EXHIBIT A

The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-33 July 14, 2005

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order

---

ARBITRATION ORDER

APPEARANCES: Bruce P. Beausejour, Esq.
Barbara Anne Sousa, Esq.
Verizon New England, Inc. d/b/a Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
FOR: VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS
Petitioner

Thomas F. Reilly, Esq.
Attorney General
By: Karlen J. Reed, Esq.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Intervenor

Jay E. Gruber, Esq.
Harry Davidow, Esq.
AT&T Communications of New England, Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111

-and-

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS & ACRONYMS

ARMIS:	Automated Record Management Information System
ASR:	Access Service Request
BA:	Bell Atlantic
BOC:	Bell Operating Company
C2C:	Carrier to Carrier
CCC:	Competitive Carrier Coalition
CCG:	Competitive Carrier Group
CLEC:	Competitive Local Exchange Carrier
CWG:	Carrier Working Group
DLC:	Digital Loop Carrier
DS0:	Digital Signal Level 0
DS1:	Digital Signal Level 1
DS3:	Digital Signal Level 3
DSL:	Digital Subscriber Line (also *x*DSL)
EEL:	Enhanced Extended Link
FCC:	Federal Communications Commission
FDI:	Feeder Distribution Interface
FTTC:	Fiber to the Curb
FTTH:	Fiber to the Home
FTTP:	Fiber to the Premises
HARC:	House and Riser Cable
HFPL:	High Frequency Portion of the Loop
IDLC:	Integrated Digital Loop Carrier
ILEC:	Incumbent Local Exchange Carrier
Kbps:	kilobits per second
LATA:	Local Access and Transport Area
LEC:	Local Exchange Carrier
LERG:	Local Exchange Routing Guide
LSR:	Local Service Request
Mbps:	megabits per second
MDU:	Multiple Dwelling Unit
MPOE:	Minimum Point of Entry
MSA:	Metropolitan Statistical Area
NGDLC:	Next Generation Digital Loop Carrier
NID:	Network Interface Device
NYPSC:	New York Public Service Commission
OCn:	Optical Carrier Network
OSS:	Operations Support System
PAP:	Performance Assurance Plan
RBOC:	Regional Bell Operating Company

RNM:	Routine Network Modification
SGAT:	Statement of Generally Available Terms
SPOI:	Single Point of Interconnection
TDM:	Time Division Multiplexing
TELRIC:	Total Element Long-Run Incremental Cost
TRO:	Triennial Review Order
TRRO:	Triennial Review Remand Order
UDLC:	Universal Digital Loop Carrier
UNE:	Unbundled Network Element
UNE-P:	UNE Platform
USF:	Universal Service Fund

ARBITRATION ORDER

I. INTRODUCTION

This proceeding is a consolidated arbitration, pursuant to § 252 of the Telecommunications Act of 1996 ("Act"),[1] between Verizon New England, Inc. d/b/a Verizon-Massachusetts ("Verizon"),[2] the incumbent local exchange carrier ("ILEC"), and the following competitive local exchange carriers and commercial mobile radio service providers (collectively, "CLECs"): AT&T Communications of New England, Inc., TCG Massachusetts, ACC Telecom Corporation, MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Massachusetts, Inc., MCI WorldCom Communications, Inc., MCI WorldCom Communications, Inc. as successor to Rhythm Links, Inc., Intermedia Communications, Conversent Communications of Massachusetts LLC, Qwest Communications Corp., Sprint Communications Company, BrahmaCom, Inc, C2C Fiber of Massachusetts LLC, Eagle Communications Inc., Freedom Ring Communications LLC d/b/a Bay Ring Communications, Global Crossing Local Services Inc., IDT America Corp., Looking Glass Networks Inc., Metropolitan Telecommunications of Massachusetts Inc. d/b/a MetTel, PNG Telecommunications Inc., RCN-BecoCom LLC, RCN Telecom Services of Massachusetts Inc., RNK Inc. d/b/a RNK Telecom, SpectroTel, Inc., US West Interprise America Inc. d/b/a

---

1 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

2 Verizon is the successor to New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts. Some of the interconnection agreements analyzed below refer to that predecessor entity as "BA." This entity was also formerly known as NYNEX.

!nterprise, Volo Communications of Massachusetts Inc., XO Massachusetts Inc., Yipes Transmission, Inc., Budget Phone, Inc., Covista, Inc., McGraw Communications, Inc., Acceris Communications Corporation f/k/a Worldxchange Corporation, BCN Telecom, Inc. f/k/a NUI Telecom, Inc., and New Horizons Communications Corporation, WilTel Local Network, LLC and the carrier members of the Competitive Carrier Coalition ("CCC")[3] and the Competitive Carrier Group ("CCG").[4]

II. PROCEDURAL HISTORY

On February 20, 2004, Verizon filed with the Department a Petition for Arbitration, requesting that the Department initiate a consolidated arbitration proceeding to amend the interconnection agreements between Verizon and its competitors. In its Petition,

---

[3] The members of the Competitive Carrier Coalition are: Allegiance Telecom of Massachusetts, Inc., ACN Communications Services, Inc., Adelphia Business Solutions Operations, Inc. d/b/a Telcove, CoreComm Massachusetts, Inc., CTC Communications Corp., DSLnet Communications, LLC, Focal Communications Corporation of Massachusetts, ICG Telecom Group, Inc., Level 3 Communications, LLC, Lightship Telecom, LLC, LightWave Communications, Inc., PAETEC Communications, Inc., RCN-BecoCom, LLC, and RCN Telecom Services of Massachusetts, Inc.

[4] The members of the Competitive Carrier Group are: A.R.C. Networks Inc., Broadview Networks Inc. and Broadview NP Acquisition Corp., Bullseye Telecom Inc., Comcast Phone of Massachusetts Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corporation, Equal Access Network LLC, Essex Acquisition Corp., Global Crossing Local Services Inc., IDT America Corp., KMC Telecom V Inc., SpectroTel Inc., Talk America Inc., and XO Communications, Inc.

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

1. Positions of the Parties

a. Verizon

Verizon proposes to apply charges for conversions between UNEs and alternative arrangements (Verizon Amendment 2, §§ 3.4.2.4, 3.4.2.5). Verizon states that it has not proposed disconnection charges in its pricing attachment to the Amendment, but that it would do so in its forthcoming cost study (Verizon Brief at 43). Verizon states that the Department has already approved the inclusion of recovery of disconnection costs up-front when the UNE was ordered (id. at 44; see UNE Rates Order, D.T.E. 01-20, at 486 (July 11, 2002) ("UNE Rates Order")). Verizon argues that none of the CLECs have presented evidence that would justify reconsideration of that determination, and, in any event, reviewing those rates would be procedurally inappropriate in this proceeding (Verizon Reply Brief at 28).

Verizon urges the Department to reject the CLEC argument that it is the "cost causer" (id. at 27). Verizon argues that when the CLECs chose to access Verizon's network at "cut-rate prices," the CLECs caused the costs that Verizon incurs, including the costs of terminating arrangements that are no longer mandated under federal law (id. at 28). Verizon argues that it may also recover the costs incurred in setting up an alternative service (id.). Verizon states that in conducting a conversion, it must "process service order, change the circuit identification to the appropriate format, move the circuit from the special access billing

account to an unbundled billing account, and update the design and inventory records in the maintenance and engineering databases" (id.).

b. CLECs

The CLECs argue that Verizon is the "cost causer" when a UNE is discontinued or migrated to an "alternative arrangement" (AT&T Brief at 30; CCC Brief at 35; CCG Brief at 16). They argue that the disconnection of a UNE arrangement is caused by Verizon's withdrawal of a UNE offering, initiated by Verizon for its own benefit (AT&T Brief at 31; CCC Brief at 35; CCG Brief at 16; Conversent Brief at 18). The CLECs contend that there are few additional costs, because the only work would involve a billing change (AT&T Brief at 31, citing Triennial Review Order at ¶ 588; CCC Brief at 35; MCI Brief at 12).[43] Moreover, they argue, to the extent that there are any costs, Verizon has already recovered them through up-front charges (CCC Brief at 36, citing UNE Rates Order at 486).

Finally, the CLECs argue that the transition from UNEs to alternative arrangements should be governed by the same principles articulated in 47 C.F.R. §§ 51.316(b) and (c) (AT&T Brief at 31). The CLECs argue that Verizon should not be able to impose any termination charges, disconnect fees, reconnect fees or charges associated with establishing a service for the first time, in connection with a conversion between existing arrangements and

---

[43] MCI argues that Verizon should be permitted to assess non-recurring charges only if there are, in fact, any non-recurring costs associated with the conversion of a UNE arrangement to an alternative arrangement, but that if Verizon incurs only the cost of a billing change, then there is no cost basis for a non-recurring charge (MCI Brief at 12).

new arrangements (id. at 31-32; CCC Brief at 36; Conversent Brief at 18; see also CCG Brief at 16).

2. Analysis and Findings

Verizon states that it has not proposed disconnection charges in this case but will do so in its next TELRIC case. The Department finds that it is premature to address this issue until Verizon submits actual rates for approval. Because Verizon has pledged not to charge CLECs for these services until it submits actual rates and those rates are approved by the Department, the practical effect of postponing a decision on this issue until Verizon's next rate case is nil.

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

1. Introduction

The parties proposed definitions for a number of terms that were already defined and were not modified as a result of the Triennial Review Order and the Triennial Review Remand Order.[44] Therefore, we find that there is no need to amend the agreements to define these terms. Further, we have reviewed the propriety of other proposed terms in conjunction with

---

44 These proposed definitions include: "DS1 loops," "DS3 loops," "dark fiber loops," "commingling," "combination," "conversion," "distribution subloop," "entrance facility," "Section 271 Network Element," "Applicable Law," "entrance facilities," "circuit switch," "switching," "line splitting," "line conditioning," "enterprise switching, "four-line carve-out switching," "FTTP," "hybrid loop," "mass market switching," "packet switching," "enterprise customer," and "loop distribution."

CCC also proposes that along with the date that conversions are complete, "Verizon bill a CLEC pro rata for the facility or service being replaced through the day prior to the date on which billing at rates applicable to the replacement facility or service commences and the applicable rate for the replacement facility or service thereafter" (id., citing CCC TRO Amendment, § 2.3.4.3). CCC also claims that its language "recognizes that these billing adjustments should appear on the bill for the first complete month after the date on which the Conversion is deemed effective" and that if the proper adjustment does not appear on a bill for applicable conversions, a CLEC may withhold payment in the amount of the adjustment that should appear on the bill (id., citing CCC TRO Amendment, § 2.3.4.3).

iv. How should the Amendment address audits of CLEC compliance with the FCC's service eligibility criteria?

The CLECs claim that the Triennial Review Order allows ILECs to conduct an audit once every twelve months[58] and that Verizon's proposal entitling it to an audit once per calendar year would allow an audit to take place in December of one year and again in January of the next year (CCC Brief at 85, citing Verizon Amendment 2, § 3.4.2.7; CCC Reply Brief at 48, citing XO-Illinois Petition for Arbitration of an Amendment to an Interconnection Agreement with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, Docket No. 04-0471, Amended Arbitration Decision of the Illinois Commerce Commission, at 38 (Oct. 28, 2004) (arguing that the Illinois

---

[58] AT&T agrees generally with the positions of the other CLECs but does not indicate whether the annual time frame is based on a calendar year or a 12-month period (AT&T Brief at 74).

Commerce Commission concluded that the "FCC gave ILECs the option of initiating an audit . . . no more than once every 12 months"); CCG Reply Brief at 59). CCG contends that before Verizon may conduct an audit, it must "demonstrate cause" with respect to the circuits it seeks to have audited (CCG Brief at 41). CCC also claims that the Triennial Review Order requires Verizon to give a CLEC 30 days advance notice of the audit (CCC Brief at 85, citing CCC TRO Amendment, § 2.2.3; Triennial Review Order at ¶ 622 n.1898 (noting that the FCC 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)). Moreover, CCC notes that its proposal requires that the auditor's report be provided to the CLEC at the same time as it is provided to Verizon (id. at 86).

The CLECs claim that Verizon's language does not properly implement the Triennial Review Order's "materiality" standard, which requires that the independent auditor find that a CLEC has failed to comply in all material respects with the service eligibility criteria (id., citing Triennial Review Order at ¶ 628; CCG Brief at 44). CCC states that Verizon recently proposed tariff pages that allow audit costs to be allocated based on whether there is material noncompliance as required by the Triennial Review Order (CCC Reply Brief at 48 n.121, citing Verizon New England M.D.T.E. Tariff 17, D.T.E. 05-36, Partial Suspension Order (March 23, 2005); Verizon Tariff Filing, TT 05-38, M.D.T.E. Tariff 17, Part B, Section 13.4.1.E.3-4 (dated April 19, 2005)).

The CLECs agree with Verizon that the Triennial Review Order requires that, if the auditor finds that a CLEC has failed the audit, the CLEC must reimburse Verizon for the cost

of the audit, and that, if the CLEC passes the audit, then Verizon must reimburse the CLEC for the CLEC's audit-related costs. However, CCC claims that Verizon's proposal regarding audit reimbursement is not symmetrical because, depending on the results of the audit, the CLEC would be required to reimburse Verizon within 30 days of receiving the audit costs, whereas Verizon would be required to reimburse the CLEC within 30 days of the auditor's verification following a CLEC's submittal to the auditor of its out-of-pocket audit related costs (CCC Brief at 87, citing Verizon Amendment 2, § 3.4.2.7). CCC proposes that Verizon reimburse CLECs within 30 days of receiving the audit costs (id., citing Triennial Review Order at ¶ 628).

CCC claims that Verizon's proposal to keep books and records for 18 months after an EEL arrangement is terminated is unreasonably long, unduly burdensome, and has no basis in the Triennial Review Order (id. at 87-88, citing Verizon Amendment 2, § 3.4.2.7). CCC also claims that while it has the duty to maintain appropriate documentation when an EEL is in service, it no longer has that responsibility when an arrangement has been terminated since those facilities can no longer be audited (CCC Reply Brief at 48). Moreover, CCC contends that Verizon's plan to convert noncompliant circuits without CLEC consent contradicts the Triennial Review Order, which requires that the carrier convert the circuits (CCC Brief at 88, citing Verizon Amendment 2, § 3.4.2.2; Triennial Review Order at ¶¶ 623 n.1900, 627 (explaining that ILECs should not "engage in self-help")).

3. Analysis and Findings

a. Service Eligibility Certification

The FCC's service eligibility criteria for EELs is set forth in 47 C.F.R. § 51.318 and states that ILECs must provide EELs to a requesting carrier if the carrier certifies that:

> (1) The requesting telecommunications carrier has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.
>
> (2) The following criteria are 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:
>
> > (i) Each circuit to be provided to each customer will be assigned a local number prior to the provision of service over that circuit;
> >
> > (ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;
> >
> > (iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit;
> >
> > (iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;
> >
> > (v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of paragraph (d) of this section;
> >
> > (vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and

> (vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic.

47 C.F.R. § 51.318(b)(1).

In the Triennial Review Order, the FCC adopted a "self-certification" requirement for carriers to satisfy the service eligibility criteria. Triennial Review Order at ¶ 623. In addition, although the FCC did not "specify the form for such a self-certification", it indicated "that a letter sent to the incumbent LEC by a requesting carrier is a practical method." Id. at ¶ 624. Verizon's proposed amendment requires that CLECs certify in writing that carriers comply with the FCC's service eligibility criteria and that the written certification:

> [C]ontain 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.

(Verizon Amendment 2, §§ 3.4.1.1, 3.4.2.1, 3.4.2.3).

We agree with the CLECs that the FCC adopted a procedure that "entitl[es] requesting carriers unimpeded UNE access based on self-certification, subject to later verification based upon cause" through an audit (see AT&T Reply Brief at 19 (emphasis omitted), citing Triennial Review Order at ¶¶ 622, 625-29 (discussing audit requirements)). Verizon's proposed language amounts to a pre-audit requirement, in that CLECs would need to provide

up-front the same information that would be provided during an audit. Under Verizon's proposal, there would be no need for "later verification" through an audit. In adopting a simple, straightforward self-certification process, the FCC stated that "[a] critical component of nondiscriminatory access is preventing the imposition of any undue gating mechanisms that could delay the initiation of the ordering or conversion process." Triennial Review Order at ¶ 623. Thus, the FCC intended that CLECs simply certify in a letter to the ILEC that it meets the FCC's service eligibility requirements. We find that backup information, of the type Verizon would require, need only be provided at the time of an audit. We remind the parties that they have a duty of good faith and fair dealing under the agreements, requiring that when CLECs submit their certification, they know, in fact, that each requirement of 47 C.F.R. § 51.318 is met.[59]

However, contrary to the CLECs arguments, the FCC was clear that certification must be made on a "circuit-by-circuit basis, so each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria." Triennial Review Order at ¶ 599. The FCC stated that a "circuit-specific approach rather than a customer-specific one prevents gaming, so the qualification of one DS1 EEL to a customer does not qualify other DS1 EELs

---

[59] "Certification" in this context is an attestation that the regulatory requirements spelled out by the FCC in the Triennial Review Order have been satisfied: namely, that the certifier has determined, through reasonably diligent enquiry (not by mere surmise or guesswork), that there are sufficient and true facts to warrant certification on each item spelled out by the FCC in its orders. See Black's Law Dictionary 124, 220 (7th ed. 1999) ("attest"; "certification"; "certify"). As noted above, the contracting parties, both ILEC and CLEC, do owe each other a duty of good faith and fair dealing in the discharge of this contractual obligation. Cf. G.L. c. 106, § 1-201(19) ("Good faith" means honesty in fact in the conduct or transaction concerned).

to that customer." Id. at ¶ 599. Although we interpret the Triennial Review Order as allowing CLECs to certify multiple circuits in a single letter to Verizon, rather than having to submit separate letters for each circuit, the FCC's circuit-by-circuit requirement rules out batch certifications (i.e., submitting a letter certifying compliance generally, without identifying specific circuits). In addition, because the FCC stated that "[t]he eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past," we interpret the Triennial Review Order as requiring re-certification for existing EELs, and, as with new orders, the certification must be circuit specific. Id. at ¶ 589.[60] The eligibility that AT&T claims has already been established (see AT&T Brief at 72), is eligibility under the old safe harbor rules. Because the new service eligibility criteria are significantly different from the requirements under the old rules, and because circuits that qualified under the former rules may not qualify under the new rules, it is only logical that the FCC would require re-certification.

Verizon's proposed language allows Verizon to reprice existing circuits to alternative arrangements if CLECs do not re-certify in writing "for each DS1 circuit or DS1 equivalent within 30 days of the Amendment Effective date" (Verizon Amendment 2, §§ 3.4.2.1, 3.4.2.2). The Triennial Review Order does not establish a re-certification deadline, but we find Verizon's deadline to be reasonable, given that the certification process is simple to

---

[60] The FCC further stated that pending orders for conversions made before the effective date of the Triennial Review Order would be eligible for EELs pricing under the safe harbor rules up to the effective date of the Triennial Review Order. Triennial Review Order at ¶ 589.

comply with, even for carriers re-certifying large numbers of circuits. We also note that no CLECs proposed an alternative deadline.

b. Audits

Under the Triennial Review Order, if an ILEC questions a CLEC's certification, the ILEC cannot resort to self-help and withhold the facilities; instead, as noted above, the FCC established limited audit rights for ILECs. Triennial Review Order at ¶ 623 n.1900 ("an incumbent LEC that questions the competitor's certification may do so by initiating the audit procedures"). The FCC gave ILECs the right to "obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria." Id. at ¶ 626. The audit must be conducted according to the standards of the American Institute for Certified Public Accountants, and the independent auditor must determine "whether the competitive LEC complied in all material respects with the applicable service eligibility criteria." Id. (footnote omitted). The FCC stated further that:

> To the extent the independent auditor's report 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 circuits to the appropriate service, and make the correct payments on a going-forward basis . . . [and] must reimburse the incumbent LEC for the cost of the independent auditor.

Id. at ¶ 627. On the other hand, if "the independent auditor's report 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." Id. at ¶ 628. Additionally, while the FCC did not establish detailed recordkeeping requirements for use

during audits, the FCC stated that it "expect[s] that requesting carriers will maintain the appropriate documentation to support their certifications." Id. at ¶ 629.

Concerning the parties' disagreement over the term "annual," we agree with Verizon that the FCC contemplated a calendar year. The FCC did not specifically state in the Triennial Review Order whether the annual audit requirement was based on a calendar year or a 12-month period. However, the Department can look for guidance to the FCC's safe harbor auditing requirements, established in the Supplemental Order Clarification. As noted by the FCC in the Triennial Review Order, the annual audit requirement under the previous safe harbors' audit rules was based on a calendar year. Id. at ¶ 622, citing Supplemental Order Clarification at ¶ 31. The FCC stated in the Triennial Review Order that the audit rules that it adopted were "comparable" to those in the Supplemental Order Clarification. Id. Therefore, it is reasonable to conclude that the FCC would use the same time period in the Triennial Review Order. Moreover, we are persuaded by Verizon's arguments that there are ample incentives for Verizon to not abuse its audit rights by conducting one audit at the end of the year and another audit at the start of the next calendar year. Indeed, the FCC stated that in requiring ILECs to reimburse CLECs for their audit costs where the auditor finds compliance in all material respects, that it "expect[s] that this reimbursement requirement will eliminate the potential for abusive or unfounded audits." Id. at ¶ 628.

Verizon's proposed audit language contains a standard for CLEC "compliance in all material respects with the service eligibility criteria applicable to High Capacity EELs" (Verizon Amendment 2, § 3.4.2.7). In cases where the auditor concludes that the CLEC was

not in compliance, Verizon's language would require that CLEC to reimburse Verizon for the entire cost of the audit within 30 days after receiving a statement of costs from Verizon (id.). If the CLEC was shown to be in compliance with the service eligibility criteria, then it "shall provide to the independent auditor for its verification a statement of [the CLEC's] out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then reimburse [the CLEC] for its out-of-pocket costs within thirty (30) days of the auditor's verification of the same" (id.). In addition, Verizon's language would require CLECs to "maintain records adequate to support its compliance" for a minimum of 18 months following the termination of the service arrangement in question (id.).

Contrary to the CLECs arguments, we find that Verizon's language on the auditors standard of "compliance in all material respects" tracks nearly verbatim the FCC's wording in the Triennial Review Order. Triennial Review Order at ¶ 626. The FCC stated that "the independent auditor's report will conclude whether the competitive LEC complied in all material respects with the applicable service eligibility criteria." Id. (emphasis added). The Department does not need to determine whether the standard is "perfection" (see AT&T Reply Brief at 22). Furthermore, as the FCC noted, "materiality" is an accounting concept, which the independent auditor will have the responsibility to apply.

In addition, we find Verizon's reciprocal provisions concerning reimbursement of audit costs generally to be reasonable. The reimbursement deadlines should not be the same because the circumstances are not the same. Verizon's costs of the audit are quickly and easily verified by the CLEC, simply by obtaining that information from the auditor. On the other hand, a

CLECs' costs must be compiled and then verified by the auditor to ensure their appropriateness. These tasks take time to complete and to expect Verizon to reimburse a CLEC within 30 days of the auditor's report is unrealistic. However, to ensure that a CLEC's reimbursement is not unduly delayed while the auditor verifies the CLEC's costs, we require Verizon to reimburse CLECs within 60 days from the date of the CLEC's submission of costs to the auditor.

As noted above, the FCC did not establish specific recordkeeping requirements but rather stated that "we do expect that requesting carriers will maintain the appropriate documentation to support their certifications." Triennial Review Order at ¶ 629. Looking again to the Supplemental Order Clarification for guidance, the FCC stated its expectation that "requesting carriers will maintain appropriate records . . . to support their local usage certification," but "emphasize[d] that an audit should not impose an undue financial burden on smaller requesting carriers that may not keep extensive records." Supplemental Order Clarification at ¶¶ 31-32. Thus, the FCC found that "in the event of an audit, the incumbent LEC should verify compliance for these carriers using the records that the carriers keep in the normal course of business." Id.

The FCC clearly stated that certification-related record keeping should not place an undue financial and administrative burden on CLECs, including smaller CLECs, but, as the tradeoff for streamlined self-certification, the FCC also made clear that CLECs have the burden of demonstrating their compliance with the service eligibility criteria if an ILEC challenges the certification via an audit. Triennial Review Order at ¶¶ 625-29. Accordingly,

the Department finds that Verizon's requirement that CLECs maintain records for at least 18 months after the EEL is terminated is reasonable. CLECs need to maintain records for at least a year after an arrangement is terminated, in order for an ILEC to conduct its annual audit at the end of the year on circuits that were terminated at the start of the year. Under this scenario, an additional six months to complete the audit is reasonable. Therefore, we adopt Verizon's 18 month recordkeeping proposal.

Lastly, Verizon's Amendment allows Verizon to reprice noncompliant facilities if a CLEC does not convert those facilities to wholesale services (Verizon Amendment 2, § 3.4.2.2). This, CCC contends, violates the FCC's determination that the CLEC must convert the noncompliant circuits following an audit finding of noncompliance. See Triennial Review Order at ¶ 627. We disagree. Verizon is simply implementing the FCC's requirement that, in addition to converting noncompliant circuits and reconciling past charges, CLECs "make the correct payments on a going forward basis." Id.

c. Implementation Date for New Rules

In the Triennial Review Order, the FCC "eliminat[ed] the commingling restriction that the [FCC] adopted as part of the temporary constraints in the Supplemental Order Clarification and applied to stand-alone loops and EELs." Triennial Review Order at ¶ 579. In addition, although some conversions were permitted under the safe harbor rules, in the Triennial Review Order the FCC adopted definitive conversion rules. Id. at ¶¶ 586, 590; 47 C.F.R. § 51.316; see also Supplemental Order Clarification at ¶¶ 5, 21-23. Further, as noted above, the FCC

adopted new service eligibility rules for high capacity EELs. Triennial Review Order at ¶¶ 590-611; 47 C.F.R. § 51.318.

We agree with Verizon that the FCC's new rules for conversions and commingling constitute a change of law. Because the Triennial Review Order declined to override existing contracts to order automatic implementation of its rules as of a date certain, the date the new rules take effect is the effective date of the Amendment for those carriers with agreements that require negotiation and, if necessary, arbitration to implement changes of law. Triennial Review Order at ¶ 701. However, for those carriers that have "self-executing" agreements that do not require negotiation or arbitration to implement changes of law (see discussion in Section IV, supra), Verizon was obligated to provide conversions, commingling and combinations on October 2, 2003, the effective date of the Triennial Review Order.[61]

d. Charges for Commingling and Conversions

In its proposed amendment, Verizon states that "a nonrecurring charge will apply for each UNE circuit that is part of a commingled arrangement . . . to offset Verizon's costs of implementing and managing commingled arrangements" (Verizon Amendment 2, § 3.4.1.1). In addition, Verizon proposes language which states that "[t]he charges for conversions are as specified in the Pricing Attachment to this Amendment and apply for each circuit converted" (id. at § 3.4.2.4). Verizon also proposes that if a conversion-related "change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as

---

61 Verizon was also obligated to provide Routine Network Modifications to such CLECs beginning on that date.

specified in the Pricing Attachment" (id. at § 3.4.2.5). Verizon Pricing Attachment lists four commingling-related non-recurring charges and three conversion-related non-recurring charges (id., exh. A at 2).[62] Although Verizon initially proposed rates for these services, Verizon notified the Department and parties that it no longer intended to litigate in this proceeding its newly-proposed rates, including the commingling and conversion charges, because it could not comply at that time with the Department's directive to file a Massachusetts-specific TELRIC cost study (Letter from Bruce P. Beausejour at 2 (Mar. 1, 2005)). Verizon stated that it would submit its cost study and proposed rates for the new charges with its next comprehensive TELRIC case, and that until those rates are approved, Verizon stated that it would not charge CLECs for the services (id.). Because Verizon has withdrawn the charges from review in this proceeding, there is no need to address these rate issues in this proceeding. We will do so at the time that Verizon proposes specific changes in its next UNE rate case.

e. Completion Date of Conversions for Billing Purposes

We agree with Verizon that billing for a conversion should begin after the conversion work is completed. However, the parties have left the Department with an insignificant record on how long conversions take to complete. We expect that the New York Carrier Working Group ("CWG") will address conversion intervals at some time in the near future, but until it

---

62 The Pricing Attachment includes rates for the following services: Commingling Arrangement - Service Order, Commingling Arrangement – Installation (no prem visit), Commingling Arrangement - Installation (with prem visit), Commingling Arrangement - Manual Intervention Charge; and Conversion - Service Order, Conversion - Installation per circuit, Circuit Retag - per circuit (Verizon Amendment 2, Exh. A at 2).

does, the Department must fashion an interim interval in order to ensure that conversions are performed in an expeditious manner, as required by the FCC. Triennial Review Order at ¶ 588. Currently, under Tariff 17, "[w]hen a CLEC has requested conversion of a special access service to an EEL arrangement, EEL rates will be effective no later than 30 business days following the start of the conversion process." Verizon M.D.T.E. No. 17, Part B, § 13.5.1.3; see also D.T.E. 98-57 Phase 1-B at 21-22 (2001). The Department finds this conversion interval to be a reasonable interim standard. Thus, the Amendment must reflect that new rates for conversions will be effective no later than 30 business days after the CLEC submits its order and certification.

f. Separating or Altering Facilities during Conversions

The CLECs point to 47 C.F.R. § 51.315(b) to support its argument that Verizon may not physically disconnect, separate, change, or alter existing facilities when it performs conversions, unless requested to do so by the CLEC. That rule states that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b). Section 51.315, however, addresses rules for combinations, not conversions, so it is not relevant to this issue. Thus, the FCC does not expressly prohibit an ILEC from making changes to facilities during the conversion process. Because the FCC has not clearly spoken on this subject, we will continue our longstanding practice of allowing Verizon to manage its own network in the manner that it regards most appropriate, so long as Verizon does not abuse that discretion by treating CLECs anti-competitively and "affect[ing] the customer's perception of service quality." Triennial

Review Order at ¶ 586. The Department will not hesitate to take action should that occur. Moreover, Verizon indicates that any physical changes to facilities would be the exception rather than the rule, and without this flexibility, CLEC orders would be delayed.

g. Excluding Conversions from Provisioning Standards

Verizon's proposed Amendment states: "Verizon may exclude its performance in connection with the provisioning of commingled facilities and services from standard provisioning intervals and from performance measures and remedies, if any, contained in the Amended Agreement or elsewhere" (Verizon Amendment 2, § 3.4.1.1). In addition, Verizon Amendment 2, § 3.4.2.6 states "[e]ach [conversion] request will be handled as a project and will be excluded from all ordering and provisioning metrics." It is unclear whether existing performance measures and remedies account for commingling and conversions. It is reasonable for Verizon to exclude them from existing standards, until the CWG and the NYPSC develop specific metrics and performance remedies for these activities or include them in existing metrics for these new tasks.

h. Combining/Commingling UNEs with Section 271 Elements

In its proposed Amendment, Verizon limits the wholesale services that may be commingled with UNEs to "Qualifying Wholesale Services," which it defines as "wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement" (Verizon Amendment 2, § 3.4.1.1). This language excludes elements or facilities obtained under other sources of law, such as § 271, the BA/GTE Merger Conditions, or state law.

N. Issue 18 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?

1. Positions of the Parties

a. Verizon

Verizon argues that, to the best of its knowledge, ILECs are not reverse collocating local switching equipment in CLEC central offices "anywhere in the real world," and that Verizon itself has no plans to reverse collocate local switching equipment in any CLEC central office in Massachusetts (Verizon Brief at 111). Verizon contends that the only reverse-collocated ILEC equipment that triggers the obligation to unbundle the transmission path back to the ILEC wire center is local switching equipment with line-side functionality[74] (Verizon Reply Brief at 53). Verizon argues that the Amendment should not contain any reference to this hypothetical arrangement (Verizon Brief at 111).

b. AT&T

AT&T argues that the Amendment should include the requirement to unbundle the transmission path between an ILEC wire center and ILEC switching equipment collocated in a CLEC premise (AT&T Brief at 59).

---

[74] The line-side of the switch connects to the local loop.

c. CCG

CCG argues that the Amendment should define Dedicated Transport to include the transmission path between an ILEC wire center and the ILEC switching equipment reverse collocated at a CLEC premise (CCG Brief at 38). CCG argues that Verizon has presented no evidence that it does not reverse collocate switching equipment at CLEC premises, and further argues that even if Verizon does not engage in reverse collocation now it may do so in the future (CCG Reply Brief at 52). CCG argues that the Amendment must account for all changes in law resulting from the Triennial Review Order and Triennial Review Remand Order, and must therefore include reverse collocation arrangements in its definition of Dedicated Transport (id. at 52-53).

d. CCC

CCC argues that Verizon is required to provision dedicated transport between Verizon switches or other equipment that is reverse collocated at non-Verizon premises, including but not limited to collocation hotels (CCC Brief at 68). CCC argues that Verizon's unbundling obligation is not limited to only those arrangements where an ILEC has reverse collocated local switching equipment, but includes multiplexing equipment and interconnection equipment (id. at 68, 69). CCC argues that, in defining reverse collocation, the FCC incorporated into the definition of dedicated transport eligible for unbundling the installation of ILEC equipment at the premises of a CLEC or any other entity not affiliated with that ILEC regardless of whether the ILEC has a cage (see id. at 69, citing Triennial Review Order at ¶ 605 n.1843).

2. Analysis and Findings

The sections of the Triennial Review Order cited by CCC involve a discussion of service eligibility criteria for EELs, not dedicated transport. Triennial Review Order at ¶ 605. Although the FCC incorporated reverse collocation in the collocation prong of the FCC's service eligibility test, the FCC did not incorporate equipment other than line-side switching facilities into its definition of ILEC wire centers for the purpose of dedicated transport. See Triennial Review Remand Order at ¶ 87 n.251. Therefore, CCC's attempt to expand the universe of qualifying reverse collocation arrangements to include situations where ILECs collocate equipment other than switches must fail.

Verizon argues that the Amendment does not need to contain any reference to ILEC reverse collocation, because Verizon does not reverse collocate any local switching equipment on CLEC premises now, and has no plans to do in the future (see Verizon Brief at 111). Although a qualifying reverse collocation arrangement may be only hypothetical now, the obligation to unbundle dedicated transport in the event of a qualifying reverse collocation is not hypothetical. In defining "wire center" for the purpose of unbundled dedicated transport, the FCC expressly included "any incumbent LEC switches with line-side functionality that terminate loops that are 'reverse collocated' in non-incumbent LEC collocation hotels." Triennial Review Remand Order at ¶ 87 n.251. Therefore, we determine that it is reasonable for the Amendment to include reverse collocation arrangements (defined as ILEC local switching equipment with line-side functionality collocated at non-incumbent LEC premises) as potential qualifying wire centers in the definition of Dedicated Transport. Because no

qualifying reverse collocation arrangements currently exist, any reference to reverse collocation in the Amendment serves only as a placeholder to obviate the need for additional changes to the Amendment in the event that Verizon ever does deploy a qualifying reverse collocation arrangement.

O. Issue 19 What obligations, if any, with respect to interconnection facilities should be included in the Amendment to the parties' interconnection agreements?

1. Positions of the Parties

a. Verizon

Verizon argues that CLECs' rights to interconnection facilities were not changed by either the Triennial Review Order or the Triennial Review Remand Order, and that it is therefore unnecessary and improper to consider any amendment to the parties' agreements concerning interconnection facilities in this arbitration (Verizon Brief at 112).

b. CLECs

The CLECs argue the Amendment should reflect the Triennial Review Remand Order's finding that interconnection facilities (including but not limited to tandem switching and certain types of transport) established for the transmission and routing of telephone exchange service and exchange access are interconnection facilities that are available to CLECs at TELRIC prices (AT&T Brief at 61, 62; CCG Brief at 38, 40; CCC Brief at 70).

2. Analysis and Findings

In the Triennial Review Order at ¶ 366, and the Triennial Review Remand Order at ¶ 140, the FCC stated that its finding of non-impairment for entrance facilities did not alter the FCC's prior determinations concerning interconnection facilities. The FCC made no findings, clarifications, or statements in the Triennial Review Order or Triennial Review Remand Order that changed the parties' pre-existing rights and responsibilities concerning interconnection facilities. As no change resulted from the Triennial Review Order or Triennial Review Remand Order, it is unnecessary to litigate any change in language in this proceeding, and it is unnecessary for the parties to amend their agreements with respect to interconnection facilities.

P. Issue 21 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? May Verizon impose separate charges for Routine Network Modifications?

1. Introduction

In its Amendment 2, Verizon proposed language that it claims properly implements the new rules from the Triennial Review Order that require ILECs to perform routine network modifications ("RNMs") when provisioning loops and dedicated transport for CLECs (Verizon Brief at 125). In addition, Verizon proposed rates and charges for the RNMs in the Pricing Attachment to its Amendment (see Verizon Amendment 2, Exh. A). The CLECs argue that

backbill CLECs for RNMs and other activities that it provides to CLECs once rates are approved by the Department for those services.

X.	Supplemental Issue 1	Should the Agreement identify the central offices that satisfy the FCC's criteria for purposes of application of the FCC's loop unbundling rules?
	Supplemental Issue 2	Should the Agreement identify the central offices that satisfy the Tier 1, Tier 2 and Tier 3 criteria, respectively, for purposes of application of the FCC's dedicated transport unbundling rules?
	Supplemental Issue 3	Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?

1. Introduction

In the Triennial Review Remand Order at ¶¶ 66, 146, the FCC established specific criteria to determine whether high-capacity loops and dedicated transport must be unbundled under § 251(c)(3). The CLECs propose that the Department arbitrate whether particular central offices meet the FCC's unbundling criteria for high-capacity loops and transport, and include in the Amendment a Department-approved list of the specific central offices that are exempt from unbundling of loops and transport. The CLECs also propose that the process, along with related supplemental provisions, be incorporated into the interconnection agreement. Verizon, however, is opposed to litigating this issue and to the inclusion of any list of exempt wire centers. Verizon argues that the FCC established a complete, self-effectuating process for CLECs to order and obtain access to UNE loops and transport consistent with its

new unbundling rules, and, thus, no amendment to the existing interconnection agreements is necessary.

2. Positions of the Parties

a. Verizon

Verizon states that the FCC established the process that parties should follow to implement the limitation on unbundling of high-capacity facilities and dedicated transport (Verizon Reply Brief at 19, citing Triennial Review Remand Order at ¶ 234). Verizon contends that, under that process, a CLEC must conduct a reasonably diligent inquiry and self-certify that it is entitled to unbundled access to the requested facilities under the Triennial Review Remand Order criteria, whereupon Verizon must provision the requested facilities (id.). Verizon notes that if it wishes to challenge an order from a CLEC for high-capacity loops or dedicated transport, Verizon must raise that dispute in the manner the FCC prescribed (id. at 20).

Verizon argues that there is no need to litigate in advance the question of whether particular central offices meet the FCC's unbundling criteria, because the FCC has already taken steps to ensure that CLECs are adequately informed as to which ILEC wire centers satisfy the various criteria established in the Triennial Review Remand Order (Verizon Brief at 143). Specifically, Verizon notes that the FCC required all RBOCs, including Verizon, to file lists of wire centers that satisfy the Triennial Review Remand Order criteria and that Verizon has provided back-up documentation supporting its list (id., citing Verizon Ex Parte, from Susanne G. Geyer to Marlene H. Dortch, Unbundled Access to Network Elements, WC

Docket No. 04-313; Review of Section 251 Unbundling Obligations for Incumbent LECs, CC Docket No. 01-338 (Feb. 18, 2005)). Verizon also states that, if and when additional central offices qualify for relief, it will promptly notify CLECs (Verizon Brief at 145). Verizon suggests that if specific issues arise, those issues should be litigated on an individual carrier- and individual central office-basis as ordered by the FCC (id. at 143-44, citing Triennial Review Remand Order at ¶ 234). Verizon further states that any concerns regarding accuracy of its data can be handled by the requesting CLEC signing a non-disclosure agreement at which time Verizon will provide the requesting CLEC with back-up data (id. at 145).

Additionally, Verizon argues that the Triennial Review Remand Order does not require the Department to insert new terms into the parties' interconnection agreements to govern the ordering of high-capacity loops and dedicated transport, nor does the Triennial Review Remand Order entitle CLECs to such terms (id. at 145). In support of its argument that the process is intended to be implemented without amendment of interconnection agreements, and that negotiation is optional, Verizon points to the FCC's reference to its UNE-ordering system as a "default process" and its statement that carriers remain free to negotiate alternative arrangements (id. at 146).

Furthermore, Verizon argues that the CLEC proposals to freeze in place an initial list of impaired wire centers and to limit Verizon's ability to make changes to the list imposes UNE obligations that exceed and conflict with those imposed under federal law (id. at 147-48). Verizon contends that, after it has complied with the Amendment's proposed notice provision,

Verizon must be allowed to cease providing access to high-capacity loops and dedicated transport once those facilities qualify for unbundling relief (id. at 147).

Finally, Verizon claims that, while it is under no obligation to insert any provisions in the Amendment identifying non-impaired wire centers or establishing a UNE-ordering system, the CLECs' supplemental proposals are inconsistent with the Triennial Review Remand Order and the FCC's new rules (id. at 148). For example, Verizon argues that CCC's proposal to extend the high-capacity loop and dedicated transport ordering process to any network element is beyond the FCC's intended scope of application (id., citing CCC TRRO Amendment, § 8.1). Verizon further argues that CCC's proposal that would entitle a CLEC to satisfy its "reasonably diligent inquiry" obligation by relying on the absence of Verizon notice of Verizon's belief that a request for a particular network element is "inconsistent with the Amended Agreement" incorrectly identifies the amended agreement, rather than the Triennial Review Remand Order, as the relevant point of reference and inappropriately relieves CLECs of the obligation to conduct a reasonably diligent inquiry (id. at 149, citing CCC TRRO Amendment, § 8.2). Verizon argues that CCC's proposal prohibits Verizon from rejecting or delaying orders for reasons unrelated to whether the FCC's unbundling criteria are met, such as overdue accounts and unavailability of facilities (id.).

Verizon maintains that CCG's proposal requiring Verizon to provision facilities despite prior failures of such facilities to meet the relevant service eligibility criteria is contrary to the FCC's holding that once a wire center satisfies the no impairment standard, an ILEC is no longer required to unbundle facilities in that wire center (Verizon Brief at 149-50, citing CCG

TRRO Amendment, § 3.10.1 and Triennial Review Remand Order at ¶ 167 n.466). Finally, Verizon argues that the Triennial Review Remand Order does not grant CLECs rights to Verizon's data, and that the data requirements proposed by CCG, such as real-time access to data regarding the number of fiber collocators and business lines and back-up data, are onerous (id. at 150).

b. AT&T

AT&T argues that the Department should ascertain whether Verizon has correctly identified the wire centers in which it seeks to eliminate its obligations to provide access to high-capacity loops and dedicated transport (AT&T Brief at 20, 28, 89-90). AT&T argues that, absent verification by the Department, it would be extremely difficult for AT&T and other CLECs to engage in a comprehensive and accurate verification of the data and its application, and, given the significance of such identification, it is very important that CLECs and this Department have confidence that Verizon has properly applied the FCC's criteria (id. at 20-21). AT&T further states that neither the Department nor any other party has access to the data that Verizon has relied on in compiling its list of non-impaired wire centers, and only if the Department orders Verizon to produce the data for Department and CLEC review will Verizon have the legitimacy necessary to implement the Triennial Review Remand Order (id. at 21). AT&T further notes that under the Triennial Review Remand Order, once the wire centers are verified, Verizon will not be required in the future to unbundle those elements (id.).

Moreover, AT&T claims that the FCC's process to resolve disputes regarding wire center designations could impose a burden on the Department's resources and produce inconsistent outcomes in different proceedings (id. at 21-22, 89-90). AT&T argues that it would be more efficient to conduct, as part of this proceeding, a generic inquiry into the wire centers identified by Verizon (id. at 22). Additionally, AT&T suggests that the interconnection agreements should reflect that, to the extent wire center designations change in the future, Verizon should be obligated to provide a transition period (id. at 22-23). AT&T argues that although the Triennial Review Remand Order's transition plan for high-capacity loops and transport no longer subject to unbundling only applies to a CLEC's embedded base, a transition plan is warranted, because the same concern for avoiding customer disruption exists when a wire center is reclassified (id.).

Finally, AT&T maintains that the wire center designations, after verification by the Department, should then be incorporated in the interconnection agreement (id. at 88). AT&T also argues that the designations should apply for the term of the carriers' interconnection agreement (id.). AT&T states that this approach is consistent with the FCC's rationale behind establishing a permanent wire center classification (id. at 88-89, citing 47 C.F.R. § 51.319(a)(4), (a)(5), (e)(3)(i), (ii)).

c. CCG

CCG argues that the Amendment must include the complete unbundling framework ordered by the FCC for high capacity loops and dedicated transport that Verizon is no longer obligated to provide under § 251(c)(3) of the Act, including a comprehensive list of Verizon

wire centers that satisfy the FCC's requirements for unbundling relief (CCG Brief at 53; CCG Reply Brief at 78). CCG contends that the FCC's unbundling criteria must be implemented through amendment to the parties' existing interconnection agreements in accordance with § 252, which, according to CCG, necessarily includes a schedule or other exhibit which identifies the Verizon wire centers and routes for which unbundling relief has been granted (CCG Brief at 53). Lastly, CCG argues that the Amendment must include a provision for dispute resolution to ensure that the information relied on by Verizon is adequate under the FCC's rules (id. at 54).

d. MCI

MCI maintains that the Department should decide in this proceeding which wire centers should be included in the list of wire centers where Verizon no longer has obligations to provide unbundled access to high capacity loops or dedicated transport (MCI Brief at 21). MCI states that its proposed language also provides for a process for updating the list, granting MCI reasonable discovery rights and submitting disputes about the updates to the Department for resolution (id.).

e. Conversent

Conversent argues that the carrier-to-carrier, central office-to-central office litigation proposed by Verizon would be duplicative in the extreme, consuming vast and unnecessary amounts of the Department's and parties' time and resources (Conversent Reply Brief at 11-12). Pointing to Verizon's corrections to its wire center lists in New York and Maine, Conversent questions the accuracy of Verizon's lists (id. at 12). Conversent notes that

the NYPSC required Verizon to tariff the list of non-impaired wire centers in New York while the New Hampshire Public Utilities Commission has opened a formal investigation into Verizon's wire center list (id.).

Conversent maintains that the list of wire centers satisfying the FCC's non-impairment criteria is objectively verifiable and that the Department can foster a greater level of certainty and efficiency if CLECs (and the Department) first scrutinize that list, investigate the methodology, and implement necessary refinements to derive a final list of wire centers that meet the FCC's criteria (Conversent Brief at 43). Conversent argues that Verizon's refusal to include a Department-approved list prevents the Department and CLECs from assessing the list's accuracy in a comprehensive and efficient manner (id. at 42). It also places, according to Conversent, the burden on CLECs to avoid all mistakes of judgment concerning whether particular UNEs are available in a given wire center (id. at 43). Conversent contends that a CLEC runs a substantial risk, including litigation,[84] when it places an order for a high-capacity loop in, or dedicated transport on a route to or from, a wire center on the list that Verizon unilaterally compiled, resulting in a chilling effect on a CLEC's willingness to order facilities

---

[84] Conversent states that in a March 1, 2005 letter, Verizon stated that it would deem any CLEC request to provide facilities in a Verizon-designated non-impaired wire center as a separate act of bad faith and a breach of the interconnection agreement that would result in litigation (Conversent Brief at 42). We note that although Conversent indicates Verizon's March 1, 2005 letter is attached as Appendix 12 to its Brief, Appendix 12 actually contains Verizon's February 10, 2005 letter. The March 1, 2005 letter referred to by Conversent was provided by other parties to this proceeding (see, e.g., CCC Brief, Exh. P), and appears to be a form letter issued industry-wide by Verizon.

if any question exists as to whether a wire center satisfies the FCC's non-impairment standard (id.).

Alternatively, Conversent argues that the Department should at least require inclusion of a mechanism by which the parties can determine at the outset of the contractual relationship the accuracy of Verizon's list and has proposed additional contract language to accomplish this (id. at 44-45; Conversent Reply Brief at 13-15, citing Conversent Amendment, § 3.8).

f. CCC

CCC maintains that the primary and fundamental purpose of an interconnection agreement is to clearly spell out the terms under which a CLEC may obtain UNEs and interconnection, and that the inclusion of clear and specific terms reduces the likelihood that disputes will be brought to the Department for resolution (CCC Brief at 122-23). CCC argues that the identification of wire centers is critical to a Triennial Review Remand Order Amendment because it will determine the parties' rights and obligations related to the affected UNEs (id. at 123).

Moreover, pointing to wire centers erroneously included in, and subsequently removed from, the wire center lists by Verizon, SBC, and BellSouth, CCC insists that the ILECs' lists are suspect (id.). CCC states that it would be unreasonable and contrary to the Triennial Review Remand Order for the Department to allow Verizon to impose its wire center lists for Massachusetts without any objective third-party scrutiny (id. at 124).

CCC further argues that, while the Triennial Review Remand Order's self-certification process affords CLECs some ability to challenge Verizon's designations, it cannot be relied

upon exclusively (id.). First, CCC notes that Verizon has threatened reprisal against CLECs that self-certify an order for a wire center on Verizon's lists (id. at 124-25). Second, CCC states that regardless of the propriety of Verizon's statements, CCC insists that the FCC did not intend for CLECs to place orders for UNEs as a fishing-expedition means of determining, through ad hoc dispute resolution, which wire centers meet the various FCC thresholds for non-impairment (id.). Finally, CCC maintains that there must be some reliable and timely process that assures that CLECs are able to make accurate determinations as to the eligibility of a wire center for unbundling and, whenever possible, that process needs to occur before the CLEC places an order for the UNE (id. at 125). Otherwise, argues CCC, CLECs could be faced with the choice of foregoing a customer or risk losing the UNE used to serve that customer after the dispute resolution process concludes (id.).

Additionally, CCC argues that an official list attached to the Amendment will avoid disputes over the effective date of any changes to the list, particularly for existing UNEs from newly designated wire centers, which, according to CCC, the Triennial Review Remand Order did not address (id. at 125-26). CCC maintains that the Department cannot approve terms that would allow Verizon to terminate its provisions of existing UNEs at a central office on the basis of some future update to Verizon's list (id. at 126).

Lastly, CCC disagrees with Verizon's claim that the self-certification process is self-effectuating and argues that Verizon's failure to propose any terms to implement the self-certification process is contrary both to the letter and to the effective implementation of the Act (CCC Reply Brief at 66, 68). CCC also maintains that supplemental terms are needed to

implement the FCC's process in the "real-world," because ¶ 234 of the Triennial Review Remand Order does not flesh out every detail needed for an effective process (id. at 67). CCC argues that the FCC specifically recognized that additional or alternative terms may be appropriate, and held that such terms are subject to § 252 negotiations (id.) CCC maintains that, whether or not the Department agrees with CCC's proposed solutions, the Department cannot give in to Verizon's demand to ignore the existence of these issues (id. at 68).

Specifically, to implement the self-certification process, CCC proposes additional terms that: (1) entitle a CLEC to rely on the absence of notice from Verizon of non-impairment for a particular wire center to satisfy a CLEC's "reasonably diligent inquiry" obligation; (2) clarify the form in which a CLEC can submit self-certification; (3) propose a 30-day time limit in which Verizon may invoke dispute resolution regarding a CLEC's eligibility to particular network elements; (4) apply the self-certification and dispute process to all UNEs, not just high-capacity loops and transport; (5) establish a process and transition terms to address what happens to existing UNEs already at a wire center when reclassified; and, (6) establish definitions that would be used by the CLEC in determining self-certification (CCC Brief at 126-28).

In response to Verizon's critique of the merits of CCC's proposed terms, CCC first argues that the need for a transitional proposal to address existing UNEs at a wire center that is reclassified is based upon the same reasons why CLECs need transition terms for UNEs eliminated in the future (CCC Reply Brief at 68). Second, CCC also states that a single, advance determination for all central offices would be more efficient than leaving the matter

for later dispute resolution (id. at 69). CCC adds that efficiency, however, is not the primary or only consideration, and that Congress' decision to implement the Act through individualized interconnection agreements reflects this fact (id.). Third, CCC disagrees with Verizon's argument that CLECs should be required to self-certify that their UNE requests are not inconsistent with the Triennial Review Remand Order, rather than CCC's proposed language that would require certification that requests are not "inconsistent with the Amended Agreement," which, according to CCC, is more consistent with the design of the Act (id. at 70). CCC argues that a certification of consistency with the Agreement would be at least as good to Verizon as a certification of consistency with the Triennial Review Remand Order (id.). Fourth, CCC acknowledges that its proposal to apply the self-certification process to all UNEs is not provided for in any FCC rule, but, CCC believes that it is a reasonable approach (id.). CCC states that if the Department disagrees, its proposal can easily be modified to be limited to high-capacity loops and dedicated transport, which CCC argues is a more warranted approach than acceptance of Verizon's proposal not to have contract terms that would apply self-certification to any UNE (id. at 71). Finally, CCC would agree to modify its language to address Verizon's point that the self-certification process would not override contract terms that may allow Verizon to reject a UNE order for reasons unrelated to unbundling eligibility, such as overdue accounts or unavailability of facilities (id.).

3. Analysis and Findings

While the FCC required all RBOCs, such as Verizon, to identify those wire centers which the ILEC believed satisfied the Triennial Review Remand Order's non-impairment

criteria, the FCC did not make findings as to whether each wire center on an RBOC's list in fact satisfied the FCC's non-impairment criteria. Accordingly, despite supporting documentation provided to the FCC, Verizon's list of wire centers filed with the FCC is not conclusive as to whether a particular wire center in fact satisfies the non-impairment criteria. Nevertheless, for the reasons outlined below, the CLECs' proposals to litigate the wire center designations and to incorporate a Department-approved wire center designation list into the Amendment are rejected.

The FCC's process for resolving disputes is more efficient than litigating the matter before an actual dispute arises. In the FCC's approach, a CLEC must undertake a reasonably diligent inquiry and self-certify that, to the best of its knowledge, its request is consistent with the FCC's requirements. Triennial Review Remand Order at ¶ 234. A CLEC's reasonably diligent inquiry should include a review of Verizon's list filed with the FCC and posted on Verizon's website; but, as stated above, that list is not conclusive as to whether the FCC's criteria have been met. A CLEC may also review Verizon's supporting data which Verizon has committed to provide once the parties sign a non-disclosure agreement. After its reasonably diligent inquiry, a CLEC may be satisfied that a wire center meets the FCC's non-impairment threshold and a dispute may never arise for the Department to resolve. The CLECs' proposal, however, would require us to resolve the matter as to each wire center on Verizon's list filed with the FCC before a dispute, if ever, arises. Committing our resources to this endeavor would be less efficient than waiting until an actual dispute, if any, arises.

Conversent characterizes the reasonably diligent inquiry requirement as burdensome and argues that, coupled with Verizon's March 1, 2005 letter, all the risks of an order are placed on the CLEC. The risk, however, is appropriate and, more importantly, the risk would not be eliminated by a Department-approved list of non-impaired wire centers. First, the possibility of losing the high-capacity loops and dedicated transport should Verizon prevail in a dispute over access ensures that a CLEC conducts a reasonably diligent inquiry. The FCC's process is not a "fishing expedition" where CLECs are blindly requesting access to high-capacity loops and dedicated transport. Rather, the reasonably diligent inquiry requirement requires a CLEC to take steps to verify that its request for access is consistent with the FCC's criteria. As Conversent states, the non-impairment designation is objectively verifiable, and a review of Verizon's supporting data would resolve the matter in many, if not all, cases. If the reasonably diligent inquiry requirement carried no risk to the CLEC, a CLEC could order high-capacity loops and dedicated transport in complete disregard for the FCC's impairment thresholds and render the reasonably diligent inquiry obligation meaningless. The FCC's process appropriately balances the risk associated with a request for access to high-capacity loops and dedicated transport. There is no basis or authority on the Department's part to contravene or deviate from the FCC's decision.

Secondly, a Department-approved list of non-impaired wire centers would only determine which wire centers meet the FCC's non-impairment thresholds at a given point in time. Additional wire centers may meet the FCC's thresholds and be exempt from unbundling in the future. If a CLEC requests access to loop or transport UNEs at a wire center not on the

Department-approved list, Verizon may still dispute access to those facilities. As such, the risk and uncertainty associated with an order for high-capacity loops or dedicated transport remains even if the Department were to litigate the wire center designations now.

Furthermore, the perceived risk associated with Verizon's March 1, 2005 industry letter does not support the CLECs' requests to litigate the wire center designations now. Regardless of Verizon's statements in that letter, a CLEC only needs to certify to the best of its knowledge that its request for access is consistent with the FCC's criteria,[85] and a review of Verizon's underlying data is not necessary for a CLEC to self-certify, unless the CLEC has the same data in its possession. But, a review of those data would minimize the risk associated with a CLEC's request for access, and, if a CLEC chooses not to review the underlying data before requesting access to high-capacity loops or dedicated transport, the CLEC must accept the greater risk and uncertainty associated with its request.

Whether or not a CLEC reviews the underlying data, the FCC's process requires Verizon to provision high-capacity loops and dedicated transport to a CLEC who has provided

---

85 In its March 2, 2005 industry letter, at 2, Verizon states that it will treat an order for high-capacity loop and dedicated transport UNEs as "a separate act of bad faith carried out in violation of federal regulations and a breach of [the CLEC's] interconnection agreement" absent "compelling evidence" that Verizon is required to unbundle the requested facilities. Verizon's requirement of "compelling evidence" is inconsistent with the Triennial Review Remand Order. The FCC clearly stated that a "requesting carrier seeking access to the UNE only certifies to the best of its knowledge and is unlikely to have in its possession all information necessary to evaluate whether the network element meets the factual impairment criteria in our rules." Triennial Review Remand Order at ¶ 234 n.659 (emphasis added). Verizon's letter, however, raises a legitimate issue as to whether a CLEC has satisfied its duty to undertake a reasonably diligent inquiry. That issue may be presented in a dispute brought by Verizon pursuant to the FCC's self-certification process.

the requisite self-certification before Verizon is permitted to dispute the matter. The ultimate burden to support the non-impairment designation lies with Verizon, not the CLECs. If Verizon prevails in dispute resolution, a CLEC will lose access to the network elements at issue. Under such circumstances, CLEC proposals for a transition period that would extend a CLEC's access to network elements to which the CLEC is determined not to be entitled goes too far, and is rejected. While CLECs compare such transition periods with those the FCC permitted for UNEs delisted by the Triennial Review Remand Order, the FCC specifically permitted transitions periods for only the embedded base of customers. See Triennial Review Remand Order at ¶¶ 142, 195, 226. There is no basis upon which to apply a transition period for UNEs provisioned beyond those provisioned to the embedded base.

Similarly, incorporation of a Department-approved list into the interconnection agreements could permit CLECs to continue to obtain unbundled access to high-capacity loops and transport at wire centers which, in the future, meet the FCC's criteria by freezing the list of wire center designations as of the effective date of the Amendment and by limiting Verizon's ability to update its non-impaired wire center list except on a periodic basis. Such continued access to non-impaired wire centers is inconsistent with the Act.

Additionally, under the CLECs' proposal, as additional wire centers meet the FCC's criteria, the Department would be asked to litigate and approve each additional wire center, and possibly to arbitrate amendments to interconnection agreements to add any additional wire centers to the non-impaired list in the interconnection agreements. The single generic proceeding proposed by CLECs would result in additional proceedings before the Department.

The FCC's UNE-ordering process, on the other hand, takes into account future changes to wire center designations and gives effect to any changes on a rolling basis. For the reasons stated above, the CLEC proposals to litigate Verizon's wire center designations are rejected.

We now turn to Verizon's argument that the FCC's process is self-effectuating and need not be incorporated into the interconnection agreements pursuant to § 252. We disagree with Verizon's interpretation of the FCC's statement that ILEC challenges to self-certification is a "default" process, and that carriers are free to negotiate alternative arrangements. See Triennial Review Remand Order at ¶ 234 n.660. Unless the carriers negotiate alternative arrangements, the FCC's "default" process itself constitutes a new process related to the new FCC rules regarding high-capacity loop and transport UNEs, which, as a whole, represents a change in law. With respect to changes in law, the FCC clearly stated that carriers "must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes." Triennial Review Remand Order at ¶ 233 (citations omitted). Nothing in the Triennial Review Remand Order exempts the FCC's self-certification process from implementation through the § 252 process. Accordingly, Verizon must implement the FCC's default self-certification process through the § 252 process.

The FCC's process, however, does not include all of the details necessary for an effective self-certification process. The FCC outlined its self-certification process in a single paragraph of the Triennial Review Remand Order and left open for carriers to determine, through negotiation and, if necessary, arbitration, the details necessary for effective

implementation. This conclusion is supported by the FCC's refusal to address the precise form certification must take. Triennial Review Remand Order at ¶ 234 n.658.

Moreover, incorporating the operational details of the self-certification process into the interconnection agreements reduces the potential for disputes over the process itself, e.g., disputes over the proper form of self-certification, and reserves the dispute process for substantive disputes pertaining to whether a particular wire center meets the FCC's criteria. Accordingly, for an effective process, supplemental terms should be incorporated into the interconnection agreement pursuant to § 252 of the Act.

Next, we address the supplemental terms proposed by CLECs and begin with CLEC proposals related to the reasonably diligent inquiry requirement. The FCC explicitly held that "to submit an order to obtain a high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry." Triennial Review Remand Order at ¶ 234 (emphasis added). Thus, CLEC proposals that seek to satisfy a CLEC's obligation to conduct a reasonably diligent inquiry, despite the CLEC's failure to undertake such inquiry, are inconsistent with the Triennial Review Remand Order and are rejected (see, e.g., CCC TRRO Amendment, § 8.2; Conversent Amendment, § 3.8.5).

Furthermore, the FCC explicitly required that, based upon the reasonably diligent inquiry, a CLEC must self-certify that its request for access is consistent with the requirements set forth in the Triennial Review Remand Order, not some other document. CCC's proposal identifying the Amended Agreement, rather than the Triennial Review Remand Order, as the

relevant point of reference for self-certifications, is therefore inappropriate (see CCC TRRO Agreement, § 8.1).

Additionally, because the FCC's non-impairment thresholds for the high-capacity loop and transport UNEs are based on the number of business lines and fiber-based collocators at a given wire center, the CLECs must refer to the these terms, and their definitions, in its reasonably diligent inquiry, as well as to the definitions for affiliate, route, and the FCC's classification of wire centers tier structure. As we have stated throughout this Order, our role as arbitrator in this proceeding is to implement the requirements imposed by the Triennial Review Order and the Triennial Review Remand Order. Therefore, it is consistent with this role to include in the Amendment new definitions arising from these FCC orders. But, the definitions must track the FCC's definitions.

For instance, some CLECs propose definitions for business line, fiber-based collocator, affiliate, wire center, route and Tier 1 and 2 wire centers which include supplemental provisions not found in the FCC's definitions or fail to incorporate accurately the FCC's definitions. Compare 47 C.F.R. Part 51.5 with CCG Amendment, §§ 2.2, 2.17, 2.36, 2.37; AT&T TRRO Amendment, §§ 2.1, 2.3; MCI Redline Amendment, § 12.7.19. Accordingly, we reject the CLECs' definitions for affiliate, business line, fiber-based collocator, wire center, and Tier 1 and Tier 2 wire centers that do no comport with the FCC's definitions. With regard

to CLECs' definitions for affiliate,[86] the CLECs' concerns regarding the announced merger between MCI and Verizon and its impact on wire center designations are minimized because wire center designations will not be litigated until a dispute arises.

Turning to supplemental terms for Verizon's production of back-up data to support its wire center designations, Verizon has committed to providing back-up data, provided that an appropriate non-disclosure agreement is executed (see Verizon Brief at 145). A review of Verizon's back-up data would provide greater certainty as to the availability of high-capacity loop and transport UNEs and may be a necessary part of a CLEC's reasonably diligent inquiry. To that end, terms incorporating Verizon's commitment to produce, subject to an appropriate non-disclosure agreement, back-up data to support its wire center designation are appropriate.

Additionally, the supplemental terms regarding the back-up data must clarify the specific data Verizon will provide, namely, the data sources upon which the FCC relied in making its impairment determinations in the Triennial Review Remand Order (i.e., ARMIS data and ILEC fiber-based collocation information). There is no basis to require data beyond that upon which the FCC relied. But, to eliminate unnecessary disputes resulting from self-certifications based on outdated data, the data sources must also be updated to the month in which a CLEC requests such data (see, e.g., CCG Amendment, § 3.10.2). As the FCC noted, ILECs already maintain these data sources for other regulatory purposes. Triennial Review

---

86 The CLEC proposed definitions of affiliate seek to qualify MCI as a Verizon-affiliated fiber-based collocator before the merger between Verizon and MCI finalizes (see e.g., CCC TRRO Amendment, § 2.1; Conversent Amendment, § 4.17.13; CCG Amendment, § 2.17). These definitions exceed the FCC's definition (see 47 C.F.R. Part 51.5, citing 47 U.S.C. § 153(1)) and are rejected.

Remand Order at ¶¶ 100, 105. An updated data requirement is also consistent with our decision to determine whether a given wire center meets the FCC's non-impairment criteria as disputes arise. Verizon provides nothing to support its claim that "real-time access" to the data sources is "onerous" nor is there anything in the Triennial Review Remand Order that would prohibit us from imposing an updated data requirement.

The last supplemental term relating to the reasonably diligent inquiry proposed by CLECs involves a 10-day time-frame for Verizon to provide back-up data (see CCG Amendment, § 3.10.2; Conversent Amendment, § 3.8.1.1). A CLEC relies on its review of the underlying data to make business decisions, e.g., whether access to facilities is available and, thus, whether or not to serve a particular customer. Thus, prompt production of the data is essential. A deadline provides additional guidance to the parties as to their rights and responsibilities and eliminates undue delay in the production of the data. Accordingly, the 10-day time limit is adopted.

Turning to the supplemental terms proposed by CLEC related to self-certifications, clarification of the form of self-certification is appropriate, because it would eliminate disputes as to whether the self-certification was properly submitted (see, e.g., CCG Amendment, § 3.10.1 (written or electronic notification sent to Verizon)). But, submission of an order, without more, would be inadequate (see, e.g., CCC TRRO Amendment, § 8.2). While the FCC did not address the precise form of certifications, the FCC requires it take some form, such as a letter. See Triennial Review Remand Order at ¶ 234 n.658. Once a CLEC self-certifies, we find it reasonable to impose a 30-day time limit for Verizon to dispute a CLEC's

self-certification in the event Verizon seeks retroactive repricing of the UNEs if Verizon prevails in the dispute (see CCC Brief at 128). The Triennial Review Remand Order does not specify a time limitation in which an ILEC may challenge a self-certification, but incorporation of a time interval provides guidance to the parties as to their rights and obligations. It will also prevent accrual of large retroactive bills if Verizon delays challenging a CLEC request for months or even years.

A time limitation on Verizon's right to invoke dispute resolution should not, however, prevent Verizon from discontinuing UNEs when a wire center is reclassified. If a wire center meets the FCC's non-impairment criteria (as determined by the Department or other appropriate authority) and is exempt from unbundling, Verizon must be permitted to discontinue previously provisioned UNEs. To require otherwise, would permit CLECs access to network elements without the requisite finding of impairment as required by the Act. To minimize disruption of service to end user customers if Verizon discontinues provisioning UNEs at a reclassified wire center, a notice period is appropriate to allow CLECs to make other arrangements. Many interconnection agreements already provide for specific notice periods in the event of discontinuation of facilities, and such notice periods would apply to UNEs to be discontinued due to a reclassified wire center. In the absence of such a notice requirement, incorporation of a 30-day notice requirement is appropriate.

We reiterate that Verizon's unilateral designation of a wire center is not evidence of whether a particular wire center in fact meets the FCC's non-impairment criteria. Verizon first must dispute the CLECs' access to UNEs and obtain a determination that the wire center in

question should be permanently reclassified. 47 C.F.R. § 51.319(e)(3). Once a wire center reclassification has been so determined, network elements provisioned in connection with that wire center may come to be no longer subject to unbundling pursuant to § 251 of the Act, and Verizon is then permitted, subject to the notice requirement, to discontinue provisioning those UNEs. CCG's proposal, which seeks to circumvent the FCC's holding relieving ILECs of unbundling obligations in a wire center that satisfies the FCC's non-impairment criteria, is rejected (see, CCG Amendment, § 3.10.1).

The final CLEC proposed supplemental provision relates to CCC's proposal to extend the FCC's mechanism for ordering high-capacity loop and transport UNEs to other UNEs (see CCC TRRO Amendment, § 8.1).[87] The FCC's ordering mechanism outlined in the Triennial Review Remand Order applied only to high-capacity loop and transport UNEs and, thus, CCC's proposal is beyond the scope of application of the FCC's self-certification process. Moreover, because this arbitration is limited to implementing the Triennial Review Order and the Triennial Review Remand Order, CCC's proposal to replace the current UNE ordering mechanisms in interconnection agreements with the ordering mechanism outlined by the FCC in the Triennial Review Remand Order for high-capacity loop and transport UNEs is beyond the scope of this proceeding, and is rejected.

---

[87] Because CCC agrees to modify § 8.3 of its TRRO Amendment to address Verizon's concern that the self-certification process should not override contract terms that may allow Verizon to reject a UNE order for reasons unrelated to unbundling eligibility, such as overdue accounts or unavailability of facilities (see Verizon Brief at 149), we determine that it is unnecessary to address this issue (see CCC Reply Brief at 71).