transmission path between the main distribution frame (or equivalent) in a Verizon wire center serving an end user to the demarcation point at the end user's customer premises~~, provided, however, that …~~

(e) Access to Hybrid Loops for Narrowband Services.

313 The parties propose language addressing access to hybrid loops for providing narrowband services in the following sections of their proposed amendments:

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[499] *Id*.

[500] *MDU Reconsideration Order*, ¶¶ 1, 20.

Verizon September 10, 2004, Amendment 1: §§ 4.7.3, 4.7.10
Verizon November 4, 2004, Amendment 2: §§ 3.2.3, 4.7.16
AT&T March 14, 2005, Amendment: §§ 2.21, 3.2.3.2
MCI April 4, 2005, Amendment: §§ 7.2.1, 12.7.12

314 Verizon proposes language providing that if a CLEC requests access to narrowband services over a hybrid loop, Verizon may provide a "spare home run copper loop serving the end-user customer on an unbundled basis," or "a DS0 voice-grade path between the main distribution frame (or equivalent) in the end user's serving wire center and the end-user's customer premises, using time-division multiplexing technology."[501]

315 While AT&T does not address the issue in brief, AT&T proposes language similar to Verizon. AT&T proposes, however, that Verizon provide access, either to spare home run copper or access to the "entire Hybrid Loop capable of voice-grade service (*i.e.*, equivalent to DS0 capacity), using time division multiplexing technology."[502] AT&T requires Verizon to provide an unbundled copper loop using routine network modifications.[503] AT&T and MCI include similar language requiring access to the "entire Hybrid Loop."[504]

316 Verizon objects to AT&T's proposed requirement that Verizon provide a copper loop at the CLEC's choice, asserting that the ILEC may choose between providing copper or TDM capabilities.[505] Verizon also objects to AT&T's inclusion of the term "other Applicable Law."[506] Finally, Verizon objects to AT&T's use of the phrase "entire Hybrid Loop capable of voice-grade service,"

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[501] Verizon Initial Brief, ¶ 181; Verizon November 4, 2004, Amendment 2, § 3.2.3.
[502] AT&T March 14, 2005, Amendment, § 3.2.3.2.
[503] *Id*.
[504] MCI April 4, 2005, Amendment, § 7.2.1.
[505] Verizon Initial Brief, ¶ 181.
[506] *Id*.

asserting that CLECs are entitled to a voice-grade transmission path, not the entire loop.[507]

317 ***Discussion and Decision.*** The FCC requires ILECs "to provide an *entire* non-packetized transmission path capable of voice-grade service (i.e., a circuit equivalent to a DS0 circuit) between the central office and customer's premises," *i.e.*, the TDM-based features, functions, and capabilities of hybrid loops for narrowband services.[508] The FCC requires that CLECs be able to access UNE loops, including the feeder and distribution portion of the ILEC loop plant, "the attached DLC system and any attached electronics used to provide a voice-grade transmission path between the customer's premises and the central office."[509] Finally, the FCC provides that ILECs may elect to provide a "home run copper loop rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities."[510]

318 The FCC provided ILECs with the option of providing home run copper or access to TDM capabilities. In addition, however, the FCC requires access to the "entire non-packetized transmission path" for narrowband services, not just "a" voice-grace DS0 transmission path, as Verizon proposes.[511] Given the discussion above, the issue is resolved in favor of Verizon, except that Verizon must modify Section 3.2.3 of its proposed amendment as follows:

> Narrowband Services. Notwithstanding any other provision of the Amended Agreement ~~(but subject to and without limiting Section 2 above)~~ or any Verizon Tariff or SGAT, when [CLEC] seeks access to a Hybrid Loop for the provision of "narrrowband services," as such term is defined by the FCC, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51,

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[507] *Id*.
[508] *Triennial Review Order*, ¶ 296 (emphasis added).
[509] *Id*.
[510] *Id*.
[511] *Id*.

> Verizon shall, in its sole discretion, either (a) provide access under the Amended Agreement to a spare home-run copper Loop serving that customer on an unbundled basis, or (b) provide access under the Amended Agreement, on an unbundled basis, to ~~a~~ the entire DS0 voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises, using time division multiplexing technology.

(f) Retirement of Copper Loops.

319 AT&T and MCI include language governing Verizon's retirement of copper loops in the following sections of their proposed amendments:

AT&T March 14, 2005, Amendment: §§ 3.2.2.6 – 3.2.2.9
MCI April 4, 2005, Amendment: § 7.3

320 AT&T requires Verizon to provide notice of any change in underlying loop architecture at least 180 calendar days prior to the change.[512] AT&T also proposes that the change not reduce the transmission capability of a loop used by AT&T.[513] In proposed Section 3.2.2.9, AT&T provides that Verizon may not modify loop plant to restrict AT&T's access to all loop features, function, and capabilities.

321 MCI proposes that Verizon comply with the FCC's network disclosure requirements prior to retiring copper loop facilities, requiring Verizon to provide 91 days notice prior to the planned retirement date and requiring Verizon to provide notice to CLECs pursuant to the Amended Agreement.[514] The Joint

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[512] AT&T March 14, 2005, Amendment, § 3.2.2.7.
[513] *Id*.
[514] MCI April 4, 2005, Amendment, § 7.3.

CLECs and Competitive Carrier Group assert that language addressing retirement of copper loops should be included in the amendment.[515]

322 Verizon objects to AT&T's proposed language as contrary to the FCC's rule governing retirement of copper facilities.[516] Verizon also objects to AT&T's language as requiring CLEC approval before copper loops are retired, asserting the FCC bars such a requirement.[517] Verizon also objects to AT&T's proposals in Sections 3.2.2.8, 3.2.2.9, and 3.2.2.10.[518]

323 ***Discussion and Decision.*** In the Triennial Review Order, the FCC chose not to impose any conditions on the ability of ILECs to retire copper loops or subloops replaced with FTTH loops.[519] The FCC requires ILECs to provide public notice of planned retirement of copper facilities pursuant to rules governing network changes.[520] The FCC modified those rules to address retirement of copper facilities, requiring ILECs to provide notice of copper loop retirement at least 91 days prior to the planned retirement date and allowing CLECs to object to the proposed retirement within nine days of the FCC's public notice of the proposed retirement.[521]

324 Given that the FCC has adopted new rules in the Triennial Review Order governing retirement of copper facilities, the issue is resolved in favor of the CLECs: The amendment should include language addressing retirement of copper facilities. AT&T's proposed language concerning retirement of copper facilities in Sections 3.2.2.6 through 3.2.2.9, however, is not consistent with the FCC's rules and is rejected. MCI proposed language, on the other hand, correctly

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[515] Joint CLEC Initial Brief, ¶ 28; CCG Initial Brief, ¶ 34.
[516] Verizon Initial Brief, ¶¶ 183-84, *citing* 47 C.F.R. § 51.319(a)(3)(iii).
[517] *Id*.
[518] *Id*., ¶ 185.
[519] *Triennial Review Order*, ¶ 281.
[520] *Id*., ¶¶ 282-83.
[521] *Id*.; *see also* 47 C.F.R. §§ 51.325(a)(4), 51.331(c), and 51.333(b).

describes the FCC's rules in 47 C.F.R. § 51.325-.333 and should be included in the amendment.

(g) Line Conditioning.

325 AT&T and MCI propose language addressing "Line Conditioning" in the following sections of their proposed agreements, while Verizon proposes charges for line conditioning in its Pricing Attachment, Exhibit A to its Amendment 2:

Verizon November 4, 2004, Amendment 2: Exhibit A
AT&T March 14, 2005, Amendment: §§ 2.23, 3.2.11
MCI April 4, 2005, Amendment: § 7.4

326 While AT&T incorporates portions of the FCC's line conditioning rules in its proposed language, MCI includes the entire rule in Section 7.4 of its proposed agreement.[522] AT&T asserts that its proposed amendment is necessary to implement the FCC's rules governing line conditioning, as Verizon's proposed amendment does not address the issue.[523] AT&T also provides that Verizon must condition copper loops at no cost, and objects to Verizon's inclusion of non-recurring charges for removal of load coils and bridge taps in Exhibit A to Amendment 2.[524] Specifically, AT&T asserts that Verizon may recover the costs of line conditioning only pursuant to the FCC's forward-looking principles required by Section 252(d)(1) and rules governing non-recurring costs.[525]

327 Verizon asserts that it is not necessary to address line conditioning in the amendment as it is not a new obligation, and the FCC only readopted its line

[522] *See* AT&T March 14, 2005, Amendment: § 3.2.11; MCI April 4, 2005, Amendment: § 7.4.
[523] AT&T Initial Brief, ¶ 80.
[524] *Id*., ¶¶ 80, 84; *see also* AT&T March 14, 2005, Amendment: § 3.2.11.
[525] AT&T Initial Brief, ¶ 184.

conditioning rules.[526] Verizon also asserts that its proposed charges for line conditioning in Exhibit A of its proposed Amendment 2 are TELRIC rates approved by the Commission.[527]

328 ***Discussion and Decision.*** In the Triennial Review Order, the FCC readopted the ILECs' obligation to condition copper loops and subloops as a form of routine network modification.[528] The FCC specifically rejected Verizon's arguments against performing line conditioning, concluding that conditioning the local loop to provide xDSL-capable services is necessary to avoid disrupting the capability of providing xDSL service.[529] The FCC's rules specifically require ILECs to "ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services."[530] The rule includes a definition of line conditioning, as well as a requirement that ILECs recover the costs of any requested line conditioning through TELRIC pricing.[531]

329 Given that the FCC resolved an issue of law in the Triennial Review Order governing line conditioning that Verizon specifically contested, and the FCC readopted rules governing line conditioning, it is appropriate to include a line conditioning provision in the amendment. The issue is resolved in favor of the CLECs. MCI's proposal, however, appears most consistent with the FCC rules, as it directly quotes the rules. AT&T's proposal that Verizon perform line conditioning at no cost is rejected. Given that the FCC readopted its rules governing line conditioning, the FCC did not approve additional charges for line conditioning. Consistent with the decision below in Issue No. 32, any line conditioning charges in Verizon's Pricing Attachment that the Commission has not already approved are rejected.

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[526] Verizon Initial Brief, ¶ 187; Verizon Reply Brief, ¶ 79.
[527] Verizon Reply Brief, ¶ 80.
[528] *Triennial Review Order*, ¶ 250 n.747.
[529] *Id.*, ¶¶ 642-43.
[530] 47 C.F.R. § 51.319(a)(1)(iii).
[531] 47 C.F.R. §§ 51.319(a)(1)(iii)(A) and (B).

(h) Packet Switching.

330 Verizon, AT&T, and MCI propose language addressing the treatment of packet switching in the following sections of their proposed agreements:

Verizon November 4, 2004, Amendment 2: § 3.2.1, 4.7.22
AT&T March 14, 2005, Amendment: §§ 2.29, 2.30, 3.5.3, 3.11
MCI April 4, 2005, Amendment: §§ 12.7.14(iii)

331 Verizon asserts that its proposed language, which precludes CLEC access to packet switched features, functions or capabilities of any Hybrid Loop, follows the FCC's decision that CLECs are not impaired without access to packet switching.[532] Verizon objects to CLEC arguments and proposed language suggesting that CLECs have access to packet switching used to provide circuit switched services.[533] Verizon asserts that the FCC has consistently determined, since its first order concerning UNE availability, that packet switches and packet switching are not stand-alone UNEs.[534] Further, Verizon insists that the FCC has encouraged ILECs to replace circuit switches with packet switches to avoid obligations to unbundled circuit switches.[535]

332 AT&T asserts that Verizon no longer has an obligation to provide CLEC access to packet switching functionality as a UNE.[536] AT&T asserts that its dispute with Verizon concerns the treatment of AT&T's UNE-P customers served by a Verizon switch that includes both packet and circuit switching capabilities.[537] AT&T requests that the amendment contain a provision requiring Verizon to provide

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[532] Verizon Initial Brief, ¶ 188, *citing Triennial Review Order*, ¶ 537.
[533] *Id.*, ¶ 189.
[534] *Id.*, ¶ 190.
[535] *Id.*, ¶ 191, *citing Triennial Review Order*, ¶ 447 n.1365.
[536] AT&T Initial Brief, ¶ 86.
[537] *Id.*

AT&T twelve months notice of a decision to replace a circuit switch with a packet switch, and requiring Verizon to provide local circuit switching functionality until March 11, 2006, when Verizon's obligation to provide local circuit switching ends.[538] AT&T asserts that this is consistent with the Commission's recent Order No. 03 in Docket No. UT-041127.

333 In reply, Verizon notes that it disagrees with the Commission's recent decision and has sought reconsideration.[539] Verizon asserts that as the FCC has eliminated the obligation for ILECs to offer unbundled circuit switching and has required CLECs to convert UNE-P arrangements to alternative arrangements, there is no basis to require Verizon to provide unbundled access to packet switching.[540]

334 ***Discussion and Decision.*** As discussed above in Issue No. 9 concerning the definition of "Local Circuit Switching," AT&T and MCI seek to maintain access to UNE-P customers served by switches that provide both packet switching and circuit switching functions.[541] This issue has been addressed both in this proceeding and in the related enforcement docket, Docket No. UT-041127, to address Verizon's conversion of a circuit switch to a packet switch. The issues in that proceeding address not only ILEC obligations under federal law, but also Verizon's obligations under its current interconnection agreements. This proceeding addresses only whether and how the parties' interconnection agreements should be amended to address changes in federal law.

335 As discussed above, the FCC has consistently determined, most recently in the Triennial Review Order, that ILECs are not obligated to provide unbundled access to packet switches or the features and functions of packet switching.[542] The FCC determined that there were no exceptions to its decision to not

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[538] *Id.*, ¶ 87.
[539] Verizon Reply Brief, ¶ 81.
[540] *Id*.
[541] AT&T Initial Brief, ¶ 86.
[542] *UNE Remand Order*, ¶ 306; *Triennial Review Order*, ¶¶ 448, 535, 537-39.

unbundle packet switching, finding that ILECs are not required to provide unbundled access to voice grade service provided by a packet switch.[543] The purpose of this proceeding is to amend the parties' interconnection agreements to be consistent with the FCC's recent decisions on unbundling. While the parties' have argued that their current agreements may be interpreted to allow unbundled access to the circuit switching functions of a packet switch, the agreements must be amended to preclude such unbundled access in the future.

336 AT&T's proposal is a hypothetical one, and may not be necessary. Verizon has already converted a circuit switch in Mount Vernon, Washington, to a packet switch, which matter is still subject to litigation in Docket No. UT-041127. To the Commission's knowledge, Verizon has not announced plans for conversion of any other circuit switches in Washington. In addition, CLECs must make alternative arrangements for existing UNE-P arrangements by March 11, 2006. An amendment to the parties' interconnection agreements would likely be adopted, at the earliest, by mid-September, five months prior to the March 11, 2006, cut-off. Twelve months notice of a proposed switch conversion is therefore unnecessary. CLECs should not wait until the last minute to make alternate arrangements for existing UNE-P customers.

337 Verizon's proposal concerning packet switching is appropriate and should be included. It properly reflects the FCC's decisions concerning packet switching and hybrid loops. The FCC's decisions in the Triennial Review Order concerning packet switching should become effective as of the effective date of the amendment, if they are not already addressed in the parties' interconnection agreements. There is no need to address the circumstance identified by AT&T, as the FCC's decision to eliminate UNE-P by March 11, 2006, renders the issue moot.

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[543] *Triennial Review Order*, ¶ 540 n.1649; *see also In the Matter of the Joint Petition for Enforcement of Interconnection Agreements with Verizon Northwest, Inc.*, Order No. 03, WUTC Docket No. UT-041127, ¶¶ 62-63 (Feb. 22, 2005).

(i) Network Interface Devices (NIDs).

338 AT&T includes in its proposed amendment the following language addressing access to Network Interface Devices, or NIDs:

> Apart from its obligation to provide the NID functionality as part of an unbundled loop or Subloop as set forth in Section 3.2.6 above, Verizon shall provide nondiscriminatory access to the NID on an unbundled basis. Verizon shall permit AT&T to connect its own loop facilities to on-premises wiring through Verizon's NID, or at any other technically feasible point.[544]

AT&T asserts that the amendment should include the FCC's direction in the Triennial Review Order that ILECs provide access to NIDs as well as the NID functionality when CLECs order unbundled local loops.[545] AT&T asserts that including the provision will avoid future disputes over Verizon's obligations.[546]

339 Verizon asserts that the FCC's requirements for access to and provisioning of NIDs have not changed in the Triennial Review Order, and that there is no need to include provisions regarding NIDs in the amendment.[547] Verizon also asserts that Verizon's rates and model interconnection agreement in Washington include terms and conditions for access to the NID as a stand alone element and to access loops or subloops.[548] Verizon asserts that its interconnection agreements already address the current NID requirements and there is no need to amend the agreements.[549]

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[544] AT&T March 14, 2005, Amendment, § 3.4.9.
[545] AT&T Initial Brief, ¶ 89.
[546] *Id*., ¶ 90.
[547] Verizon Initial Brief, ¶ 192.
[548] *Id*.
[549] *Id*.; *see also* Verizon Reply Brief, ¶ 82.

340 ***Discussion and Decision.*** While the FCC adopted a rule governing NIDs in the Triennial Review Order, the FCC specified that it readopted current rules and did not establish specific rules defining the manner and scope of access to the NID.[550] The FCC identified three scenarios in which ILECs must provide access to the NID or NID functionality and clarified ILEC obligations for provisioning access to the NID, both on a stand-alone basis and as a portion of a loop or subloop.[551]

341 Given the FCC's clarification, it appears that AT&T's proposal is appropriate to ensure that the parties' obligations and rights under the interconnection agreements are properly identified. The language should assist the parties in avoiding future disputes about the obligations for providing access to NIDs and NID functionality.

(j) Line Sharing.

342 Verizon, AT&T, and MCI propose language concerning "Line Sharing" in the following sections of their proposed amendments:

Verizon September 10, 2004, Amendment 1: § 4.7.3
Verizon November 4, 2004, Amendment 2: §§ 4.7.5, 4.7.18
AT&T March 14, 2005, Amendment: §§ 2.24, 3.2.9
MCI April 4, 2005, Amendment: §§ 12.7.5, 12.7.11

343 Verizon includes a definition of "Line Sharing" in its proposed amendments and includes "Line Sharing" in its definition of "Discontinued Facilities."[552] Similarly, MCI includes a definition of "Line Sharing" in its proposed amendment and

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[550] *Triennial Review Order*, ¶ 358.
[551] *Id*., nn.1066, 1083.
[552] Verizon September 10, 2004, Amendment 1, § 4.7.3; Verizon November 4, 2004, Amendment 2, §§ 4.7.5, 4.7.18

includes the term in its definition of "Discontinued Elements."[553] Verizon asserts that the FCC eliminated in the Triennial Review Order the ILECs' obligations to provide line sharing as a UNE, and required ILECs to continue providing existing line sharing arrangements, but did so under its Section 201 authority, not its Section 251 authority.[554] Thus, Verizon asserts that any transition period or grandfathering of line sharing arrangements be addressed in a commercial agreement, not through the change of law provisions of interconnection agreements.[555]

344 Neither AT&T nor MCI address their proposals in brief. AT&T requires that Verizon "provision Line Sharing arrangements and continue to provide existing Line Sharing arrangements in accordance with 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law."[556] The Joint CLECs and Competitive Carrier Group assert that language addressing line sharing should be included in the amendment.[557]

345 ***Discussion and Decision.*** The FCC eliminated Line Sharing as a UNE in the Triennial Review Order, grandfathered existing line sharing arrangements, and allowed CLECs to obtain new line sharing arrangements over a three-year transition period.[558] The dispute between the parties concerns whether the grandfathered or transition-period line sharing arrangements should be addressed in the amendment or in a separate commercial agreement. The FCC specifically directed ILECs and competitors to enter into line sharing arrangements, and did not address whether the parties should address the transition or grandfathering through the change of law or Section 252 process.[559]

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[553] MCI April 4, 2005, Amendment, §§ 12.7.5, 12.7.11.
[554] Verizon Initial Brief, ¶ 193.
[555] *Id.*, ¶ 194.
[556] AT&T March 14, 2005, Amendment, §§ 2.24, 3.2.9.
[557] Joint CLEC Initial Brief, ¶ 28; CCG Initial Brief, ¶ 34.
[558] *Triennial Review Order*, ¶¶ 255, 264.
[559] *Id.*, ¶ 265.

The FCC referred to Section 201 of the Act, however, not Section 252, as providing the authority for a transition process. For these reasons, Verizon and MCI's treatment of line sharing is appropriate.

15. ISSUE NO. 15: What should be the effective date of the Amendment to the parties' agreements?

346 This issue addresses the appropriate effective date for the amendment. The sections of the parties' proposed amendments relevant to Issue No. 15 are as follows:

Verizon September 10, 2004, Amendment 1: Preamble
Verizon November 4, 2004, Amendment 2: Preamble
AT&T March 14, 2005, Amendment: Preamble, § 3.7.1
MCI April 4, 2005, Amendment: Preamble
Focal March 11, 2005, Amendment: §§ 2.1, 2.3, 2.3.4

347 Verizon asserts that the effective date of the Amendment should be the date the parties execute and the Commission approves the amendment, unless the parties agree to a different date.[560] Verizon asserts that this is consistent with the Commission's orders.[561]

348 Verizon opposes the CLECs' proposal for a different effective date to implement the Triennial Review Order's commingling and conversion provisions.[562] Verizon asserts that the proposal would give the CLECs a pricing benefit and is contrary to the FCC's direction that parties implement changes of law through the Section 252 process.[563] Verizon asserts that the FCC's decisions in the

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[560] Verizon Initial Brief, ¶ 195.
[561] *Id*.
[562] *Id*.
[563] *Id*.

Triennial Review Order concerning routine network modifications, commingling and conversions imposed new requirements, effecting a change in the law.[564]

349 The CLECs generally concur that the effective date of the amendment should be the date the parties execute the agreement, or the date the Commission approves the amendment.[565] AT&T, the Joint CLECs and the Competitive Carrier Group assert that certain provisions of the agreement addressing rates, terms and conditions for routine network modifications, commingling and conversions, should be effective as of the Triennial Review Order's effective date, October 2, 2003.[566] The CLECs assert that the Triennial Review Order did not effect a change of law concerning routine network modifications, commingling and conversions, and that the provisions are effective when the FCC's order became effective.[567] AT&T asserts that the rates for new EELs / conversions should be applicable as of the date the CLEC first requested the arrangement.[568]

350 ***Discussion and Decision.*** The amendment will become effective on the date the Commission approves the amendment, consistent with the Commission's practice. As discussed further below in Issues 21(b)(4) and 22, this decision rejects the CLECs' proposal for retroactive effectiveness of the Triennial Review Order's routine network maintenance, commingling and conversion provisions. This aspect of the issue is resolved in favor of Verizon.

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[564] Verizon Reply Brief, ¶¶ 84-86.
[565] AT&T Initial Brief, ¶ 91; MCI Initial Brief at 13; Joint CLEC Initial Brief, ¶ 29; CCG Initial Brief, ¶ 35.
[566] AT&T Initial Brief, ¶ 91; Joint CLEC Initial Brief, ¶ 29; CCG Initial Brief, ¶¶ 35-36.
[567] Joint CLEC Initial Brief, ¶ 29; CCG Initial Brief, ¶ 36.
[568] AT&T Initial Brief, ¶ 29.

16. ISSUE NO. 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?

351 This issue addresses the terms and conditions for providing narrowband services over an unbundled loop served via Integrated Digital Loop Carrier (IDLC), i.e., a form of hybrid loop. The Triennial Review Order includes a good description of DLC technology:

> Carriers use digital line carrier (DLC) systems to aggregate the many copper loops that terminate at a remote terminal location, multiplex such signals onto a fiber or copper feeder loop facility, and transport them to the carrier's central office. These DLC systems may be integrated directly to the carrier's switch (*i.e.*, Integrated DLC systems) or not (*i.e.*, Universal DLC systems).[569]

and

> Universal DLC systems consist of a "central office terminal" and a "remote terminal," i.e., a DLC system in the carrier's central office terminal mirrors the deployment at the remote terminal. By contrast, an Integrated DLC system does not require the use of a central office terminal because the DLC system is integrated into the carrier's switch (thus, the naming convention).[570]

352 The sections of the parties' proposed amendments relevant to Issue No. 16 are as follows:

Verizon November 4, 2004, Amendment 2: § 3.2.4
AT&T March 14, 2005, Amendment: § 3.2.4
MCI April 4, 2005 Amendment: § 7.2.2

[569] *Triennial Review Order*, ¶ 217 (footnotes omitted).
[570] *Id.*, n.667 (citations omitted).

353 Verizon proposes to provide CLECs unbundled access to a loop "capable of voice-grade service to the end user customer."[571] Verizon proposes to provide CLECs with an existing copper loop or UDLC loop, where available, at standard recurring and non-recurring charges.[572] If neither a copper loop or UDLC loop are available, Verizon proposes to construct copper loop or UDLC facilities at the CLEC's request, making the CLECs responsible for the costs of the facility, including engineering costs.[573]

354 Verizon objects to the CLECs' proposed language, asserting that the language allows CLECs to choose the loop technology, and implies that Verizon will provide or construct a new copper loop at the CLEC's request for free.[574] Verizon asserts that this language is contrary to the FCC's requirements for access to hybrid loops served by IDLC systems.[575] Verizon asserts that its proposal to charge for loop construction is appropriate, *e.g.*, it may not be possible to provide an unbundled loop over IDLC systems, and that Verizon is entitled to recover the costs of providing facilities and services to CLECs.[576]

355 AT&T asserts that with IDLC systems, there is often not a one-for-one transmission path in the central office for each line, as the integrated system is part of the digital switch.[577] AT&T asserts that the FCC determined that ILECs must implement different practices and procedures to provide unbundled access to loops served by IDLC systems.[578] AT&T states that the FCC requires the ILEC

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[571] Verizon Initial Brief, ¶ 199, *citing* Verizon November 4, 2004, Amendment 2, § 3.2.4.
[572] *Id.*, *citing* Verizon November 4, 2004, Amendment 2, § 3.2.4.1.
[573] *Id.*, *citing* Verizon November 4, 2004, Amendment 2, § 3.2.4.2.
[574] *Id.*, ¶¶ 200-201.
[575] *Id.*; *see also* Verizon Reply Brief, ¶ 89.
[576] Verizon Reply Brief, ¶ 89 n. 38.
[577] AT&T Initial Brief, ¶ 93.
[578] *Id.*, ¶ 94, *citing Triennial Review Order*, ¶ 297.

to "present requesting carriers a technically feasible method of unbundled access" if neither a spare copper facility nor a UDLC system is available.[579]

356 AT&T objects to Verizon's proposal to construct new copper loop as "costly, time consuming and discriminatory" and contrary to Verizon's obligations to provide access to unbundled IDLC loops.[580] AT&T asserts that there are engineering solutions available other than constructing a new loop, such as using cross-connect equipment.[581] AT&T proposes that the Commission require Verizon to "provide a technically feasible method of unbundled access …, including, if necessary, providing a UNE-P arrangement at TELRIC prices.[582] AT&T also proposes that Verizon provide access to an unbundled copper loop using routine network modifications if necessary.[583]

357 MCI does not address the issue in brief, but proposes that Verizon provide the CLEC, at the CLEC's option, "(i) an existing copper loop; (ii) a Loop served by existing Universal Digital Loop Carrier ('UDLC'), where available; or (iii) an unbundled 64 kbps TDM channel on the Hybrid Loop," and that standard recurring and non-recurring charges would apply.[584]

358 The Competitive Carrier Group asserts that the amendment should require Verizon to comply with the FCC's rule governing access to the narrowband portion of hybrid loops, 47 C.F.R. § 51.319(a)(2)(iii), *i.e.*, allowing access to an entire unbundled hybrid loop capable of providing voice-grade service using TDM technology or a spare home run copper loop.[585] If those options are not available, the Competitive Carrier Group asserts that Verizon should provide

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[579] *Id*.
[580] *Id*., ¶¶ 95-96.
[581] *Id*., ¶¶ 97-98, *citing Triennial Review Order*, n.855.
[582] *Id*., ¶ 99.
[583] AT&T March 14, 2005, Amendment, § 3.2.4.
[584] MCI April 4, 2005, Amendment, § 7.2.2.1.
[585] CCG Initial Brief, ¶ 37.

CLECs with an unbundled copper loop, using routine network modifications if necessary.[586]

359 ***Discussion and Decision.*** The FCC imposed the following requirements on ILECs when providing unbundled access to hybrid loops served by IDLC systems:

> [I]ncumbent LECs [must] provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems. We recognize that in most cases this will be either through a spare copper facility or through the availability of Universal DLC systems. Nonetheless even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access.[587]

In discussing other technically feasible methods, the FCC noted that carriers can configure existing equipment, add new equipment, or both, including using a "hairpin" option, operating in a UDLC mode, or using central office terminations and cross-connects.[588] If fact, in an *Ex Parte* letter to the FCC, Verizon stated that it uses central office terminations and cross-connects to simulate a UDLC system.[589]

360 MCI's proposal most closely follows the FCC's directions concerning unbundled access to hybrid loops served by IDLC systems and should be included in the amendment, except for allowing CLEC's the choice of copper or UDLC loops. Given Verizon's explanation in its *Ex Parte* letter, Verizon's proposal to construct a copper loop at a CLEC's expense is not the only technically feasible method for allowing unbundled access, but is likely the most costly and complicated option. AT&T and the Competitive Carrier Group's proposals require Verizon to

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[586] *Id*.
[587] *Triennial Review Order*, ¶ 297.
[588] *Id*., n.855.
[589] *Id*.

provide access to UNE-P or to shift all costs of a technically feasible option to Verizon through the use of routine network modification. These proposals are rejected. The issue is resolved in favor of MCI except that the choice of copper or UDLC loops is the ILEC's.

17. ISSUE NO. 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?

361 This issue addresses whether the amendment should include provisioning intervals or performance measurements for access to IDLC-served hybrid loops, commingled arrangements, conversions, loops or transport for which routine network maintenance is required, or for batch hot cuts. The sections of the parties' proposed amendments relevant to Issue No. 17 are as follows:

Verizon November 4, 2004, Amendment 2: §§ 3.2.4.3, 3.4.1.1, 3.4.2.6, 3.5.2
AT&T March 14, 2005 Amendment: §§ 3.2.8, 3.8.2, 3.12.1

362 Verizon's proposal allows Verizon to exclude its performance in provisioning IDLC Hybrid Loops, commingling, conversions, and routine network modifications.[590] Verizon asserts that it is no longer subject to performance measurements or intervals in Washington State: Verizon's performance obligations under the Bell Atlantic/GTE Merger Order expired in May 2004.[591] Verizon asserts that, even if it remained subject to the provisions of the Merger Order, the Merger Order requires Verizon to measure its performance only for routine and standardized processes.[592] Verizon asserts that the items listed in this issue are all new and non-standardized tasks and should be excluded from existing standard measures.[593]

363 Verizon objects to including any discussion of hot cuts in the proceeding or amendment, asserting that hot cuts are not part of the ILEC's unbundling obligations, and that any concerns over hot cuts can be addressed through inter-carrier negotiations.[594]

364 While recognizing that this Commission has not established any standard provisioning intervals or performance measurements for Verizon, the Joint CLECs and Competitive Carrier Group assert that Verizon should be required to meet any intervals or measurements in existing interconnection agreements approved by the Commission.[595] The CLECs assert that Verizon provides no basis for excluding commingling, conversions or routine network modifications from performance measurements or provisioning intervals.[596] Further, the CLECs assert that the FCC expects states to consider routine network modifications when applying performance measures to UNE provisioning.[597]

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[590] Verizon November 4, 2004, Amendment 2, §§ 3.2.4.3, 3.4.1.1, 3.4.2.6, 3.5.2.
[591] Verizon Initial Brief, ¶ 204; Verizon Reply Brief, ¶ 90.
[592] Verizon Initial Brief, ¶ 205.
[593] *Id*., ¶ 206.
[594] *Id*., ¶¶ 121, 208.
[595] Joint CLEC Initial Brief, ¶ 31; CCG Initial Brief, ¶ 38.
[596] Joint CLEC Initial Brief, ¶¶ 32-33; CCG Initial Brief, ¶¶ 39-40.
[597] Joint CLEC Initial Brief, ¶ 33; CCG Initial Brief, ¶ 40, *citing Triennial Review Order*, ¶ 639.

365 AT&T asserts that Verizon should be required to meet standard provisioning intervals or performance measurements in "any plan adopted and approved by this Commission."[598] AT&T asserts that routine network modifications are already included in activities in Verizon's cost study for high capacity loops and transport and asserts that provisioning for these facilities should also be subject to the Commission's approved measurements.[599]

366 ***Discussion and Decision.*** This issue appears largely hypothetical, as Verizon asserts that it is no longer subject to performance measurements or provisioning intervals, and the CLECs appear to agree. The issue, however, is whether the amendment should specify that Verizon has the option of excluding certain activities from performance measurements if the Commission ever imposed such measurements. There is no need in the amendment for language addressing or excluding the itemized facilities or services from performance measurements, nor is there a need to require adherence in the amendment to performance measurements for these items. If certain interconnection agreements include obligations for performance measurements or provisioning intervals, Verizon has not demonstrated a basis for excluding the items from these obligations. The amendment should be silent on the issue of performance measurements and provisioning intervals.

18. ISSUE NO. 18: How should sub-loop access be provided under the TRO?

367 This issue addresses how the amendment should implement the Triennial Review Order's provisions governing access to subloops. The sections of the parties' proposed amendments relevant to Issue No. 18 are as follows:

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[598] AT&T Initial Brief, ¶ 100.
[599] *Id.*, ¶¶ 100-101.

Verizon November 4, 2004, Amendment 2: § 3.3
AT&T March 14, 2005, Amendment: §§ 3.2.3.3, 3.4
CCG October 22, 2004, Amendment: § 3.4

368 Verizon asserts that the FCC's new rules governing inside wire subloops are not applicable to Verizon in Washington State, as Verizon does not own inside wire subloops in the state.[600] Verizon asserts that CLEC proposals addressing inside wire subloops (in particular, AT&T's proposed Sections 3.4, 3.4.1, 3.4.2, 3.4.3, 3.4.4, 2.4.5, 3.4.6, 3.4.7, 3.4.8, 3.4.9) appear to be intended for use in other states and should be rejected.[601] Verizon asserts that it owns "distribution subloop facilities" in Washington State and has modeled its proposed Section 3.3 of Amendment 2 after the FCC's rule, 47 C.F.R. § 51.319(b)(1)(i).[602] Verizon objects to certain amendments proposed by Sprint.[603]

369 AT&T and the Competitive Carrier Group assert that the Triennial Review Order requires Verizon to provide CLECs with access to copper subloops and NIDs, provide the terms of access to subloops for access to customers in multiunit facilities, and provide a single point of interconnection, or SPOI.[604] The CLECs assert that these terms must be included in the amendment.[605]

370 AT&T asserts that access to subloop facilities is important for accessing customers in multiunit premises.[606] AT&T asserts that the FCC has found that the ability to access subloops at or near a customer's premises is critical.[607] AT&T

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[600] Verizon Initial Brief, ¶ 209; Verizon Reply Brief, ¶ 91.
[601] Verizon Initial Brief, ¶ 209.
[602] *Id.*, ¶ 210.
[603] *Id.*, ¶¶ 211-12.
[604] AT&T Initial Brief, ¶¶ 102-111; CCG Initial Brief, ¶ 41.
[605] AT&T Initial Brief, ¶¶ 102-111; CCG Initial Brief, ¶ 41.
[606] AT&T Initial Brief, ¶ 103.
[607] *Id., citing Triennial Review Order*, ¶ 348.

asserts that Verizon's proposal does not address the Triennial Review Order's requirements for access to subloops.[608]

371 AT&T faults Verizon's proposal for not including definitions and not complying with the Triennial Review Order's requirement to provide access "at or near" customer premises.[609] AT&T faults Verizon for not reserving House and Riser Cable for competitors and imposing restrictions on CLEC access to inside wire subloops.[610] AT&T also objects to Verizon's proposal that CLECs use Verizon technicians for access to subloops.[611] Finally, AT&T asserts that Verizon does not propose a method for identifying a SPOI for multiunit premises.[612] AT&T asserts that including terms to address these requirements for subloop access will prevent disputes in the future.[613]

372 ***Discussion and Decision.*** A subloop is "a smaller included segment of an incumbent LEC's local loop plant, i.e., a portion of the loop from some technically accessible terminal beyond the incumbent LEC's central office and the network demarcation point,[614] including that portion of the loop, if any, which the incumbent LEC owns and controls inside the customer premises."[615]

373 "Inside wire" refers to "a discrete subloop within the incumbent LEC's local loop," including that portion of the local loop that connects customer premises equipment to the ILEC's network.[616] In the Triennial Review Order, the FCC distinguished the "unregulated wire on the end-user side of the demarcation

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[608] *Id*.
[609] *Id*., ¶¶ 105-6.
[610] *Id*., ¶¶ 107-8.
[611] *Id*., ¶¶ 109-110.
[612] *Id*., ¶ 111.
[613] *Id*., ¶¶ 105-6.
[614] The demarcation point is generally within 12 inches of where the telephone wire enters the customer's premises. *See Triennial Review Order*, n.1012.
[615] *Id*., ¶ 343.
[616] *Id*., n.1021.

point" from "inside wire on the incumbent LEC network side of the demarcation point, *i.e.*, between the MPOE and the demarcation point," and defined the latter as the "Inside Wire Subloop."[617]

374 ILECs must provide unbundled access to copper subloops on copper or hybrid loops.[618] In the Triennial Review Order, the FCC determined that CLECs are impaired without access to unbundled subloops used to access customer premises wiring in multiunit premises.[619] The FCC defines subloops used to access multiunit premises wiring as "any portion of the loop that is technically feasible to access at a terminal in the incumbent LEC's outside plant at or near a multiunit premises."[620] The FCC includes the Inside Wire Subloop as one category of the subloop used for accessing multiunit premises wiring.[621]

375 It is curious that Verizon insists that it does not own Inside Wire Subloops in Washington State, and asserts that the FCC rules governing access to Inside Wire Subloops do not apply. As an Inside Wire Subloop is part of the subloop on the incumbent side of the demarcation point, Verizon's claim makes no sense. Verizon cannot avoid its obligations to provide access to customer premises in a multiunit environment. As there were no evidentiary hearings in this proceeding at the request of the parties, there is no testimony or evidence on this issue, simply Verizon's assertion in brief. This is a factual issue that could benefit from discussion in a Commission–sponsored workshop following this decision.

376 Verizon's proposal in Section 3.3 of Amendment 2 addresses only access to copper subloops. While it appears to mirror the FCC rules governing access to such subloops, Verizon's proposal is not complete. Without more evidence justifying Verizon's assertion that it does not own Inside Wire Subloops in the

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[617] *Id*.
[618] 47 C.F.R. § 51.319(b)(1).
[619] *Triennial Review Order*, ¶¶ 347, 348.
[620] 47 C.F.R. § 51.319(b)(2).
[621] *Id*.

state, Verizon must include language in its amendment to address FCC rules governing access to multiunit premises, including Inside Wire Subloops. The issue of whether to include terms and conditions for such access is resolved in favor of the CLECs. AT&T's Section 3.4 includes numerous terms and conditions governing access to multiunit premises, several of which do not appear to be required by or consistent with FCC rules.[622] AT&T's language is not adopted, given these inconsistencies, and is ripe for further negotiation by the parties or discussion during a Commission-sponsored workshop.

19. ISSUE NO. 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?

377 This issue addresses whether the amendment should include provisions governing reverse collocation, *i.e.*, where Verizon collocates switching equipment in a CLEC facility or premises. Only AT&T includes language in its proposed amendment concerning this issue. AT&T includes reverse collocation in its definition of "Dedicated Transport:"

> Dedicated Transport includes Verizon transmission facilities between Verizon switches or wire centers, (including Verizon switching equipment located at AT&T's premises), or between Verizon wire centers or switches and requesting telecommunications carriers' switches or wire centers, including DS-1, DS-3, and OCn-capacity level services as well as dark fiber, dedicated to a particular customer or carrier.[623]

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[622] *See, e.g.*, AT&T March 14, 2005, Amendment, §§ 3.4.2, 3.4.3, 3.4.4, 3.4.5, 3.4.8.
[623] *Id.*, § 2.9.

378 Verizon asserts that Verizon does not own "local switching equipment" installed at a CLEC's premises in Washington State and does not intend to do so.[624] Verizon asserts that there is no need to include language in the amendment to address such a hypothetical issue.[625]

379 AT&T and CCG assert that the FCC has found that where ILECs collocate local switching equipment at a competitor's premises, the equipment is "reverse collocated" and that CLECs should have unbundled access to the transmission path back to the ILEC's wire center as unbundled transport.[626] AT&T and CCG assert that Verizon has an obligation to provide such unbundled transport and that their proposed definitions of "Dedicated Transport" should be adopted as consistent with the Triennial Review Order.[627]

380 ***Discussion and Decision.*** Consistent with the discussion above in Issue No. 9, AT&T's definition includes an obligation imposed by the FCC. There is no harm in including the reference to reverse collocation if Verizon has no such facilities in place in CLEC premises. However, if Verizon ever collocates local switching equipment in a CLEC premises, the parties' agreements should contain the obligation that the transmission path back to the ILEC's wire center is accessible as unbundled transport. The issue is resolved in favor of the CLECs.

20. ISSUE NO. 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?

381 This issue addresses the ILEC's continuing obligation to provide access to interconnection trunks under Section 251(c)(2). The FCC revised the definition of

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[624] Verizon Initial Brief, ¶ 214.
[625] *Id*.
[626] AT&T Initial Brief, ¶ 112, *citing Triennial Review Order*, ¶ 369 n.1126; *see also*, CCG Initial Brief, ¶ 42.
[627] AT&T Initial Brief, ¶¶ 112-13; CCG Initial Brief, ¶¶ 42-43.

"dedicated transport" in the Triennial Review Order to exclude "entrance facilities," but retained the ILEC obligation to provide interconnection trunks pursuant to Section 251(c)(2) at cost-based rates.[628] While the FCC changed the definition of "Dedicated Transport" in the Triennial Review Order to include "entrance facilities," and found that CLECs are not impaired without access to "entrance facilities," the FCC did not change its decision that ILECs provide interconnection facilities pursuant to Section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.[629] The sections of the parties' proposed amendments relevant to Issue No. 20 are as follows:

AT&T March 14, 2005, Amendment: § 3.6.3
MCI April 4, 2005, Amendment: § 10.6

382 Verizon asserts that the FCC did not establish new rules in the Triennial Review Order governing CLEC rights to obtain interconnection facilities under Section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.[630] Verizon asserts that the parties' agreements already address access to interconnection facilities and that there is no need to renegotiate or arbitrate the issue.[631]

383 AT&T asserts that the amendment should include language reflecting Verizon's obligation to provide interconnection trunks between a Verizon wire center and a CLEC wire center for transmission and routing of telephone exchange service and exchange access, but not for backhauling traffic.[632] The Joint CLECs and Competitive Carrier Group also assert that Verizon must continue to provide interconnection trunks between a Verizon wire center and CLEC wire center at

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[628] *Triennial Review Order*, ¶ 366.
[629] *Triennial Review Remand Order*, ¶ 140.
[630] Verizon Initial Brief, ¶ 215.
[631] *Id*.
[632] AT&T Initial Brief, ¶ 117.

TELRIC rates.[633] MCI does not address the issue in brief, but includes language addressing the issue in its proposed amendment.[634]

384 ***Discussion and Decision.*** The FCC did not alter, in either the Triennial Review Order, or the Triennial Review Remand Order, its decision that ILECs are obligated to provide interconnection trunks to CLECs for the purpose of the transmission and routing of telephone exchange service and exchange access at cost based rates. Including the language is consistent with the discussion above concerning the definition of "Entrance Facilities." The FCC requires ILECs provide the facilities at cost-based rates, not necessarily TELRIC rates.

385 In addition, while Verizon is correct that there is no change in law requiring a change in the terms of access to interconnection trunks, there is good reason, nonetheless, to document the continuing obligation in the agreement. Similar to the discussion above concerning Issues No. 3 through 5, it is useful to include language in the agreement to prevent future disputes. The purpose of interconnection agreements and amendments is to document the obligations and rights of the parties to avoid disputes. In addition, where there is a lack of trust between the parties, documenting rights and obligations is even more important. This issue is resolved in favor of the CLECs, except as to TELRIC rates, and MCI's proposed language in Section 10.6 of its proposed amendment best captures the FCC's intent.

21. ISSUE NO. 21: What obligations, if any, with respect to EELs should be included in the Amendment to the parties' interconnection agreements?

386 This issue addresses the details of implementing the FCC's decisions concerning commingling and conversion, in particular, rules governing conversion of wholesale or non-section 251(c)(3) services to high capacity EELs, or enhanced

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[633] Joint CLEC Initial Brief, ¶ 36; CCG Initial Brief, ¶¶ 44, 46.
[634] MCI April 4, 2004, Amendment, § 10.6.

extended links. An EEL is a combination of one or more segments of unbundled (DS0, DS1 or DS3) loops with unbundled (typically DS1 and DS3) dedicated transport. An EEL may or may not include multiplexing. EELs are essentially long loops -- loops that have been extended from an ILEC wire center to a location where a CLEC has a switch or some other network appearance.

(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?

387 The parties disagree about the information CLECs must provide to Verizon to "self-certify" eligibility to convert wholesale services to EELs or to order new EELs. The sections of the parties' proposed amendments relevant to Issue No. 21(a) are as follows:

Verizon November 4, 2004, Amendment 2: § 3.4.2.3
AT&T March 14, 2005, Amendment: § 3.7.2
MCI April 4, 2005, Amendment: § 4.2
Focal March 11, 2005, Amendment: §§ 2.2, 2.3.1

388 Verizon proposes that CLECs provide the following information in certifying eligibility:

> Each written certification … must contain the following information for each DS1 circuit or DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff; (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There

> must be one such identification number per every 24 DS1 circuits; and (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.[635]

Verizon argues that this language "precisely implements the criteria established in the *Triennial Review Order*."[636] Verizon proposes that its EEL obligations and 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."[637]

389 Verizon asserts that CLECs have the option to, and are required to, provide self-certifications through an electronic medium, *i.e.*, via an Access Service Request, or ASR.[638]

390 Verizon asserts that CLECs are required to have all of the information necessary to certify compliance with the EEL eligibility criteria at the time of self-certification: Requiring them to provide the information to Verizon would impose no meaningful burden on CLECs.[639] Verizon asserts that its proposal provides greater certainty that a CLEC's circuits are eligible for conversion, and would minimize the need for audits and dispute resolution.[640]

391 Verizon asserts that the FCC did not intend that a CLEC's self-certification would consist of "a completely unsubstantiated single sentence (*e.g.*, '[The CLEC]

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[635] Verizon November 4, 2004, Amendment 2, § 3.4.2.3. These requirements mirror the certification requirements on page 5 of Verizon's "conversion guidelines."
[636] Verizon Initial Brief, ¶ 217, *citing Triennial Review Order*, ¶¶ 602, 604, 607, and 610.
[637] Verizon November 4, 2004, Amendment 2, § 3.4.2; *see also* Verizon Reply Brief, ¶ 103.
[638] Verizon Reply Brief, ¶ 104.
[639] Verizon Initial Brief, ¶ 218; Verizon Reply Brief, ¶ 96, *citing Triennial Review Order*, ¶¶ 622, 629.
[640] Verizon Initial Brief, ¶ 218; Verizon Reply Brief, ¶ 97.

hereby certifies that it meets the criteria.').”[641] Verizon asserts that its language does not require that a certification letter include the level of detail or proof that would amount to a “pre-audit,” but merely requests the information specified by the FCC.[642]

392 Verizon asserts the FCC held service eligibility requirements should be applied “*on a circuit-by-circuit basis*, so *each DS1 EEL* (or combination of DS1 loop with DS3 transport) *must satisfy the service eligibility criteria*.”[643] Verizon argues that requiring a CLEC to certify a specific telephone number has been assigned imposes no burden, except 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.[644] Similarly, Verizon asserts that requesting 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.”[645]

393 AT&T and CCG assert that the amendment should include a provision establishing Verizon’s obligation to allow EELs combinations or to perform EELs conversions as required by the Triennial Review Order and FCC rules.[646] AT&T urges the Commission to adopt its proposed language to ensure that there is no ambiguity regarding Verizon’s obligations concerning EELs.[647]

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[641] Verizon Reply Brief, ¶ 97.
[642] *Id*., n.40.
[643] *Id*., ¶ 100, *citing Triennial Review Order,* ¶ 599 (emphasis in original).
[644] *Id*., ¶ 98, *citing Triennial Review Order,* ¶ 602.
[645] *Id*, ¶ 99, *quoting Triennial Review Order*, ¶ 607.
[646] AT&T Initial Brief, ¶ 123; CCG Initial Brief, ¶ 47.
[647] AT&T Initial Brief, ¶ 123.

394 AT&T, Focal, the Joint CLECs and the Competitive Carrier Group object to Verizon's requirement to include detailed information in a certification, asserting that the FCC requires only that CLECs provide the ILEC with a self-certification letter.[648] Focal asserts that Verizon's proposal violates principles the FCC established in its Supplemental Order Clarification and affirmed in the Triennial Review Order.[649] AT&T asserts that the FCC specifically rejected pre-conditions, such as pre-audits, to order an EEL or convert existing circuits to EELs, as "unjust, unreasonable and discriminatory terms and conditions for obtaining access to UNE combinations."[650]

395 AT&T asserts that the FCC found self-certification "the appropriate mechanism to obtain promptly the requested circuit" and that "a critical component of nondiscriminatory access is preventing the imposition of undue gating mechanisms that could delay the initiation of the ordering or conversion process."[651] Focal, the Joint CLECs, and the Competitive Carrier Group also argue that any requirements for certification other than a self-certifying letter impose inappropriate gating mechanisms.[652]

396 The CLECs emphasize that the FCC required CLECs to self certify their eligibility, subject only to ILEC verification after the fact through a limited annual audit process.[653] The CLECs object to Verizon's proposed Section 3.4.2.3 as imposing a discriminatory "gating mechanism" by requiring an inappropriate

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[648] *Id.*, ¶ 125 n.132; Focal Initial Brief, ¶ 17; Joint Response Brief, ¶ 26. While the Joint CLECs initially argue that the FCC has abandoned the eligibility requirements established in the Triennial Review Order, the Joint CLECs concede in their Response Brief that the FCC retained eligibility and certification requirements for EELs. *See* Joint Response Brief, n.6.
[649] Focal Reply Brief, ¶ 3.
[650] AT&T Initial Brief, ¶ 125, *quoting Triennial Review Order,* ¶ 577.
[651] *Id.*, ¶ 126, *quoting Triennial Review Order*, ¶ 623.
[652] Focal Reply Brief, ¶ 4; Joint Response Brief, ¶ 26.
[653] AT&T Initial Brief, ¶ 127, *citing Triennial Review Order*, ¶ 622; *see also* Focal Initial Brief, ¶ 3; Focal Reply Brief, ¶ 4, *citing Triennial Review Order*, ¶¶ 622-623; Joint Response Brief, ¶ 26, *citing Triennial Review Order*, ¶¶ 622-623 n. 1900.

"pre-audit."[654] Focal asserts the FCC determined that the ordering process for EELs and conversions should meet "the basic principles of entitling requesting carriers *unimpeded* UNE access upon self-certification, *subject to later verification*" in order to prevent "the imposition of any undue gating mechanisms that could delay the initiation of the ordering or conversion process."[655] AT&T and Focal also assert that the FCC requires ILECs to immediately process orders for EELs and conversion, prohibits ILECs from engaging in "self-help" measures such as withholding a requested facility, and allows ILECs to initiate an audit if they question the CLEC's eligibility.[656]

397 AT&T and Focal assert that Verizon requests information well beyond what the FCC requires CLECs to provide: CLECs must simply certify that the criteria have been met, and that CLECs are not required to provide specific identifying information in their certification letter.[657] For example, AT&T asserts that Verizon requires CLECs to provide the local phone number assigned to each DS1 or DS3 circuit or equivalent, while the FCC requires CLEC to certify that at least one such number has been assigned.[658] Similarly, AT&T asserts that Verizon requires CLECs to identify the date each circuit was established in the 911 database, while the FCC requires only that the CLEC certify that it provides 911 capability to each circuit.[659] AT&T asserts that Verizon's proposal converts a one-time certification into an ongoing certification, contrary to the FCC rules.[660] AT&T explains that the particular local telephone number assigned may change in the ordinary course of business, but asserts that a change in the assigned local telephone number continues to satisfy the FCC's criteria and should not trigger a

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[654] AT&T Initial Brief, ¶¶ 127, 128, 130; Focal Reply Brief, ¶¶ 3-4, 7; Joint Response Brief, ¶ 26.
[655] Focal Reply Brief, ¶ 4, *citing Triennial Review Order*, ¶¶ 622-623 (emphasis added).
[656] AT&T Initial Brief, ¶¶ 127-28; Focal Reply Brief, ¶¶ 4-7, *citing Triennial Review Order*, ¶¶ 621-24 n.1899; *Supplemental Order Clarification*, ¶ 31.
[657] AT&T Initial Brief, ¶ 128; Focal Initial Brief, ¶ 17.
[658] AT&T Initial Brief, ¶ 128.
[659] *Id*.
[660] *Id*., n.133.

pointless recertification obligation.[661] AT&T asserts that a change in telephone number could be associated with establishing that number in the E911 database, but neither condition changes the CLEC's eligibility or triggers any bona fide need for re-certification.[662] AT&T asserts that CLECs should not be required to provide the specific telephone number or the date that the telephone number was established in the 911/E911 database.

398 Likewise, AT&T objects to Verizon's requirement that CLECs identify the address of the collocation termination for each circuit, asserting that the FCC requires only that the CLEC certify that the circuit terminates to a collocation.[663] AT&T asserts that CLECs should not be required to make a "showing" as to the nature of the collocation that it has established: The collocation arrangement may have been established originally for access traffic and may be used now for access and local, interstate and intrastate purposes.[664] AT&T asserts that CLECs should self-certify only that the collocation established for termination of the circuit meets the requirements in 47 C.F.R. § 51.318(c).[665]

399 AT&T opposes Verizon's proposal to require CLECs to demonstrate that the collocation arrangement was established under 47 U.S.C. § 251(c)(6) and not under a federal collocation tariff, asserting that the FCC provides only that the CLEC certify that the collocation is governed by 47 U.S.C. § 251(c)(6).[666] AT&T objects to Verizon's proposal to require CLECs to provide the interconnection trunk circuit identification number for each DS1 EEL or DS1-equivalent of a DS3 EEL, asserting that the FCC requires only that a CLEC certify that each DS1 or DS1-equivalent circuit will be served by an interconnection trunk that "will

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[661] *Id*.
[662] *Id*.
[663] *Id*., ¶ 128.
[664] *Id*., n.134.
[665] *Id*.
[666] *Id*., ¶ 128.

transmit the calling party's number in connection with calls exchanged over the trunk."[667]

400 Finally, AT&T objects to Verizon requiring CLECs to identify the local switch serving each DS1 circuit, asserting that the FCC requires only that a CLEC certify that a local switch serves the DS1 circuit.[668]

401 MCI does not address the matter in brief, but includes language similar to Verizon's proposal in Section 4.2, and 4.2.2 of its proposed amendment. MCI proposes to modify Verizon's proposal as follows:

> 4.2.2 Each written certification … must contain the following information for each DS1 circuit or DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit ~~showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(3), and not under a federal collocation tariff~~; (e) the interconnection trunk circuit identification number that serves each DS1 circuit~~. T~~ (t~~T~~here must be one such identification number per every 24 DS1 circuits); and (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.

402 ***Discussion and Decision.*** The parties' arguments identify a gray area in the FCC's decisions concerning service eligibility criteria: What must a CLEC provide in its "self-certifying" letter to demonstrate eligibility?

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[667] *Id.*, ¶ 129; *quoting* 47 C.F.R. §51.318 (d).
[668] *Id.*, ¶ 129.

403 The FCC adopted service eligibility criteria to ensure that bona-fide qualified carriers had access to high-capacity EELs, while addressing the potential for gaming by those carriers that are not eligible.[669] The FCC's eligibility criteria focus on ensuring that CLECs that purchase EELs are committed to serving the local voice market.[670]

404 The FCC specified a number of "network-specific and circuit-specific criteria" requesting CLECs must satisfy to demonstrate eligibility, requiring that requesting CLECs satisfy the requirements on a circuit-by-circuit basis in order to avoid gaming by long distance providers.[671] The FCC identified specific information that would satisfy each criterion.[672] On the other hand, the FCC did not specify the form of a CLEC's self-certification, but provided that a CLEC need only provide a letter certifying that it meets the service eligibility criteria.[673] The FCC modeled its requirement for a self-certifying letter on the requirement for a similar letter in the Supplemental Order Clarification.[674] The FCC provided that the self-certification process would allow CLECs to obtain requested circuits promptly, and without delays caused by "undue gating mechanisms."[675] The FCC prohibits ILECs from challenging a CLEC's self-certification except through an audit after provisioning the circuit, "entitling requesting carriers unimpeded UNE access based upon self-certification, subject to later verification based upon cause."[676]

405 By contrast, Verizon requires in Section 3.4.2.3 that each CLEC provide specific information to demonstrate compliance with these rules. Verizon's proposal imposes a "gating mechanism" contrary to the FCC's decision and rules.

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[669] *Triennial Review Order*, ¶ 595.
[670] *Id*.
[671] *Id*., ¶¶ 595, 597, 599.
[672] *Id*., ¶¶ 601-11.
[673] *Id*., ¶¶ 623-24.
[674] *See Id*., ¶ 624, *citing Supplemental Order Clarification*, ¶ 29.
[675] *Id*., ¶ 623.
[676] *Id*., ¶¶ 622-23 n.1900.

Verizon's proposal would impede the prompt and timely provisioning of EELs. While Verizon is correct that requiring the information in advance may result in fewer audits and fewer resources devoted to after-the-fact audits, Verizon's argument is irrelevant. The FCC chose to allow prompt provisioning of EELs and to require audits conducted only after the fact, presuming, perhaps, that the specter of paying the cost of an audit would create an incentive for CLECs to avoid gaming.

406 Based on the discussion above, the issue is resolved in favor of the CLECs. AT&T's proposed Sections 3.7.2 and 3.7.2.1 and Focal's proposed Sections 2.2, 2.2.1 and 2.2.2 include appropriate language governing service eligibility and provisioning of new and converted EELs. Verizon's proposed Section 3.4.2.3 and MCI's proposed Section 4.2.2 are rejected. The parties should confer among themselves or in a Commission-sponsored workshop to develop amendment language consistent with this decision.

(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?

407 The parties dispute the terms and conditions for conversions in the amendment, including how the amendment should address changes in the underlying facilities during a conversion. CLECs argue that conversions are just a billing change, and that Verizon should not be allowed to physically change, separate, disconnect or alter existing facilities when making conversions. Verizon seeks flexibility to deal with unforeseen situations. The sections of the parties' proposed amendments relevant to Issue No. 21(b)(1) are as follows:

AT&T March 14, 2005, Amendment: §§ 3.7.2.4, 3.7.2.5
MCI April 4, 2005, Amendment: §§ 4.1, 5.2
Focal March 11, 2005, Amendment: §§ 2.3.2, 2.3.3
CCC October 22, 2004, Amendment: §§ 3.7.2.4, 3.7.2.5

408 Verizon does not include a provision addressing separation or physical alteration of existing facilities when a CLEC requests an EEL conversion, as such a provision would remove the parties' flexibility to address unusual situations, and may delay requested conversions.[677] While Verizon does not expect a standard conversion to require any physical alteration of the underlying facilities, Verizon opposes an inflexible, uniform prohibition on all alterations.[678] Verizon asserts that prohibiting any separation or physical alteration removes Verizon's ability to address particular circumstances that may arise and may interfere with a "seamless" migration of service.[679]

409 The CLECs assert that the amendment should include a provision prohibiting Verizon from physically disconnecting, separating or physically altering the existing facilities when a CLEC requests the conversion of existing access circuits to an EEL, unless the CLEC specifically requests that such work be performed.[680]

410 While MCI does not address the issue in brief, MCI includes language in Sections 4.1 and 5.2 of its proposed amendment prohibiting actions that affect an end-user customer's service quality.[681]

411 AT&T and Focal assert such a provision is necessary to protect service quality *i.e.*, to avoid customer service from being degraded, suspended or cut off.[682]

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[677] Verizon Initial Brief, ¶ 220; Verizon Reply Brief, ¶ 105.
[678] Verizon Initial Brief, ¶ 220.
[679] *Id.*, ¶ 220; Verizon Reply Brief, ¶ 105.
[680] AT&T Initial Brief, ¶ 131; Focal Initial Brief, ¶ 18; Joint CLEC Initial Brief, ¶ 39; CCG Initial Brief, ¶ 49; Joint Response Brief, ¶ 27.
[681] MCI Initial Brief at 14; *see also* MCI April 4, 2005, Amendment, §§ 4.1, 5.2.

AT&T and Focal assert that the proposed provision is supported by the FCC's rules and statements in the Triennial Review Order governing service quality in conversions.[683] The CLECs rely on the FCC's statements that: "Converting between wholesale services and UNEs or UNE combinations should be a *seamless* process that does not alter the customer's perception of service quality. We recognize that conversions may increase the risk of service disruptions to competitive LEC customers," and "requesting carriers should establish and abide by any necessary operational procedures to ensure customer service quality is not affected by conversions."[684]

412 AT&T refers to 47 C.F.R. § 51.316(b), which provides:[685]

> An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

Focal claims that Verizon's position violates 47 C.F.R. § 51.315, which provides in relevant part that:[686]

> (b) Except upon request, an incumbent LEC *shall not separate* requested network elements that the incumbent currently combines.
> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner …

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[682] AT&T Initial Brief, ¶¶ 131-32; Focal Initial Brief, ¶ 18.
[683] AT&T Initial Brief, ¶¶ 131-32; Focal Initial Brief, ¶ 18; Focal Reply Brief, ¶ 8.
[684] AT&T Initial Brief, ¶ 132; Focal Initial Brief, ¶ 18, *quoting Triennial Review Order*, ¶ 586 (emphasis added).
[685] AT&T Initial Brief, ¶ 131;
[686] Focal Reply Brief, ¶ 8.

413 AT&T and the Joint CLECs assert that conversion is "largely a billing function."[687] The Joint CLECs assert that the same circuits remain in the same configuration and location both before and after they become UNEs.[688]

414 The CLECs criticize Verizon for not providing any examples of a situation where flexibility would be required.[689] The CLECs assert that the "flexibility" Verizon proposes would, at best, be a source of future disagreement, and at worse, provide Verizon with the opportunity to delay or burden requests for conversions.[690]

415 ***Discussion and Decision.*** The FCC does not specifically or explicitly state that ILECs may not physically disconnect, separate, change or alter existing facilities when a CLEC requests a conversion of existing circuits or services to an EEL, unless the CLEC requests such alteration. The FCC states that conversions "should be a seamless process that does not affect the customer's perception of service quality," and that conversions are "largely a billing process."[691] The FCC also noted that:

> [C]onversions may increase the risk of service disruptions to competitive LEC customers because they often require a competitive LEC to groom interexchange traffic off circuits and equipment that are already in use in order to comply with the eligibility criteria. Thus, requesting carriers should establish and abide by any necessary operational procedures to ensure customer service quality is not affected by conversions.[692]

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[687] AT&T Initial Brief, 132; Joint CLEC Initial Brief, ¶ 39, *citing Triennial Review Order*, ¶ 588.
[688] Joint CLEC Initial Brief, ¶ 39.
[689] Joint Response Brief, ¶ 27.
[690] *Id*.
[691] *Triennial Review Order*, ¶¶ 586, 588.
[692] *Id.*, ¶ 586.

416 Given the FCC's statements in the Triennial Review Order and rules governing conversions and combinations, it is reasonable to include in the amendment a provision addressing "operational procedures to ensure customer service quality is not affected by conversions."[693] The provision does not preclude Verizon from notifying a CLEC of a potential problem with a conversion requiring disconnection, separation, alteration or change, but precludes Verizon from taking the action without the consent of the CLEC. The issue is resolved in favor of the CLECs, in particular the language proposed by AT&T, Focal, and the Competitive Carrier Group.

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?

417 This issue, touched upon above in Issue No. 13, addresses whether Verizon may impose charges for conversions. The sections of the parties' proposed amendments relevant to Issue No. 21(b)(2) are as follows:

Verizon November 4, 2004, Amendment 2: §§ 3.4.1.1, 3.4.2.4, 3.4.2.5, Exhibit A
AT&T March 14, 2005, Amendment: § 3.7.2.2
MCI April 4, 2005, Amendment: §§ 4.1, 5.3
Focal March 11, 2005, Amendment: § 2.3
CCG October 22, 2004, Amendment: § 3.7.2.2

418 While Verizon proposes a non-recurring charge for each circuit, four particular charges for "commingling arrangements," and a "Circuit Retag" charge to be applied to each affected circuit, Verizon asserts in its reply brief that it no longer proposes new rates for conversions.[694]

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[693] *Id*.

[694] Verizon November 4, 2004, Amendment 2, Exhibit A; Verizon Reply Brief, ¶ 107.

419 In initially justifying the charges, Verizon claims that the FCC did not prohibit ILECs from recovering legitimate expenses through conversion charges, but only expressed concern that ILECs might impose "wasteful and unnecessary charges."[695] Verizon claims that its proposed "retag fee" and per-circuit "nonrecurring charge" are legitimate and intended to compensate Verizon for legitimate expenses.[696] Verizon asserts it is entitled to recover the costs it incurs due to conversions.[697]

420 Verizon asserts the proposed retag fee will allow Verizon to recover the cost of physically retagging a circuit that a CLEC requests to convert from special access to UNEs.[698] Verizon asserts that retagging is necessary because the converted UNE circuit has a different circuit ID from the special access circuit and retagging the circuit with the correct circuit ID will facilitate future maintenance and ordering activities.[699]

421 Verizon's proposed per-circuit non-recurring charge is "intended to offset Verizon's costs of implementing and managing commingled arrangements," including "the costs of system and process changes, added costs to perform billing investigations, and added costs for future access product changes or additions that will require changes to UNE products in order to allow commingling."[700] Verizon asserts that it must validate CLEC self-certifications for each commingled circuit, which will require changes to its service order processes, requiring customer service representatives to process more orders manually.[701] Verizon asserts that commingling will result in additional costs to

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[695] Verizon Initial Brief, ¶ 222; Verizon Reply Brief, ¶ 106, *quoting Triennial Review Order*, ¶ 587.
[696] Verizon Initial Brief, ¶¶ 223-24; Verizon Reply Brief, ¶¶ 106-107.
[697] Verizon Initial Brief, ¶ 225.
[698] *Id*., ¶ 223.
[699] *Id*.
[700] *Id*., ¶ 224.
[701] *Id*.

set up part of a commingled arrangement to be billed as a UNE, and the other part as access, with different billing rate structures, terms and conditions, and policies.[702]

422 Verizon reserves the right to propose conversion charges after submitting a cost study, and asserts that the Amendment should not foreclose Verizon from assessing new non-recurring charges in the future.[703]

423 The CLECs, generally, assert that the amendment should preclude Verizon from imposing conversion charges.[704] AT&T and Focal assert that Verizon is not authorized to impose non-recurring charges (including, but not limited to termination charges, disconnect and reconnect fees) on a circuit-by-circuit basis when wholesale services are converted to EELs.[705] AT&T and Focal assert that the FCC has determined that conversion charges are unlawful:

> [O]nce a competitive LEC starts serving customer, there exists a risk of *wasteful and unnecessary charges*, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could *unjustly enrich* an incumbent LEC. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just reasonable and nondiscriminatory rates, terms and conditions. Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any person or class of

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[702] *Id*.
[703] Verizon Reply Brief, ¶ 107.
[704] AT&T Initial Brief, ¶ 133; MCI Reply Brief, ¶ 6; Focal Initial Brief, ¶ 19; CCG Initial Brief, ¶ 50; Joint CLEC Initial Brief, ¶ 40; Joint Response Brief, ¶ 28.
[705] AT&T Initial Brief, ¶ 133; Focal Initial Brief, ¶ 19.

> persons (*e.g.*, competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or disadvantage.[706]

424 AT&T further asserts that FCC rules, specifically, 47 C.F.R. § 51.316(b), prohibit such charges:

> Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.[707]

425 AT&T objects to Verizon's proposed per circuit charges as contrary to the FCC's clear directives.[708] AT&T calculates that Verizon's proposed charges would result in $1426.32 in additional charges for conversion to a DS1 EEL, while conversion of a T-1 access circuit to a DS1 EEL would result in charges of over $2000.[709] AT&T asserts that charges of this level are in excess of any forward-looking costs that Verizon conceivably could incur to make the simple billing change described by the FCC.[710] AT&T objects to Verizon's proposed retag fee as a "band-aid approach" to Verizon's inventory systems, which costs AT&T asserts are not recoverable as forward-looking costs.[711]

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[706] AT&T Initial Brief, ¶ 134; Focal Initial Brief, ¶ 19, *quoting Triennial Review Order*, ¶ 587 (emphasis added).
[707] AT&T Initial Brief, ¶ 133, *quoting* 47 C.F.R. § 51.316(b).
[708] *Id*., ¶ 135.
[709] *Id*.
[710] *Id*., ¶ 136.
[711] *Id*.

426 While MCI does not address the issue in brief, MCI includes language in its proposed amendment limiting Verizon's ability to impose conversion charges.[712]

427 The Joint CLECs, Competitive Carrier Group, and MCI assert that Verizon has provided no cost support for its proposed conversion charges.[713] The CLECs also argue that Verizon's proposed charges are not theoretically appropriate: The CLECs contest Verizon's authority to charge CLECs for validating self-certifications.[714] The CLECs further argue that the order processing charge the Commission has previously authorized for Verizon to recover costs associated with systems modifications compensates Verizon for any system adjustments required to accommodate conversions.[715]

428 ***Discussion and Decision.*** Although Verizon has withdrawn its proposed conversion charges, the parties continue to dispute whether the amendment should include language prohibiting Verizon from imposing conversion charges, generally. The FCC finds termination charges, reconnect and disconnect fees, and non-recurring charges associated with establishing service for the first time are inconsistent with an ILECs' duty to provide non-discriminatory access to UNEs on just, reasonable and non-discriminatory rates, terms and conditions, as ILECs are not required to perform conversions for their own customers.[716] The FCC did not prohibit conversion charges as a whole, only "untariffed" charges that are not agreed to by the parties, placing the burden on ILECs to justify any charges, and to seek regulatory approval before imposing them.[717] The FCC also found that conversions "should be a *seamless* process that does not alter the

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[712] MCI April 4, 2005, Amendment, §§ 4.1, 5.3.
[713] Joint Response Brief, ¶ 28; MCI Reply Brief, ¶¶ 1-6.
[714] Joint Response Brief, ¶ 28.
[715] Joint CLEC Initial Brief, ¶ 40; Joint Response Brief, ¶ 28.
[716] *Triennial Review Order*, ¶ 587.
[717] *See* 47 C.F.R. § 51.316(c).

customer's perception of service quality," and that conversions are "largely a billing function."[718]

429 Verizon proposes in Section 3.4.2.4 to identify any charges for conversions in a pricing attachment to the amendment. Such language is appropriate, as it merely identifies where CLECs may find conversion charges listed in the amendment. On the other hand, Verizon's proposed conversion charges, including the proposed retag fee and per-circuit non-recurring charges, are rejected, based upon the FCC's findings that conversion is largely a billing function, and that certain charges are inappropriate except as agreed to by the parties. There is no agreement by the parties for these charges and Verizon has provided no cost support for the charges. Unless Verizon can demonstrate otherwise, conversion charges should be limited to the order processing charge previously authorized by the Commission and otherwise included in wholesale and interconnection tariffs. The issue is resolved in favor of the CLECs. The language AT&T and the Competitive Carrier Group propose in Section 3.7.2.2 of their proposed amendments is most consistent with the FCC's rule governing conversion charges, 47 C.F.R. § 51.316(c).

430 Finally, the FCC has found that conversion is largely a billing function, and that parties should establish appropriate mechanisms to remit the correct payment after the conversion request.[719] Following the FCC's direction, the amendment should reflect that billing changes be reflected in the next billing cycle after the conversion request.[720]

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[718] *Triennial Review Order*, ¶¶ 586, 588 (emphasis added).
[719] *Id*., ¶ 588.
[720] *Id*.

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

431 This issue concerns whether existing EELs must meet the service eligibility criteria established in the Triennial Review Order, or whether the criteria apply only to EELs ordered after the effective date of the FCC's Order. The sections of the parties' proposed amendments relevant to Issue No. 21(b)(3) are as follows:

Verizon November 4, 2004, Amendment 2: §§ 3.4.2.1, 3.4.2.2
AT&T March 14, 2005, Amendment: §§ 3.7.2, 3.7.2.6
MCI April 4, 2005, Amendment: § 4.2.1
Focal March 11, 2005, Amendment: § 2.3.4.4

432 Verizon asserts that the FCC established new EEL eligibility criteria in the Triennial Review Order, and that these new eligibility criteria apply to all EELs, with no exceptions or grandfathering for pre-existing EELs that a CLEC might have obtained under the old rules.[721] Verizon asserts that the new rules differ from the old ones, and that an EEL that qualified under the old criteria will not necessarily continue to qualify under the new criteria.[722] Verizon relies on two statements by the FCC to support its arguments: First, that the service eligibility requirements apply on a circuit-by-circuit basis, and second, that the new eligibility criteria "supersede the safe harbors that applied to EEL conversions in the past."[723] Verizon proposes language requiring CLECs to recertify existing circuits within 30 days of the amendment's effective date, or allowing Verizon to reprice or disconnect the facility.[724]

433 Verizon disagrees that CLEC eligibility has already been established for circuits ordered or in place prior to October 2, 2003, and disputes that requiring a CLEC

[721] Verizon Initial Brief, ¶ 227; Verizon Reply Brief, ¶ 108.
[722] Verizon Initial Brief, ¶ 227; Verizon Reply Brief, ¶ 108.
[723] Verizon Initial Brief, ¶¶ 227-28, *quoting Triennial Review Order*, ¶¶ 589, 599.
[724] Verizon November 4, 2004, Amendment 2, §§ 3.4.2.1, 3.4.2.2.

to go through a recertification process will unnecessarily increase costs.[725] Verizon asserts that the FCC declined to require retroactive billing to any time before the effective date of the TRO.[726] Verizon asserts that the FCC's decision not to allow retroactive charges does not address pricing or eligibility criteria for EELs after October 2, 2003.[727] Verizon asserts that any pre-existing EELs must meet the new criteria and be recertified, following the FCC's finding that the new eligibility criteria supersede the prior safe harbors requirements.[728] Verizon asserts that any old EELs not subject to unbundling must be converted to lawful arrangements.[729]

434 In response to Focal's arguments, Verizon denies that applying the new criteria to all EELs violates the "'*ex post facto*' prohibition."[730] Verizon argues that the Ex Post Facto clause of the Constitution applies only in the criminal context, *not* in administrative proceedings.[731] Verizon asserts that its proposal is not retroactive, as it is not seeking to apply the new criteria to a time period before the effective date of the Triennial Review Order.[732] Verizon asserts that Focal should have challenged the FCC's new criteria on direct review, rather than making a collateral attack in a state proceeding.[733]

435 The CLECs assert that the FCC intended the new eligibility criteria to apply only to new orders, conversions and commingling: "[W]e make clear that the service eligibility criteria must be satisfied (1) to *convert* a special access circuit to a high-capacity EEL; (2) to obtain a *new* high-capacity EEL; or (3) to obtain at UNE

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[725] Verizon Reply Brief, ¶ 108.
[726] *Id.*, ¶ 109, *citing Triennial Review Order*, ¶ 589.
[727] Verizon Initial Brief, ¶ 228; Verizon Reply Brief, ¶ 109.
[728] Verizon Reply Brief, ¶ 109.
[729] *Id.*
[730] *Id.*, n.42.
[731] *Id.*, *citing Eastern Enters. v. Apfel*, 524 U.S. 498 (1998).
[732] *Id.*, n.42.
[733] *Id.*

pricing part of a high-capacity loop-transport combination (*commingled* EEL)." [734] The CLECs assert that if the FCC intended to include existing EELs, it would have done so.[735]

436 The CLECs oppose Verizon's proposed language and assert that CLECs should not be required to recertify pre-existing EELs under the new service eligibility criteria.[736] Focal urges the Commission to reject Verizon's proposal to disconnect or convert existing circuits to alternative arrangements if a CLEC does not recertify the circuit, asserting that the FCC forbids ILECs from engaging in self-help.[737]

437 Relying on the FCC's decision not to allow retroactive billing, Focal argues that the new EELs criteria do not apply to EELs ordered prior to the Triennial Review Order's effective date, October 2, 2003.[738] Focal asserts that if a circuit qualifies under the new standards but did not qualify under the old standards, a CLEC cannot recover the higher charges prior to the effective date.[739] Conversely, Focal argues that if a circuit does not qualify under the new standards but did qualify under the old standards, the ILEC may not recover past losses.[740] Focal also asserts that EELs may continue to be provided under the old standards up to the effective date.[741]

438 Focal asserts that the FCC intended a dual-track EEL qualification system.[742] Focal asserts that the FCC intended that requests pending prior to the effective

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[734] Focal Reply Brief, ¶ 10, *citing Triennial Review Order*, ¶¶ 593, 623-24; Joint Response Brief, ¶ 29, *quoting Triennial Review Order*, ¶¶ 593.
[735] *Id*.
[736] Focal Reply Brief, n.43; CCG Initial Brief, ¶ 51; Joint Response Brief, ¶ 29.
[737] Focal Reply Brief, n.43.
[738] Focal Initial Brief, ¶ 20, Focal Reply Brief, ¶ 10.
[739] Focal Initial Brief, ¶ 20; Focal Reply Brief, ¶ 10.
[740] Focal Initial Brief, ¶ 20; Focal Reply Brief, ¶ 10.
[741] Focal Initial Brief, ¶ 20; Focal Reply Brief, ¶ 10.
[742] Focal Initial Brief, ¶ 21.

date of the Triennial Review Order were submitted under the old "safe harbors" eligibility criteria and would be entitled to the pricing applicable to circuits that satisfied the former eligibility criteria.[743] Focal claims that a CLEC may "lock in" the appropriate pricing for the circuit.[744] Focal argues that by locking in the appropriate price, some circuits would continue to qualify as EELs under the old standards, while other circuits would have to satisfy the new standards before being priced at UNE rates.[745]

439 Focal asserts that Verizon's proposal applies retroactively and negatively affects Focal's rights.[746] Focal argues that the FCC did not intend that the new EEL eligibility criteria apply retroactively, running afoul of the *ex post facto* prohibition.[747]

440 ***Discussion and Decision.*** Similar to the discussion in Issue No. 21(b)(1) above, the FCC does not specifically state whether its new EELs eligibility criteria should apply to EELs requested or in place prior to the effective date of the Triennial Review Order. While the FCC appears to imply that the new eligibility criteria apply only to new orders, conversions and commingling, the FCC also states that the new criteria "supersede the safe harbors that applied to EEL conversions in the past."[748]

441 The CLECs, in particular Focal, rely on the FCC's decision not to require retroactive billing as intent that the old eligibility requirements continue to apply after the effective date of the Triennial Review Order.[749] This argument does not logically flow from the FCC's decision, specifically as the FCC states in the next

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[743] *Id*.
[744] *Id*.
[745] *Id*.
[746] *Id*., ¶ 22.
[747] *Id*.
[748] *Triennial Review Order*, ¶¶ 589, 593, 623-24.
[749] *Id*., ¶ 589.

sentence that the new rules supersede the old. It is reasonable to require CLECs to recertify any EEL arrangements existing or requested as of the effective date of the Triennial Review Order, subject to the new certification requirements discussed above in Issue No. 21(a). This issue is resolved in favor of Verizon's proposed language in Sections 3.4.2.1 and 3.4.2.2. MCI proposes a 60-day period for recertification.[750] Given that this decision rejects Verizon's certification proposal, a 30-day period should be sufficient to recertify EELs arrangements.

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)?

442 This issue addresses whether the conversion obligation imposed in the Triennial Review Order should take effect retroactively to the Triennial Review Order's October 2, 2003, effective date, rather than the effective date of the Amendment. The sections of the parties' proposed amendments relevant to Issue No. 21(b)(4) are as follows:

AT&T March 14, 2005, Amendment: § 3.7.1
CCC October 22, 2004, Amendment: § 3.7.1
Focal March 11, 2005, Amendment: §§ 2.3, 2.3.4

443 Verizon asserts that the effective date for conversions and conversion pricing should be the same as all other issues addressed in this proceeding, the effective date of the amendment.[751] Verizon asserts that the FCC required the parties to modify their agreements under Section 252 and declined to override existing contracts as it did with the Triennial Review Remand Order transition plan.[752] Verizon asserts that allowing CLECs to obtain conversions at UNE EEL prices as

[750] MCI April 4, 2005, Amendment, § 4.2.1.
[751] Verizon Initial Brief, ¶ 230.
[752] *Id.*; Verizon Reply Brief, ¶ 111.

of October 2, 2003, would reward CLECs for their delay in amending their interconnection agreements.[753] Verizon asserts that allowing the CLECs to do so would be inequitable, and would impose a "substantial, unanticipated, and unjustified liability" on Verizon.[754]

444 Verizon opposes 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 event to exceed 30 days), regardless of whether Verizon has in fact completed such work."[755] Verizon argues that this 30-day requirement has no basis in the Triennial Review Order or in federal regulations.[756]

445 Verizon also objects to Focal's proposal that Verizon bill the CLEC "pro rata" for the facility, that this billing adjustment "appear on the bill for the first complete month after the date on which the Conversion is deemed effective," and that the CLEC "withhold payment" if that first month's bill has not been adjusted.[757] Verizon asserts that it is entitled to bill for the facilities and services that it actually provides, but that there is no reason to adjust the billing dispute provisions already contained in the parties' agreements.[758]

446 Focal, the Joint CLECs and the Competitive Carrier Group assert that the requirement to perform conversions is not a change in the law as the FCC did not impose a new obligation, and that the effective date for conversions and UNE / EELs pricing should be October 2, 2003, the effective date of the Triennial Review

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[753] Verizon Initial Brief, ¶ 231.
[754] *Id.*; Verizon Reply Brief, ¶ 112.
[755] Verizon Reply Brief, ¶ 113, *citing* Focal March 11, 2005, Amendment, § 2.3.4.2.
[756] *Id*.
[757] *Id.*, ¶ 114, *citing* Focal March 11, 2005, Amendment, § 2.3.4.3.
[758] *Id*.

Order.[759] Focal asserts a recent order by the FCC's Wireline Competition Bureau refutes Verizon's theory that there was a change of law.[760]

447 Focal asserts that Verizon must process conversion requests upon the effective date of the Triennial Review Order as long as the requesting carrier certifies that it has met the FCC's applicable eligibility criteria.[761] Focal asserts that the FCC emphasized that CLECs should be able to "begin ordering without delay" and that "conversions should be performed in an expeditious manner," unencumbered by additional processes or requirements.[762]

448 Focal argues that Verizon's position requiring contract amendment before conversions are performed is contrary to the Triennial Review Order.[763] Focal asserts that Verizon's amendment requirement is tantamount to imposing conversion charges, which the FCC has held are inconsistent with an ILEC's duty to provide nondiscriminatory access to UNEs and UNE combinations.[764]

449 Focal proposes a number of terms and conditions governing when conversion orders are deemed to have been completed and when recurring charges for the replacement facility or service should apply.[765] Specifically, Focal proposes that when a CLEC specifically requests that Verizon perform physical alterations to the facilities being converted, the conversion order is 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 event to exceed 30 days),

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[759] Focal Reply Brief, ¶¶ 11-12; Joint CLEC Initial Brief, ¶¶ 29, 42; CCG Initial Brief, ¶ 52.
[760] Focal Reply Brief, ¶ 12, *citing In the Matter of 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, Order, DA 05-675, ¶ 1 (rel. March 14, 2005) [Hereinafter "*Stay Denial Order*"].
[761] Focal Initial Brief, ¶ 23, *citing Triennial Review Order*, ¶ 586.
[762] *Id., citing Triennial Review Order*, ¶¶ 587-88, 623.
[763] *Id.*, ¶ 24.
[764] *Id.*, ¶ 25.
[765] *See* Focal March 11, 2005, Amendment, § 2.3.4.

regardless of whether Verizon has in fact completed such work.[766] Focal asserts that its proposal is reasonable as 30 days provides a sufficient amount of time for Verizon to accomplish the work.[767] Focal asserts that billing adjustments related to conversions should appear on the bill for the first complete month after the date on which the conversion is deemed effective and that if any bill does not reflect the appropriate charge adjustment, a CLEC may withhold payment in an amount that reflects the amount of the adjustment that should have been made on the bill for the applicable conversions.[768]

450 ***Discussion and Decision.*** The FCC requires parties to negotiate changes to their interconnection agreements to implement the changes in the Triennial Review Order concerning conversions, including billing mechanisms and conversion charges.[769] The FCC specifically provided that "[w]e decline to require incumbent LECs provide requesting carriers an opportunity to supersede or dissolve existing contractual arrangements through a conversion request."[770] The new EELs pricing is not effective until the effective date of the amendment. This aspect of the issue is resolved in favor of Verizon.

451 Focal proposes specific language to implement billing mechanisms, as suggested by the FCC. The FCC stated that "conversions should be performed in an expeditious manner" and "converting between wholesale services and UNEs (or UNE combinations) is largely a billing function."[771] The FCC also suggested that pricing changes begin in the next billing cycle after the conversion request.[772] Therefore, it is reasonable that the amendment include billing mechanisms such as those Focal suggests, including that the conversion order be deemed

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[766] *Id.*, § 2.3.4.2.
[767] *Id.*
[768] *Id.*, § 2.3.4.3.
[769] *See Triennial Review Order*, ¶¶ 585, 587-88.
[770] *Id.*, ¶ 587.
[771] *Id.*, ¶ 588.
[772] *Id.*

completed upon receipt of a written or electronic conversion request and that recurring charges for the replacement facility or service apply as of that date. To the extent pending requests have not been converted and are still eligible for conversion under the new criteria, the prices under the Triennial Review Order apply.[773]

452 Focal's proposal for circumstances when Verizon performs physical alterations is reasonable because if facility rearrangements or changes are requested, thirty (30) calendar days provides a sufficient amount of time for Verizon to accomplish the work and recognizes that Verizon otherwise has no incentive to perform the conversion in any reasonable time period. Focal's proposal concerning prorated billing is likewise appropriate. Billing adjustments should appear on the bill for the first complete month after the date on which the conversion is deemed effective. However, if there is a dispute about the bill, the parties may invoke normal dispute resolution procedures as provided under the terms of their interconnection agreements.

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

453 While all parties agree that Verizon may audit CLEC certifications of eligibility, the parties dispute the timing and frequency of audits and the standard for compliance with the eligibility criteria. The sections of the parties' proposed amendments relevant to Issue No. 21(c) are as follows:

Verizon November 4, 2004, Amendment 2: § 3.4.2.7
AT&T March 14, 2005, Amendment: § 3.7.2.8
Focal March 11, 2005, Amendment: § 2.2.3
CCG October 22, 2004, Amendment: § 3.7.2.8

[773] *Id.*, ¶ 589.

454 Verizon asserts that its proposed language mirrors the FCC's requirements for audits of CLEC self-certifications.[774] Verizon proposes language providing that "[o]nce per calendar year, Verizon may obtain and pay for an independent auditor to audit [the CLEC's] compliance in all material respects with the service eligibility criteria," and that the "audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants, and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment."[775]

455 Verizon asserts that if the auditor finds the CLEC did not comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then the CLEC must convert all noncompliant circuits to the appropriate service, true up any difference in payments, make the correct payments on a going-forward basis, and reimburse Verizon for the entire cost of the audit within 30 days.[776] Under Verizon's proposal, if the CLEC is in compliance with the service eligibility criteria, the CLEC must provide for the independent auditor's verification a statement of the CLEC's costs of complying with the audit.[777] Verizon agrees to reimburse the CLEC for the CLEC's out-of-pocket costs within 30 days of the auditor's verification.[778] Verizon proposes that CLECs keep records adequate to support their compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit for at least 18 months after the service arrangement in question is terminated.[779]

456 Verizon asserts that its proposal for audit compensation is fair and symmetrical: CLECs pay when they are not in compliance, while Verizon will reimburse the

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[774] Verizon Initial Brief, ¶ 233.
[775] *Id., quoting* Verizon November 4, 2004, Amendment 2, § 3.4.2.7.
[776] *Id*., ¶ 233; *see also* Verizon November 4, 2004, Amendment 2, § 3.4.2.7.
[777] *Id*.
[778] *Id*.
[779] *Id*.

CLEC for its audit-related costs if it passes the audit.[780] Verizon asserts that the issue of "materiality" is not relevant.[781] Verizon asserts that any failure to comply with the FCC's requirements that resulted in provisioning of EELs for which the CLEC was ineligible would be material, and the CLEC would have failed the audit, whether or not it failed "in all respects."[782] Verizon asserts that inserting a subjective standard could lead to disputes between the parties.[783]

457 Verizon argues that it should be allowed to perform the next year's audit before a full 12 months have elapsed to provide flexibility if there is a pressing need for an audit at that time.[784] Verizon asserts that it would not demand an audit two months in a row, but that Verizon might need to audit a given CLEC in September of one year, and then in August of the next year.[785] Verizon asserts that if the CLEC failed the audit, there would be no need to repeat the audit a month later; and if the CLEC passed the audit, Verizon would not repeat the process and find itself liable for paying the CLEC's expenses a second time.[786]

458 Verizon asserts that it is not unduly burdensome for CLECs to keep information for 18 months as only the CLEC possesses the information needed in an audit.[787] Verizon asserts that an audit might take 18 months or more after the EEL arrangement in question was ordered.[788] Given the possibility for delay, Verizon asserts that an 18-month recordkeeping obligation is reasonable and consistent with the nature and purpose of the audit requirement.[789]

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[780] *Id.*, ¶¶ 235-36.
[781] *Id.*, ¶ 235.
[782] *Id., see also* Verizon Reply Brief, ¶¶ 115-16.
[783] Verizon Initial Brief, ¶ 235.
[784] *Id.*, ¶ 237.
[785] *Id.*, ¶¶ 236-37.
[786] *Id.*, ¶ 236.
[787] *Id.*, ¶ 238.
[788] *Id.*
[789] *Id.*

459 The CLECs object to Verizon's proposed audit terms, in particular the terms for an audit once in a calendar year, the standard for determining whether a CLEC failed an audit, and the 18-month recordkeeping obligation.[790]

460 The CLECs assert that Verizon should have a limited right, on an annual basis, to audit the compliance of CLECs with the service eligibility criteria for EELs, meaning that a full 12 months would need to elapse between audits.[791] Focal asserts that the FCC determined that "an annual audit right strikes the appropriate balance between the incumbent LECs' need for usage information and risk of illegitimate audits that impose costs on qualifying carriers."[792]

461 Focal proposes that Verizon give CLECs 30 days written notice of a scheduled audit.[793] Focal asserts that the FCC established this requirement in the Supplemental Order Clarification and did not alter the requirement in the Triennial Review Order.[794] Focal also proposes that the auditor's report be provided to the CLEC at the time it is provided to Verizon.[795]

462 The CLECs object to Verizon's terms for whether a CLEC should pay for the audit: The CLECs assert that Verizon should be required to pay for the audit unless the auditor finds that the CLEC failed to comply "in all material respects" with the service eligibility criteria.[796] The CLECs assert that the amendment must incorporate the FCC's concept of materiality, and recognize that "to the extent the independent auditor's report concludes that the competitive LEC failed to

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[790] AT&T Initial Brief, ¶ 138; Focal Initial Brief, ¶¶ 29-34; Joint Response Brief, ¶¶ 31-33.
[791] AT&T Initial Brief, ¶ 138; Focal Initial Brief, ¶ 29; Joint Response Brief, ¶ 32.
[792] Focal Initial Brief, ¶ 29, *quoting Triennial Review Order*, ¶ 626.
[793] *Id*., ¶ 30.
[794] *Id., citing Triennial Review Order*, ¶ 622 n.1898 (noting that the Commission found that an ILEC must provide at least 30 days written notice to a carrier that has purchased an EEL that it will conduct an audit).
[795] *Id*.
[796] AT&T Initial Brief, ¶ 138, *citing Triennial Review Order*, ¶¶ 626-27; Focal Initial Brief, ¶ 31; Joint Response Brief, ¶ 31.

comply in all material respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor."[797]

463 Focal asserts that the FCC requires reimbursement for the cost of the auditor, not "the entire cost of the audit" as Verizon requests.[798] Focal asserts that its proposal (1) provides an incentive for CLECs to request EELs only to the extent permitted by the Triennial Review Order, and (2) "eliminates the potential for abusive or unfounded audits, so that incumbent LEC will only rely on the audit mechanism in appropriate circumstances."[799] The Joint CLECs and Competitive Carrier Group consider Verizon's proposal arbitrary and self-serving, in that a single error on a single DS1 circuit could result in liability for an audit.[800]

464 Focal also complains that Verizon proposes an unequal process for reimbursement: A CLEC must reimburse Verizon within 30 days, but the CLEC must provide the independent auditor for verification a statement of the CLEC's out-of-pocket costs of complying with the auditor's requests and Verizon will reimburse the CLEC within 30 days of the auditor's verification.[801]

465 Focal, the Joint CLECs, and Competitive Carrier Group oppose Verizon's proposal for CLECs to keep books and records for a period of 18 months after an EEL arrangement is terminated.[802] The CLECs assert that the FCC does not require CLECs to retain records for each specific circuit for 18 months after the circuit has been disconnected.[803] Whether or not an audit takes that long to

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[797] Focal Initial Brief, ¶ 31, *quoting Triennial Review Order*, ¶ 628; *see also* Joint Response Brief, ¶ 31.
[798] Focal Initial Brief, ¶ 31, *citing Triennial Review Order*, ¶ 628.
[799] *Id.*, *citing Triennial Review Order*, ¶¶ 627-28.
[800] Joint Response Brief, ¶ 31.
[801] Focal Initial Brief, ¶¶ 32-33.
[802] *Id.*, ¶ 34; Joint Response Brief, ¶ 33.
[803] Focal Initial Brief, ¶ 34; Joint Response Brief, ¶ 33.

complete, the CLECs assert that an 18-month interval is unreasonably long and unduly burdensome for CLECs.[804]

466 ***Discussion and Decision.*** The FCC held that ILECs have a limited right to audit compliance with the service eligibility criteria, and that ILECs may obtain and pay for an independent auditor to audit, on an annual basis.[805] The FCC found that an annual audit strikes the appropriate balance between the ILEC's need for usage information and risk of illegitimate audits that impose costs on competing carriers.[806] ILECs have the right to "obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria."[807] The auditor "must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants," and the audit may "include an examination of a sample selected in accordance with the independent auditor's judgment."[808]

467 The FCC merely stated that ILECs have an annual audit right, but did not address the specific issue in dispute. Verizon's proposal is not unreasonable, and if Verizon abuses its right to an "annual" audit, the CLECs would have every right to complain to the Commission. The issue of an audit once every calendar year rather than once every twelve months is resolved in favor of Verizon.

468 The FCC dealt with the concept of materiality by requiring that the independent auditor's report conclude whether the competitive LEC complied *in all material respects* with the applicable service eligibility criteria.[809] If the auditor "concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant

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[804] Focal Initial Brief, ¶ 34; Joint Response Brief, ¶ 33.
[805] *Triennial Review Order*, ¶ 626.
[806] *Id*.
[807] *Id*.
[808] *Id.*
[809] *Id*.

circuits to the appropriate service, and make the correct payments on a going-forward basis."[810] If the auditor "concludes that the competitive LEC failed to comply *in all material respects* with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor."[811] If the auditor "concludes that the requesting carrier complied *in all material respects* with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit."[812]

469 The issue in dispute is who pays auditing costs, and when. Regardless of materiality, the CLEC must correct errors if the auditor finds noncompliance, but need not reimburse the ILEC for the costs of the independent auditor unless the auditor finds the CLEC out of compliance "in all material respects." Likewise, the ILEC need not pay the CLEC's costs associated with the audit unless the CLEC complied "in all material respects."

470 "Material" is defined as "having real importance or great consequences."[813] Thus, as Verizon suggests, if a CLEC failed to meet the eligibility criteria for a circuit, that would be "material." Compliance "in all material respects" would reasonably mean compliance for most or all of the circuits at issue in the audit. The number of circuits that comprise materiality would depend on the number of circuits at issue in the audit. Based on this analysis and the FCC's clear directions for bearing audit costs, the issue concerning materiality is resolved in favor of the CLECs. Verizon's language does not sufficiently address the FCC's concern with material compliance.

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[810] *Id.*, ¶ 627.
[811] *Id*.
[812] *Id.*, ¶ 628.
[813] Webster's New Collegiate Dictionary (1977) at 709.

471 As to Verizon's proposal that CLEC's maintain documents supporting their certification for 18 months, the FCC did not establish detailed recordkeeping requirements, but expected "that requesting carriers will maintain the appropriate documentation to support their certifications."[814] To demonstrate satisfaction of the first criteria for high-capacity EELs, *i.e.*, authorization to provide voice service, state certification would be the most prevalent form of documentation, but evidence of registration, tariffing, filing of fees, or other regulatory compliance is adequate where there is no state certification requirement.[815] Circuit facility assignment is sufficient supporting evidence to verify that the EEL circuit terminates into a section 251(c)(6) collocation.[816] It is not unreasonable to require CLECs to retain these records for 18 months after ordering an EELs for the circuit. CLECs must be able to demonstrate compliance in an audit or could be subject to significant costs. The issue of record retention is resolved in favor of Verizon.

22. ISSUE NO. 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?

472 This issue addresses whether the amendment should include provisions concerning the ILECs' obligation to perform routine network modifications to allow access to UNEs. The parties dispute whether the FCC's discussion of the issue in the Triennial Review Order effected a change in law, the particular terms and conditions for routine network modifications, and whether Verizon may impose additional rates or charges for performing routine network

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[814] *Triennial Review Order*, ¶ 629.
[815] *Id.*, ¶ 601.
[816] *Id.*, ¶ 604.

modifications. The sections of the parties' proposed amendments relevant to Issue No. 22 are as follows:

Verizon November 4, 2004, Amendment 2: § 3.5
AT&T March 14, 2005, Amendment: §§ 2.32, 3.8

473 The matter of ILEC obligations to perform routine network modifications first arose in the Eighth Circuit Court of Appeals' decision in *Iowa Utilities Board v. FCC* that ILECs could be required to "modify their facilities 'to the extent necessary to accommodate interconnection or access to network elements'."[817] The FCC sought comments in its Triennial Review Order Notice of Proposed Rulemaking concerning FCC authority to order ILECs to modify their networks to allow access to network elements.[818]

474 In the Triennial Review Order, the FCC determined that ILECs must perform routine network modifications to allow access to unbundled transmission facilities and high capacity loop facilities where the facilities have already been constructed.[819] The FCC described routine network modifications as "those activities that incumbent LECs regularly undertake for their own customers," and "the routine, day-to-day work of managing an incumbent [LEC's] network."[820] The FCC held that ILECs are not required to construct new facilities, or to trench or place new cables for a CLEC.[821] The FCC adopted rules governing routine network modifications in the Triennial Review Order to resolve "a controversial competitive issue that has arisen repeatedly, in both this proceeding and in the context of several section 271 applications."[822] Those rules are codified in 47 C.F.R. § 51.319(8)(i) and (ii).

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[817] *Id.*, ¶ 630, *quoting Iowa Utils. Bd. v, FCC*, 120 F.3d 753, 813 n.33 (8th Cir. 1997).
[818] *Id.*, ¶ 631.
[819] *Id.*, ¶¶ 632-34.
[820] *Id.*, ¶ 637.
[821] *Id.*, ¶¶ 632, 636.
[822] *Id.*, ¶ 632.

475 Verizon proposes language in Section 3.5 of Amendment 2 to implement the FCC's rule on routine network modifications, 47 C.F.R. § 51.319(a)(8). Verizon's proposal requires Verizon to make routine network modifications at the rates and charges it proposes in Exhibit A to Amendment 2.[823] Verizon asserts that its proposal is consistent with the FCC's rule.[824]

476 Verizon asserts that the Triennial Review Order does effect a change of law: The FCC adopted rules in the Triennial Review Order stating that "[t]he routine network modification requirement *that we adopt today* resolves a controversial competitive issue that has arisen repeatedly."[825]

477 Verizon opposes AT&T's proposed language, in particular the following sentence: "Determination of whether a modification is 'routine' shall be based on the tasks associated with the modification, not on the end-user service that the modification is intended to enable."[826] Verizon asserts that the language is unnecessary as Verizon's language does not limit routine network modifications to particular end-user services.[827] Verizon defends its proposed language for "rearranging or splicing of *in-place cable* at *existing splice points*," and "splicing of *in-place* dark fiber at *existing splice points*," asserting that the FCC does not require Verizon to construct new facilities or establish new splice points.[828]

478 Verizon agrees to include the following sentence proposed by AT&T: "Verizon shall perform Routine Network Modifications without regard to whether the

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[823] Verizon November 4, 2004, Amendment 2, § 3.5.1.1.
[824] Verizon Initial Brief, ¶ 240.
[825] Verizon Reply Brief, ¶ 120 (emphasis added)
[826] *Id.*, ¶ 241.
[827] *Id.*
[828] Verizon Reply Brief, ¶ 121 (emphasis added).

facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier."[829]

479 Verizon asserts that it is entitled to recover the costs of providing routine network modification services.[830] Verizon proposes interim rates in Exhibit A to Amendment 2, subject to a later pricing proceeding in which the Commission would establish permanent rates.[831] Verizon has not submitted a cost study in this phase of the proceeding, explaining that there was not sufficient time to prepare thorough studies.[832]

480 AT&T, MCI, and the Competitive Carrier Group assert that there is no change of law requiring an amendment to the parties' interconnection agreements, but AT&T and the Competitive Carrier Group request the amendment include terms and conditions governing routine network modifications asserting that Verizon will not perform such modifications without an amendment to the parties' agreements.[833]

481 AT&T asserts that amendment language should describe routine network modifications in the same manner and detail as in the Triennial Review Order and FCC rules.[834] AT&T and the Competitive Carrier Group assert that whether a modification is routine should be based on "the nature of the tasks associated with the modification, not on the end-user service that the modification is intended to enable."[835] AT&T objects to Verizon's language, asserting that it does not describe all the routine network modification activities in the FCC's rule, specifically objecting to the words "in-place" cable at "existing splice points."[836]

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[829] Verizon Initial Brief, ¶ 242.
[830] *Id.*, ¶ 245; Verizon Reply Brief, ¶ 122.
[831] Verizon Initial Brief, ¶ 245.
[832] *Id.*; Verizon Reply Brief, ¶ 122.
[833] AT&T Initial Brief, ¶ 141; MCI Initial Brief at 14; CCG Initial Brief, ¶ 54.
[834] AT&T Initial Brief, ¶ 142.
[835] *Id.*; CCG Initial Brief, ¶ 55.
[836] AT&T Initial Brief, ¶¶ 143-44.

AT&T asserts that modifications could involve new cable or old cable spliced in new arrangements.[837] AT&T also objects to Verizon's proposal to exclude routine network modifications from performance measures and remedies plans, asserting that the FCC expects state commissions to review ILEC performance.[838]

482 The CLECs oppose Verizon's proposal to impose charges for routine network modifications, asserting that the FCC has provided that the costs of routine network modifications are most often already included in existing TELRIC rates.[839] The CLECs object that Verizon has not provided any evidence or cost study to support its proposed charges.[840] The CLECs assert that the Commission should require Verizon to demonstrate that the costs of routine network modifications are not already being recovered before approving any additional charges.[841]

483 ***Discussion and Decision.*** While the Eighth Circuit may have stated that ILECs have an obligation to modify their networks to allow access to network elements, the FCC did not adopt rules governing routine network modifications until it entered the Triennial Review Order. The FCC's discussion of ILEC obligations to perform routine network modifications is intended to resolve an outstanding contentious issue, *i.e.*, an unresolved issue of law. Whether or not ILECs had the obligation to provide routine network modifications previously, the FCC has adopted new rules to ensure ILECs meet their obligations. Language addressing the obligation to provide routine network modifications must be included in the amendment, and the amendment language will be come effective on the effective

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[837] *Id.*, ¶ 144.
[838] *Id.*, ¶ 145.
[839] *Id.*, ¶¶ 146-47; MCI Reply Brief, ¶¶ 1, 3; Joint CLEC Initial Brief, ¶¶ 43-44; CCG Initial Brief, ¶ 55; Joint Response Brief, ¶ 37.
[840] AT&T Initial Brief, ¶¶ 148-51; MCI Reply Brief, ¶¶ 3-6; Joint CLEC Initial Brief, ¶ 44; Joint Response Brief, ¶ 35.
[841] AT&T Initial Brief, ¶ 152; MCI Reply Brief, ¶¶ 1, 6; Joint CLEC Initial Brief, ¶ 45; Joint Response Brief, ¶ 37.

date of the amendment, not before. This aspect of Issue No. 23 is resolved in favor of Verizon.

484 Verizon's language governing routine network modifications captures the FCC's rule in 47 C.F.R. § 51.319(8)(ii), while AT&T's proposal captures the intent of both subsections of the FCC rules. Verizon's proposal to include the phrase "in-place fiber" and "in-place cable" are appropriate, as the FCC limited routine network modifications to current facilities. The FCC did not require new construction to be subject to the obligation to perform routine network modifications. However, Verizon's use of the phrase "existing splice points" does not appear appropriate. Opening a new splice point is not constructing a new facility: It is the kind of activity that Verizon would perform for its own customers and to manage its own network. Verizon must remove this phrase from its proposed language. With the removal of the phrase and the addition of the AT&T language that Verizon agrees to, Verizon's proposed language is appropriate and should be included in the amendment.

485 The issue of applying performance measures to the obligation to perform routine network modifications is discussed above in Issue No. 17. Given that there are currently no performance measures or service intervals applicable to Verizon in Washington State, there is no need for language requiring performance measures or excluding routine network modifications from performance measures.

486 Finally, Verizon's proposal to recover interim rate and charges for routine network modification is based on the premise that Verizon's costs are not recovered in existing UNE rates. The FCC left the decision for how ILECs may recover the costs of routine network maintenance to the states, finding that most of the costs are likely already recovered in existing UNE rates. The presumption must be, then, that an ILEC is already recovering the costs of routine network modifications in current UNE rates. Verizon has not provided any evidence to support its proposal, nor submitted a cost study to demonstrate that its costs are

not already recovered in rates. The Commission should not approve Verizon's proposed interim rates for routine network modifications until Verizon demonstrates through a cost study or supporting evidence that it is not already recovering the costs in approved rates. This aspect of Issue No. 22 is resolved in favor of the CLECs.

23. ISSUE NO. 23: Should the parties retain their pre-amendment rights arising under the Agreement, tariffs, and SGATs?

487 At issue is a clause used in several core provisions of Verizon's amendments to limit the effect of any inconsistent language in other regulatory documents: "Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT…"[842] The CLECs dispute whether this language allows other regulatory documents to control the parties' rights and obligations or limits their pre-amendment rights. The sections of the parties' proposed amendments relevant to Issue No. 23 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 2.1, 2.3, 3.1, 3.4, 4.5, 4.7
Verizon November 4, 2004, 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 March 14, 2005, Amendment: §§ 1.1, 2, 3.2.1, 3.2.2.3, 3.2.3.1, 3.2.3.2, 3.2.3.3, 3.2.4, 3.2.9, 3.6.2, 3.7.1
MCI April 4, 2005, Amendment: §§ 3.1, 12.5, 12.7
Focal March 11, 2005, Amendment: §§ 2.1, 2.3

488 Verizon includes the contested clause in a number of sections of its proposed Amendments 1 and 2. Verizon includes the clause in provisions describing the extent of its obligations to provide access to UNEs and other obligations under

[842] SGAT stands for "statement of generally available terms," and refers to a generic form of interconnection agreement that CLECs may opt into as an interconnection agreement. *See* 47 U.S.C. § 252(f).

the amendment, defining terms used in the amendment, and discussing rates and charges.[843] Verizon also includes the clause in provisions establishing Verizon's ability to cease providing discontinued elements and reserving rights.[844]

489 Verizon's proposed amendments are based on the premise that Verizon has the right to cease providing unbundled access to UNEs or facilities for which the unbundling obligation has been removed.[845] Verizon seeks to reserve in the amendment any existing rights in SGAT or tariff to cease providing discontinued UNEs.[846] Verizon also asserts that its proposed amendments make clear that the amendment defines the parties' obligations to provision UNEs, and supersedes any inconsistent obligations in Verizon tariffs or SGAT.[847]

490 Verizon disagrees with the CLECs' arguments that the amendment is the sole source of the parties' contract rights and that parties should retain any pre-amendment rights not expressly modified by the amendment.[848] Verizon denies that its proposed language could cause confusion, asserting that the language makes clear that the amendment defines the parties obligations concerning UNEs, notwithstanding any other provisions in other regulatory instruments.[849]

491 AT&T and MCI include a clause similar to Verizon's in provisions describing the extent of its obligations to provide access to UNEs and other obligations under

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[843] Verizon September 10, 2004, Amendment 1, §§ 2.1, 2.3, 3.5, 4.7; Verizon November 4, 2004, Amendment 2, §§ 2.1, 2.3, 2.5, 3.1, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.1, 3.5.3.
[844] Verizon September 10, 2004, Amendment 1, §§ 3.1, 3.4, 3.5, 4.5; Verizon November 4, 2004, Amendment 2, § 4.5.
[845] Verizon Initial Brief, ¶ 247.
[846] *Id*.
[847] *Id*., ¶¶ 248-49.
[848] Verizon Reply Brief, ¶ 123.
[849] *Id*., ¶ 124.

the amendment, defining terms used in the amendment, and reservation of rights.[850]

492 AT&T objects to Verizon reserving the right to discontinue UNEs that it claims exist in documents outside of the interconnection agreement, *e.g.*, tariffs and SGATs.[851] AT&T and MCI assert that the terms of the interconnection agreement and amendment should govern the rights of the parties, not some other document.[852] AT&T objects to Verizon's failure to identify the specific tariffs or other documents involved, asserting that this vague language creates confusion.[853] MCI objects to Verizon's language in Section 3.4 of Amendment, which provides that Verizon's rights to cease providing discontinued facilities are "in addition to, and not in limitation of, any rights Verizon may have" under its tariffs and SGATs.[854]

493 The Joint CLECs and Competitive Carrier Group assert that parties should retain their pre-Amendment rights under their agreements, tariffs, and SGATs concerning matters not addressed by the amendment.[855] The CLECs note that the issue is not applicable in Washington State, as Verizon does not have an SGAT in Washington, and its tariffs in Washington are not supposed to have substantive UNE provisions applicable to carriers with interconnection agreements.[856] The CLECs assert that the clause is superfluous and should not be included in the agreement.[857]

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[850] AT&T March 14, 2005, Amendment, §§ 1.1, 2, 3.2.1, 3.2.2.3, 3.2.3.1, 3.2.3.2, 3.2.3.3, 3.2.4, 3.2.9, 3.6.2, 3.7.1.
[851] AT&T Initial Brief, ¶ 154.
[852] *Id.*; MCI Initial Brief at 15.
[853] AT&T Initial Brief, ¶ 154.
[854] MCI Initial Brief at 15.
[855] Joint CLEC Initial Brief, ¶ 46; CCG Initial Brief, ¶ 56.
[856] Joint Response Brief, ¶ 38.
[857] *Id*.

494 ***Discussion and Decision.*** While Verizon's clause may be applicable or useful in other states that have approved a Verizon SGAT, or where the tariffs include substantive provisions governing access to UNEs and other obligations, there are no such regulatory documents in Washington. It makes no sense to include the "notwithstanding" clause in the amendment in question. In addition, if the amendment governs the parties' rights and obligations, as Verizon appears to agree, there is no need for such a clause in the agreement. In particular, the amendment, and no other document, governs Verizon's rights to discontinue facilities. The issue is resolved in favor of the CLECs.

24. ISSUE NO. 24: Should the Amendment set forth a process to address the potential effect on the CLECs' customer services when a UNE is discontinued?

495 This issue addresses whether the amendment should include a provision ensuring that a CLEC's end-user customer's service is not disrupted when UNE facilities or services are discontinued. Only AT&T includes in its proposed amendment language concerning this issue: "Verizon shall not impose any termination charges associated with the conversion or discontinuance of any Declassified Network Element and any conversion to another service arrangement shall be provided in a seamless manner without any customer disruption or adverse effects to service quality."[858]

496 Verizon asserts that its proposed amendment language adequately addresses discontinuance of UNEs, and asserts that the potential impact of discontinuing a UNE is solely in the CLEC's control.[859] Verizon asserts that it is not appropriate for the amendment to address a CLEC's obligations to its customers.[860] Verizon asserts that neither the Triennial Review Order nor the Triennial Review Remand

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[858] AT&T March 14, 2005, Amendment, § 3.11.2.
[859] Verizon Initial Brief, ¶¶ 251-52.
[860] *Id.*, ¶¶ 253-54.

Order conditioned discontinuing UNEs on assurances that no CLEC end-user customer would be adversely affected.[861]

497 The CLECs agree that the transition plans established in the Triennial Review Remand Order should be included in the amendment, and that such plans will allow CLECs sufficient time to make alternative arrangements, avoiding customer disruption.[862] AT&T, the Joint CLECs, and the Competitive Carrier Group also assert that the amendment should include a provision ensuring that the transition or conversion of UNEs to alternative arrangements does not result in customers being adversely affected.[863] AT&T asserts that the rules governing conversions should apply to the transition from UNEs to alternative arrangements.[864]

498 ***Discussion and Decision.*** The FCC did not apply the rules governing conversions to the transition from particular UNEs in the Triennial Review Remand Order. The FCC allowed for a twelve-month, and in the case of dark-fiber an eighteen-month, transition period to provide CLECs sufficient time to find alternative arrangements and to avoid the severe customer impact of a more rapid transition. Including the transition plans in the amendment, as is discussed above in Issues No. 3 through 5, will provide guidance to all parties in the transition. Where the conversion rules do apply in converting UNEs to wholesale services or wholesale services to UNEs, the FCC's rules provide some guidance to ILECs to avoid activities that will disrupt end-user customers' service quality. This is discussed above concerning Issues No. 13 and 21. This issue is resolved in favor of Verizon.

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[861] Verizon Reply Brief, ¶ 126.
[862] AT&T Initial Brief, ¶ 155-56; MCI Initial Brief at 16; Joint CLEC Initial Brief, ¶ 47; CCG Initial Brief, ¶ 57.
[863] AT&T Initial Brief, ¶ 158; Joint CLEC Initial Brief, ¶ 47; CCG Initial Brief, ¶ 57.
[864] AT&T Initial Brief, ¶ 158.

25. ISSUE NO. 25: How should the Amendment implement the FCC's service eligibility criteria for combinations and commingled facilities to which Verizon is not required to provide access as a Section 251 UNE?

499 This issue is addressed, for the most part, above in Issues No. 12 and 21. The only aspect of this issue that may not be fully addressed above is whether Verizon's language imposes eligibility requirements on certain non-UNEs for which the FCC has lifted eligibility requirements.

500 Verizon, AT&T, and the Competitive Carrier Group primarily address this issue in the context of Issues No. 12 and 21, above, and refer the Commission to that discussion.[865]

501 Focal complains that Verizon's language contemplates applying the eligibility criteria more broadly than the FCC intended and to non-UNEs to which the FCC did not intend to apply the eligibility rules.[866] Focal asserts that its proposal specifically incorporates the language of FCC rule (47 C.F.R. § 51.318(b)), and identifies the precise instances when a CLEC must self-certify.[867] Focal complains that Verizon's proposed certification requirements are not limited to these instances and that Verizon's proposal inappropriately applies to each DS1 circuit or DS1 equivalent circuit.[868] Focal asserts that Verizon's proposal is too sweeping, and requires that the eligibility criteria be satisfied "for each combined circuit, including each DS1 circuit, each DS1 enhanced extended link, and each DS1-equivalent circuit on a DS3 enhanced extended link."[869]

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[865] Verizon Initial Brief, ¶ 255; AT&T Initial Brief, ¶ 159; CCG Initial Brief, ¶ 58.
[866] Focal Initial Brief, ¶ 37.
[867] *Id*.
[868] *Id., citing* Verizon Amendment 2 § 3.4.2.1.
[869] *Id., quoting* 47 CFR § 51.318(b)(2).

502 ***Discussion and Decision.*** In the Triennial Review Order, the FCC provided that a CLEC must be providing "qualifying" service to a customer in order to obtain access to unbundled network elements, and established additional eligibility criteria for access to high-capacity loops and transport facilities.[870] These eligibility criteria only apply when a CLEC seeks "(1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (commingled) EEL."[871] To the extent that these categories include non-UNEs, *i.e.*, converting special access circuits to EELs, Verizon's proposal is consistent with the FCC's rules. As discussed above in Issue No. 12, Verizon must remove the word "Qualifying" when discussing eligibility criteria, as the FCC eliminated the term in the Triennial Review Remand Order. This aspect of the issue is resolved in favor of Focal. Consistent with the discussion above in Issue No. 21, the parties should work together to negotiate language consistent with the FCC's decisions or do so in a Commission-sponsored workshop.

26. ISSUE NO. 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?

503 The parties dispute whether the amendment should include language addressing commercial agreements negotiated by the parties to establish alternative arrangements to UNEs. The sections of the parties' proposed amendments relevant to Issue No. 26 are as follows:

Verizon September 10, 2004, Amendment 1: §§ 3.2, 3.3
MCI April 4, 2005, Amendment: § 3.2

[870] *Triennial Review Order*, ¶ 591.
[871] *Id.*, ¶ 593.

504 Verizon asserts that Verizon is not required to, nor can be forced to, arbitrate issues unrelated to its unbundling obligations under Section 251(c)(3).[872] Verizon includes a reference in its amendments to obtaining access to discontinued facilities through a separate agreement as a convenience for the parties, not to alter any obligations in the amendment.[873] Verizon asserts that the CLECs are incorrect that any gap in unbundling obligations would be met by "other Applicable Law."[874]

505 AT&T and the Competitive Carrier Group object to including language in the amendment addressing commercial agreements, asserting that there is no need for the language.[875] AT&T objects to Verizon's proposed language for the same reason that AT&T objects to Verizon's proposal concerning reserving rights discussed above in Issue No. 23, *i.e.*, the rights and obligations of the parties should be contained in the interconnection agreement, not some other document.[876]

506 ***Discussion and Decision.*** Verizon's proposal in Section 3.2, referring to separate agreements for making alternative arrangements for obtaining discontinued UNEs, is appropriate. The provision merely provides a description of how CLECs may obtain as UNEs network elements that are discontinued.

507 Verizon's proposed Section 3.3 establishes that negotiations for replacement arrangements are not subject to arbitration pursuant to Section 252:

> Notwithstanding any other provision of this Amended Agreement, any negotiations regarding any replacement arrangement or other facility or service that Verizon is not required to provide under the

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[872] Verizon Initial Brief, ¶ 256.
[873] *Id.*, ¶ 257.
[874] *Id.*, ¶ 258.
[875] AT&T Initial Brief, ¶ 160; CCG Initial Brief, ¶ 59.
[876] AT&T Initial Brief, ¶ 160.

> Federal Unbundling Rules shall be deemed not to have been conducted pursuant to the Amended Agreement, 47 U.S.C. § 252(a)(1), or 47 C.F.R. Part 51, and shall not be subject to arbitration pursuant to 47 U.S.C. § 252(b). Any reference in this Amended Agreement to Verizon's provision of a facility, service, or arrangement that Verizon is not required to provide under the Federal Unbundling Rules is solely for the convenience of the Parties and shall not be construed to require or permit arbitration of such rates, terms, or conditions pursuant to 47 U.S.C. § 252(b).

Consistent with the decision above in Issue No. 6, negotiations of commercial agreements for elements that are no longer governed by Section 251 are similarly not governed Section 252. There is no harm in including this provision in the amendment. The issue is resolved in favor or Verizon.

27. ISSUE NO. 27: Should Verizon provide an access point to CLECs to engage in testing, maintaining and repairing copper loops and copper subloops?

508 This issue addresses whether the amendment should require obligating Verizon to provide an access point to allow CLECs to engage in loop testing, maintenance, and repair activities. The issue arises because the FCC chose to readopt rules relating to physical test access points in the context of adopting rules concerning line splitting.[877] The FCC provided:

> We also readopt the Commission rules requiring incumbent LECs to provide access to physical loop access points on a nondiscriminatory basis or the purpose of loop testing, maintenance, and repair activities, and allowing incumbent LECs to maintain control over the loop and splitter equipment and functions in certain circumstances.[878]

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[877] *Triennial Review Order*, ¶ 252.
[878] *Id*.

The FCC adopted the following rule in the Triennial Review Order governing maintenance, repair, and testing of loops:

> An incumbent shall provide, on a nondiscriminatory basis, physical loop access test points to a requesting telecommunications carrier at the splitter, through a cross-connection to the requesting telecommunications carrier's collocation space, or through a standardized interface, such as an intermediate distribution frame or test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.[879]

509 Only AT&T includes in its proposed amendment language addressing this issue:

> Verizon shall provide, on a nondiscriminatory basis, physical loop test access points to AT&T at the splitter, through a cross-connection to AT&T's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper Subloops.

510 Verizon asserts there has been no change of law concerning testing, maintenance, or repairing copper loops and that existing agreements adequately address the issue.[880] Verizon asserts that it is a waste of resources to arbitrate what it describes as "non-TRO issues" and offers to work separately with CLECs to develop amendment language addressing the issue.[881]

511 AT&T and the Competitive Carrier Group request that the amendment include a provision requiring Verizon to provide an access point for CLECs to engage in

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[879] 47 C.F.R. § 51.319(a)(1)(iv).
[880] Verizon Initial Brief, ¶ 259; Verizon Reply Brief, ¶ 129.
[881] Verizon Initial Brief, ¶ 259.

testing, maintenance, and repair of copper loops and subloops.[882] The Competitive Carrier Group asserts that the FCC requires ILECs to do so.[883]

512 ***Discussion and Decision.*** Consistent with the decisions above in Issues 14(a) and (g), AT&T's proposed language is appropriate and should be included in the amendment. The FCC readopted its rule governing maintenance, testing, and repair of copper loops and subloops to resolve an outstanding issue between the CLECs and ILECs. It is appropriate, therefore, to address the issue in the amendment. AT&T's proposed language mirrors the FCC's rule governing maintenance, testing, and repair. The issue is resolved in favor of AT&T.

28. ISSUE NO. 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?

513 The issues addressed in Issue No. 28 are also raised in Issues No. 1 through 6. In fact, the parties do not address the issue in brief, asserting that they fully addressed the issues in their positions on Issues No. 1 through 6.[884]

514 ***Discussion and Decision.*** Consistent with the decisions discussed above in Issues No. 1 through 6, Verizon must include in its amendment the transition plans the FCC established in the Triennial Review Remand Order. In addition, as discussed above in Issues No. 6 and 26, replacement arrangements for elements that are no longer governed by Sections 251 are not subject to negotiation or arbitration under Section 252. However, during the transition

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[882] AT&T Initial Brief, ¶ 161; CCG Initial Brief, ¶ 60.
[883] CCG Initial Brief, ¶ 60, *citing Triennial Review Order*, ¶ 252.
[884] Verizon Initial Brief, ¶ 260; Verizon Reply Brief, ¶ 130; AT&T Initial Brief, ¶ 162; Joint CLEC Initial Brief, ¶ 51; CCG Initial Brief, ¶ 61.

periods established by the FCC, Verizon must negotiate with the CLECs to establish alternative arrangements, including converting UNEs to wholesale services. The amendment should include provisions governing the transition from UNEs to non-UNEs.

29. ISSUE NO. 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.

515 Similar to Issue No. 28, above, this issue is addressed in great detail above in Issues No. 1 through 6. The parties do not address the issue in brief, asserting that they fully discussed the issues in the context of Issues No. 1 through 6, 7, 8, and 11.[885]

516 ***Discussion and Decision.*** This issue is resolved consistently with Issues No. 2 through 8, 11, and 28, above. Verizon must follow the change of law processes in its existing interconnection agreements to reflect the changes of law in the FCC's Triennial Review Order and Triennial Review Remand Order. Verizon must amend its agreements to reflect the FCC's transition plans, negotiating and arbitrating the terms for converting UNEs to non-UNEs. For those UNEs for which the FCC has not established a transition plan, the amendments must be amended to reflect that the network elements are no longer UNEs, and the parties should negotiate commercial agreements or other arrangements to obtain access to the network elements. Those negotiations and arrangements, however, are not subject to the Section 251 or Section 252 processes.

[885] *See* Verizon Initial Brief, ¶ 261; Verizon Reply Brief, ¶ 131; AT&T Initial Brief, ¶ 163; Joint CLEC Initial Brief, ¶ 52; CCG Initial Brief, ¶ 62.

30. ISSUE NO. 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 ICAS to implement them, or Verizon issues a tariff in accordance with them.

517 The parties dispute how the FCC's permanent unbundling rules should be implemented in the agreement, in particular the effective date of implementing the rules. These issues are discussed in great length above in Issues No. 2 through 8, 10, and 11.

518 Verizon asserts that the rules adopted in the Triennial Review Remand Order apply as of March 11, 2005, the effective date of the order.[886] Verizon insists that the transition periods and plans for UNE-P arrangements, high-capacity loops, and transport do not apply to new additions or arrangements, but only to embedded customers.[887] Verizon refers to its arguments concerning Issues No. 2 through 5, and 10.[888]

519 AT&T refers to its arguments concerning Issues No. 1 through 8, and 11.[889] The Joint CLECs and the Competitive Carrier Group assert that the FCC requires the parties to incorporate the new unbundling rules into their interconnection agreements through change of law provisions and the Section 252 process.[890] The CLECs assert that the new rules adopted in the Triennial Review Remand Order are not self-effectuating, nor effective until the Commission approves the amendment.[891]

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[886] Verizon Initial Brief, ¶ 262.
[887] *Id*.
[888] *Id*.; Verizon Reply Brief, ¶ 132.
[889] AT&T Initial Brief, ¶ 163.
[890] Joint CLEC Initial Brief, ¶¶ 53-54; CCG Initial Brief, ¶¶ 63, 65.
[891] Joint CLEC Initial Brief, ¶¶ 53, 55; CCG Initial Brief, ¶¶ 64, 66.

520 ***Discussion and Decision.*** This issue has been resolved above in Issues No. 2 through 6, 8, 10, and 11. The FCC requires that the parties implement the new rules by following the change of law provisions in interconnection agreements. Thus, the amendment must include the transition plans the FCC established in the Triennial Review Remand Order. While the transition plan provisions are not effective until the Commission approves the amendment, Verizon is entitled to true-up existing rates to the transition rates as of March 11, 2005. The FCC's decision that local circuit switching is no longer a UNE, and that certain high-capacity loops and transport arrangements are no longer subject to unbundling is effective as of March 11, 2005, including the limitation not to add new UNE-P customers or arrangements, or new high-capacity loops or transport arrangements as UNEs if they no longer qualify under the new rules. This issue is resolved consistent with the decisions above in Issues No. 2 through 6, 8, 10, and 11.

31. ISSUE NO. 31: Do Verizon's obligation 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?

521 This issue addresses whether Verizon must charge TELRIC rates only for existing, embedded customers under the FCC's Triennial Review Remand Order, or whether Verizon must also charge TELRIC rates for new customers. AT&T includes the following language addressing the issue in Section 3.5.1.1 of its proposed amendment:

> New customers do not include AT&T's existing customers whose connectivity is changed (e.g., technology migration, hot cut, loop reconfiguration, UNE-P to UNE-L, etc.) on or after March 11, 2005. AT&T will provide Verizon with the information necessary to identify new customers and Verizon shall apply its rate for new

customers only to those orders identified by AT&T as orders relating to new customers.

522 Verizon asserts that the FCC distinguished between a CLEC's embedded customer base and new customers by adopting a rule against adding new customers after March 11, 2005.[892] Verizon asserts that its proposed amendments sufficiently address the requirements of the Triennial Review Remand Order.[893] Verizon asserts that AT&T's definition of "new customer" is contrary to the FCC's "no new adds" policy, noting that Verizon addressed the issue in briefing Issue No. 3.[894]

523 AT&T asserts that if a network element is a UNE, Verizon must provide the network element at TELRIC prices regardless of whether a customer using the UNE is embedded or a new customer.[895] As to transitional network elements, AT&T asserts that for pre-existing customers, Verizon must charge the transitional rates, and that new customers will be charged under some other arrangement.[896] AT&T asserts that its proposed Section 3.5.1.1 appropriately defines "new customers."[897]

524 The Competitive Carrier Group asserts that the amendment must define a CLEC's "embedded customer base" to which the transition plan will apply.[898] The CLECs assert that the amendment should allow UNEs added, moved, or changed by a competitive carrier at a customer's request as of March 11, 2005, to be included in the embedded customer base.[899] The CLECs also assert that the

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[892] Verizon Initial Brief, ¶ 264.
[893] *Id*.
[894] *Id*., ¶ 266; Verizon Reply Brief, ¶ 133.
[895] AT&T Initial Brief, ¶ 164.
[896] *Id*., ¶ 165.
[897] *Id*.
[898] CCG Initial Brief, ¶ 67.
[899] *Id*.

"no new adds" rule should not become effective until the amendment is approved.[900]

525 ***Discussion and Decision.*** Consistent with the decisions reached above in Issue No. 3, the amendment should include a definition of "embedded customer base." In that discussion, the Arbitrator recommends that embedded customers are a CLEC's existing customers as of March 11, 2005, including those who may require repairs or maintenance on their line, or request additions or changes to any features of their service. New UNE-P arrangements include an additional UNE-P line requested by an existing customer or an existing customer who seeks the same service at a different location. These new UNE-P arrangements are not considered part of the "embedded customer base." AT&T's proposed language is not consistent with this decision and is rejected. The parties are encouraged to work together to develop an appropriate definition of "embedded customer base."

526 Consistent with the discussion above in Issue No. 3, the "no new adds" rule was effective on March 11, 2005, not on the date the amendment becomes effective.

527 Based on this analysis, Verizon must charge the transition rates established by the FCC as of March 11, 2005, except Verizon must charge TELRIC rates and may true-up the charges back to March 11, 2005, on the effective date of the amendment for those parties with change of law provisions. For any network element that remains a UNE after the Triennial Review Order and Triennial Review Remand Order, Verizon may charge only TELRIC rates, and may charge applicable non-TELRIC rates for facilities or services that are no longer UNEs.

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[900] *Id.*

32. ISSUE NO. 32: Should the Commission adopt Verizon's proposed new rates for the items in the Pricing Attachment to Amendment 2?

528 The parties did not include this issue in their Joint Issues List filed on January 19, 2005. Verizon included this issue in its Initial Brief filed March 11, 2005. Verizon requests the Commission adopt interim rates for certain proposed items relating to its Amendment 2. The proposed rates and charges are included in the Pricing Attachment, or Exhibit A, to Amendment 2.

529 Verizon asserts that the FCC's new rules require Verizon to provide services to CLECs for which no prices have been established under the existing interconnection agreements.[901] Verizon asserts that it has a right to be compensated for these services, and requests the Commission allow Verizon to charge the rates in the Pricing Attachment on an interim basis, until Verizon submits an appropriate cost study.[902]

530 MCI opposes Verizon's request, asserting that there is a question whether Verizon is already recovering the costs for routine network modifications in UNE rates.[903] MCI objects that Verizon has not yet provided evidence or costs studies supporting its proposal. MCI asserts that it would be inappropriate to allow Verizon to double recover its costs until the issue can be fully litigated in a costing proceeding.[904]

531 ***Discussion and Decision.*** Verizon proposes a number of charges in Exhibit A to its proposed Amendment 2, including charges for line conditioning, routine network maintenance and repair, and commingling and conversions. Most of the proposed charges are interim rates that would be subject to review in a

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[901] Verizon Initial Brief, ¶ 267.
[902] *Id*.
[903] MCI Initial Brief at 17; MCI Reply Brief, ¶¶ 3, 4, 6.
[904] MCI Initial Brief at 17; MCI Reply Brief, ¶¶ 1-6.

costing proceeding, while a few are rates already approved by the Commission. In discussions above in Issues No. 8, 11, 14(g) and 21(b)(2), the Arbitrator recommends rejecting Verizon's proposal to charge interim rates, and requiring Verizon to submit a cost study or other evidence supporting the rates before the Commission should consider adopting interim rates. The only rates Verizon may charge are those already approved by the Commission. This issue is resolved in favor of the CLECs.

E. Implementation Schedule

532 Pursuant to 47 U.S.C. § 252(c)(3), the Arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." In preparing an agreement for submission to the Commission for approval, the parties may include an implementation schedule. In this case the parties did not submit proposed implementation schedules. Specific provisions to the agreement, however, may contain implementation time-lines. The parties must implement the agreement according to the schedule provided in its provisions, and in accordance with the Act, applicable FCC Rules, and this Commission's orders.

F. Conclusion

533 The Arbitrator's resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). The parties are directed to submit an interconnection agreement to the Commission for approval pursuant to the following requirements.

1. Petitions for Review and Requests for Approval

534 Any party may petition for Commission review of this Arbitrators' Report and Decision by **August 8, 2005**. Any petition for review must be in the form of a

brief or memorandum, and must state all legal and factual bases in support of arguments that the Arbitrator's Report and Decision should be modified. Replies to any petition for Commission review must be filed by **August 18, 2005**.

535 The parties must also file, by **August 18, 2005**, a complete copy of the signed interconnection agreement, including any attachments or appendices, incorporating all negotiated terms, all terms requested pursuant to Section 252(i), and all terms intended to fully implement arbitrated decisions. This filing will include the parties' request for approval, subject to any pending petitions for review.[905] The Agreement must clearly identify arbitrated terms by bold font style and identify by footnote the arbitrated issue that relates to the text. As discussed above, given the number of substantive changes to Verizon's proposed amendments, and that the parties have waived the statutory deadlines in this proceeding, the parties may request additional time for negotiation or for the Commission to convene a workshop to assist in developing amendment language.

536 Parties that request approval of negotiated terms must summarize those provisions of the agreement, and state why those terms do not discriminate against other carriers, are consistent with the public interest, are consistent with the public convenience, and necessity, and satisfy applicable state law requirements, including relevant Commission orders.

537 Parties that request approval of arbitrated terms must summarize those provisions of the agreement, and state how the agreement meets each of the applicable requirements of Sections 251 and 252, including relevant FCC regulations, and applicable state requirements, including relevant Commission orders. A party that petitions for review must provide alternative language for

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[905] If the parties agree that no petition for review will be filed, the parties may file their joint request for approval and complete interconnection agreement at any time after the date of this Report and Decision.

arbitrated terms that would be affected if the Commission grants the party's petition.

538 Any petition for review, any response, and/or any request for approval may reference or incorporate previously filed briefs or memoranda. Copies of relevant portions of any such briefs or memoranda must be attached for the convenience of the Commission. The parties are not required to file a proposed form of order.

539 Any petition for review of this Arbitration Report and Decision and any response to a petition for review must be filed (original and five (5) copies) with the Commission's Secretary and served as provided in WAC 480-07-145. Post-arbitration hearing filings and any accompanying materials must be served on the opposing party by delivery on the day of filing, unless jointly filed.

540 An electronic copy of all post-arbitration hearing filings must be provided by e-mail delivery to the Commission Secretary at records@wutc.wa.gov. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch, IBM-formatted, high-density diskette including the filed document(s), in Adobe Acrobat file format (*i.e.,* <filename>.pdf), reflecting the pagination of the original. Please also provide the text in either MSWord file format (*i.e.,* <filename>.doc) or WordPerfect file format (*i.e.,* <filename>.wpd). Attachments or exhibits to pleadings and briefs that do not pre-exist in an electronic format do not need to be converted.

2. Approval Procedure

541 The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) to include the approval process. Further, the Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act.

542 The Commission will consider any request(s) for approval at a hearing scheduled for **September 7, 2005, at 1:30 p.m.**, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Any person may appear at the hearing to comment on the request(s).

543 The Commission will endeavor to enter an order approving or rejecting the Agreement by **September 23, 2005**, unless the parties request additional time for negotiation or a Commission-sponsored workshop.[906] The Commission's order will include its findings and conclusions.

Dated at Olympia, Washington, and effective this 8th day of July, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Arbitrator

[906] As noted above, the parties have agreed to waive the statutory deadlines in 47 U.S.C. § 252(e)(4), but have requested prompt resolution of the petition.