[Service Date September 22, 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. 18
With	)	
COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON	)	COMMISSION'S FINAL ORDER GRANTING, IN PART, AND DENYING, IN PART, VERIZON'S PETITION FOR REVIEW; DENYING AT&T'S PETITION FOR REVIEW; AFFIRMING, IN PART, AND MODIFYING, IN PART, ARBITRATOR'S REPORT AND DECISION
Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order	)	
. . . . .	)	

1 ***Synopsis.*** *In this Order, the Commission affirms the Arbitrator's recommendations for definitions of "dark fiber loop," "DS1 loop," and "DS3 loop" (Issue No. 9), definitions and terms for line conditioning, line splitting, and testing, maintenance, and repair of copper loops (Issues No. 9, 14(a), (g), and 27), language concerning routine network modifications (Issue No. 22), consideration in staff investigation Docket No. UT-053025 whether to develop lists of eligible ILEC wire centers (Issues No. 4 and 5), and terms for audits of CLEC orders for EELs (Issue No. 21(c)).*

2 *This Order modifies the Arbitrator's recommendations concerning whether Verizon may assess non-recurring charges for disconnection of UNEs (Issue No. 8), definitions of "business switched access line," "EEL," and "subloop" (Issue No. 9), definitions of "dark fiber" and "dedicated transport" (Issues No. 9 and 19), the definition of "entrance*

facility" (Issues No. 9 and 20), and certain terms and conditions for conversions to EELs (Issues No. 21(b)(1), 21(b)(2), 21(b)(4), and 21(c)).

3 **PROCEEDINGS.** Docket No. UT-043013 concerns a petition filed by Verizon Northwest Inc. (Verizon) with the Washington Utilities and Transportation Commission (Commission) 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 sought to arbitrate an amendment to its interconnection agreements with all competitive local exchange carriers (CLECs) and Commercial Mobil Radio Service (CMRS) providers in Washington State that have entered into agreements with Verizon.

4 After Verizon filed its petition, the legal environment of the petition changed: The D.C. Circuit Court of Appeals vacated and remanded the Triennial Review Order,[2] the FCC issued interim unbundling rules,[3] and later issued final unbundling rules in its Triennial Review Remand Order.[4]

5 Arbitrator Ann E. Rendahl entered Order No. 17, her Arbitrator's Report and Decision, on July 8, 2005.

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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] *USTA II v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[3] *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).

[4] *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"].

6 On August 8, 2005, Verizon and AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle (collectively AT&T) filed separate Petitions for Review of the Arbitrator's Report and Decision.

7 On August 18, 2005, Verizon filed a Reply to AT&T's Petition, AT&T filed a Response to Verizon's Petition, and Integra Telecom of Washington, Inc. (Integra), Pac-West Telecomm, Inc. (Pac-West), and XO Communications Services, Inc. (XO) (collectively the Joint CLECs) filed a Response to Verizon's and AT&T's Petitions for Review.

8 The parties have agreed to file a complete, signed interconnection agreement for approval within 30 days after the Commission enters this Order.

9 **APPEARANCES.** 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 Communications Corporation of Washington (Focal) and the Competitive Carrier Coalition.[5] 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

[5] The members of the Competitive Carrier Coalition include Focal, Allegiance Telecom of Washington, Inc., DSL.net Communications, LLC, Integra, Adelphia Business Solutions Operations, Inc., Pac-West, ICG Telecom Group, Inc., and McLeodUSA Telecommunications Services, Inc.

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., represent the Competitive Carrier Group.[6] William E. Hendricks, III, Hood River, Oregon, represents Sprint Communications Company, L.P.

10 **COMMISSION.** The Commission affirms the Arbitrator's Report and Decision, except as to certain aspects of Issues No. 8, 9, 19, 20, 21(b)(1), 21(b)(2), 21(b)(4), and 21(c), modifying portions of the decision consistent with this Order. The Commission grants, in part, and denies, in part, Verizon's Petition for Review of the Arbitrator's Report and Decision, and denies AT&T's Petition for Review.

MEMORANDUM

11 We have considered the parties' arguments concerning the issues Verizon, AT&T, and the Joint CLECs raise in petitions for review and responses. Our analyses and decisions based on these arguments and the record below, follow.

1) ISSUES NO. 4 & 5: The Commission's role in implementing access to high capacity loops and transport.

12 Issues No. 4 and 5 address how the amendment to the parties' interconnection agreements should implement the provisions of the FCC's Triennial Review Remand Order concerning unbundled access to high capacity loops, *i.e.*, DS1, DS3, and dark fiber loops, and high capacity transport, *i.e.*, DS1, DS3, and dark fiber transport. Verizon seeks review of the Arbitrator's recommendation in paragraphs 106 and 116-117 of Order No. 17.[7] In those paragraphs, the

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[6] The members of the Competitive Carrier Group include Advanced Telecom Inc., BullsEye Telecom Inc., Comcast Phone of Washington, LLC, DIECA Communications Inc. d/b/a Covad Communications Company, Global Crossing Local Services Inc., KMC Telecom V Inc., and Winstar Communications LLC.

[7] Verizon Petition at 2-14.

Arbitrator recommended that the Commission consider in a separate staff investigation docket, Docket No. UT-053025, developing lists of eligible and ineligible wire centers for both Verizon and Qwest, as well as a process for updating the lists.[8]

13 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 incumbent local exchange carrier (ILEC) wire centers.[9] The FCC also limited the number of high capacity loops a CLEC may obtain to a single building.[10] The FCC also 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 ILEC wire centers.[11] The FCC limited the number of high capacity transport circuits a CLEC may obtain on routes for which unbundling obligations remain.[12]

14 In order for CLECs to obtain access to unbundled high capacity loops and high capacity transport, the FCC provided that, a CLEC must "undertake a reasonably diligent inquiry" into whether the loops or transport circuits meet the FCC's criteria, and then must self-certify to the ILEC that the CLEC is entitled to unbundled access.[13] The ILEC must provision the unbundled network element (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.[14]

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[8] Order No. 17, ¶¶ 106, 116-17.
[9] Triennial Review Remand Order, ¶¶ 146, 155, 166, 174, 178, 182, 195.
[10] *Id.*, ¶¶ 177, 181.
[11] *Id.*, ¶¶ 66, 79-80, 111, 112, 118, 123, 126, 129.
[12] *Id.*, ¶¶ 128, 131.
[13] *Id.*, ¶ 234.
[14] *Id*.

15 In addition to other issues concerning implementation of the Triennial Review Remand Order, Order No. 17 recommends that the Commission consider, in an existing staff investigation docket, developing wire center lists for both Verizon and Qwest, as well as a process for updating the lists.[15] The Arbitrator recommends the Commission create on the Commission's web site a central list of all ILEC wire centers in the state, making available to the public accurate and verifiable information about eligibility of loop and transport UNEs at the wire centers.

16 Verizon objects to the proposal as unnecessary and a waste of resources. Verizon asserts that all of Verizon's wire centers in Washington are eligible for access to high capacity loops, and that there are only one Tier 1 and one Tier 2 wire center in Washington State ineligible for access to high capacity transport.[16] Verizon asserts that the proposal would be inconsistent with the Triennial Review Remand Order, as the FCC has developed a system for CLEC access to wire centers.[17] Verizon also asserts that there is no problem with that process that requires intervention by the state.[18]

17 While AT&T disagrees that the proposal is inconsistent with the Triennial Review Remand Order, AT&T agrees with Verizon that there is no need for a generic proceeding given the current information concerning Verizon wire centers in Washington.[19]

18 Like AT&T, the Joint CLECs disagree that the proposal is inconsistent with the Triennial Review Remand Order, but the Joint CLECs encourage the

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[15] Order No. 17, ¶¶ 106, 116-17.
[16] Verizon Petition, ¶ 7.
[17] *Id*., ¶¶ 9-10.
[18] *Id.*, ¶ 11.
[19] AT&T Reply, ¶ 1.

Commission to undertake a generic inquiry.[20] The Joint CLECs assert that the inquiry would not be a waste of resources, asserting that the FCC has not made ILEC information available to CLECs, nor verified the accuracy of the ILEC data, and that ILECs generally refuse to provide sufficient information to CLECs.[21]

19 We affirm the Arbitrator's recommendation in paragraphs 106 and 116-117 of Order No. 17 and deny Verizon's petition for review on this issue. The Arbitrator recommends that the Commission consider a generic inquiry in Docket No. UT-053025, a staff investigation docket to analyze the impact of the Triennial Review Remand Order on competition in Washington State. The Arbitrator's recommendation imposes no obligation on any party to this proceeding, nor requires that any particular language be included in the amendment to the parties' interconnection agreements. Rather than foreclose the opportunity to further consider the issue, we find it appropriate to allow interested parties to file comments in the staff investigation docket and allow the proposal to be fully addressed in that docket.

2) ISSUE NO. 8: May Verizon assess non-recurring charges when it converts a UNE arrangement to an alternative service?

20 This issue concerns whether Verizon may assess or impose one-time charges, *i.e.*, non-recurring charges, when a CLEC discontinues a UNE or changes a UNE arrangement to an alternative service. The Arbitrator found in Order No. 17 that conversions from UNEs to alternative arrangements require only a billing change and recommended that Verizon not be allowed to impose a circuit re-tag charge or any other non-recurring charges for such conversions.[22] Where a CLEC disconnects a UNE rather than converts the UNE to an alternative arrangement, the Arbitrator recommends that Verizon not be allowed to charge a disconnect

[20] Joint CLEC Response, ¶¶ 2-3.
[21] *Id.*, ¶¶ 3-4.
[22] Order No. 17, ¶ 148.

fee already established by the Commission in prior cost dockets, but that Verizon file a tariff or change the pricing exhibit to its proposed amendment to interconnection agreements before imposing disconnection or other charges.[23]

21 Verizon asserts that its UNE disconnection charges are already included in its UNE tariff, which has been approved by, and filed with, the Commission.[24] Verizon notes that the Arbitrator recommends in other portions of Order No. 17 that Verizon may continue to charge rates approved by the Commission.[25] Verizon seeks clarification that it may assess already approved disconnection charges when a CLEC disconnects, rather than converts, an existing UNE. Verizon asserts that it should be able to assess disconnection fees if a CLEC disconnects a UNE, regardless of the reason for the disconnection.[26]

22 AT&T argues that there is a fundamental difference between a disconnection voluntarily ordered by a CLEC and one that results from involuntary delisting of UNEs.[27] AT&T asserts that in the case of involuntary disconnection of UNEs, Verizon is the cost-causer, such that the CLEC should not bear the cost of disconnecting the UNE.[28] AT&T requests the Commission affirm the Arbitrator's recommendation.

23 We grant Verizon's petition for review on this issue and modify paragraph 149 of the Arbitrator's Report and Decision to reflect that Verizon may assess an already-approved disconnection charge when a CLEC disconnects a UNE. The reason for the disconnection, whether due to a customer's decision to disconnect or the FCC's decisions on unbundling, does not--and should not—matter for purposes of applying Verizon's tariff. We note that Verizon has not identified a

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[23] *Id.*, ¶ 149.
[24] Verizon Petition, ¶ 73.
[25] *Id*.
[26] *Id*.
[27] AT&T Reply, ¶ 16.
[28] *Id*.

disconnect charge in its proposed charges in Exhibit A to its proposed amendment.[29] If Verizon decides to include such a charge in Exhibit A, it may include the disconnect charge identified in its UNE tariff.

3) ISSUE NO. 9: Definitions.

a) Business Switched Access Line.

24 AT&T included in its proposed amendment a definition of "Business Switched Access Line." AT&T defines a business switched access line as "a Verizon switched access line used to serve a business customer, whether by Verizon itself or by a competitive LEC that leases the line from Verizon." 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.[30]

25 The Arbitrator recommends including in the amendment AT&T's proposed definition, finding the definition consistent with the FCC's definition in 47 C.F.R. § 51.5 and necessary to implement recommended decisions concerning Issues No. 4 and 5.[31]

26 Verizon requests the Commission modify the proposed definition to use the term "business line," as defined in 47 C.F.R. § 51.5, rather than "business switched access line" as defined in AT&T's proposal. Verizon asserts that AT&T's proposed definition includes only part of the FCC's definition of "business line" and omits important language, such as the second sentence of the FCC's definition: "The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops

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[29] *See* Verizon November 4, 2004, Amendment 2, Exhibit A.
[30] AT&T Initial Brief, ¶ 58; Joint CLEC Initial Brief, ¶ 17; CCG Initial Brief, ¶ 27.
[31] Order No. 17, ¶ 154.

connected to that wire center, including UNE loops provisioned in combination with other unbundled elements."[32]

27 AT&T does not oppose Verizon's modifications to the definition.[33]

28 We grant Verizon's petition for review on this issue and modify paragraph 154 of the Arbitrator's Report and Decision in Order No. 17 to require the parties to include the FCC's definition of "business line" in the amendment. Including the FCC's definition of "business line" will make the amendment more clear and will likely reduce the opportunity for future disputes on the issue.

b) Dark Fiber Loop, DS1 Loop, DS3 Loop.

29 The parties agree that the amendment should include definitions for "dark fiber loop," "DS1 loop," and "DS3 loop," but disagree about whether the definitions should include language addressing the use of these loops through routine network modifications. The Arbitrator recommends including in the amendment Verizon's proposed definitions of "dark fiber loop," "DS1 Loop," and "DS3 loop."[34] The Arbitrator found Verizon's definitions to most closely track the FCC's definitions. The Arbitrator recommends rejecting AT&T's proposal to include language in the definition addressing the use of dark fiber, DS1 loops, and DS3 loops through routine network modifications, finding that a definition should not include terms or conditions for availability.[35]

30 AT&T asserts the Arbitrator erred in rejecting the proposed references to routine network modifications.[36] AT&T asserts that the FCC recognized in the Triennial Review Order that "the obligation to perform routine network modifications is

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[32] Verizon Petition, ¶ 17.
[33] AT&T Reply, ¶ 2.
[34] Order No. 17, ¶¶ 166, 175-76.
[35] *Id*., ¶¶ 166, 176.
[36] AT&T Petition, ¶ 5.

an extension of the requirement that ILECs provide CLECs with all of the functions of an element."[37] AT&T asserts that "routine network modifications are a mechanism for providing access to high capacity and dark fiber loops," and should be included in the definitions.[38]

31 Verizon requests the Commission affirm the Arbitrator's recommendation. Verizon argues there is no reason for a definition to include terms and condition concerning routine network modifications where the Arbitrator recommends other language in the amendment addressing Verizon's obligations for routine network modifications.[39] Verizon asserts that including AT&T's language will create confusion and disputes. Verizon also asserts that AT&T's proposed definition is inconsistent with the FCC's unbundling rules by requiring that dark fibers "be made spare and continuous via routine network modifications."[40]

32 We affirm the Arbitrator's recommendation in paragraphs 166 and 176 of Order No. 17 concerning the definitions of "dark fiber loop," "DS1 loop," and "DS3 loop," and deny AT&T's petition for review on this issue. Terms and conditions governing routine network modifications should be included in specific provisions of the proposed amendment governing routine network modifications, not in the definitions of terms.

c) Dark Fiber Dedicated Transport, Dedicated Transport, and Reverse Collocation (Issues No. 9 and 19).

33 The issue on review concerns whether the amendment should address "reverse collocation," a situation where an ILEC collocates switching equipment at a CLEC's premises, and whether the definitions of "dark fiber transport" and "dedicated transport" should include a reference to "reverse collocation." While

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[37] *Id*.
[38] *Id*.
[39] Verizon Reply, ¶ 13.
[40] *Id.*, ¶ 14.

recognizing that Verizon has no facilities collocated in CLEC premises and does not intend to do so, the Arbitrator recommended that the amendment include a reference to reverse collocation in the event Verizon collocates switching equipment in a CLEC premises.[41] The Arbitrator made the recommendation based on the FCC's decision to allow CLECs access to the transmission path between the ILEC's collocated switch and the ILEC's wire center as unbundled transport.[42]

34 Verizon requests the Commission clarify that references to reverse collocation in the definitions be consistent with the FCC's unbundling obligations.[43] Specifically, Verizon asserts that the FCC determined that unbundling obligations do not apply to all Verizon switching equipment, but "only ILEC switches with line-side functionality that are located in CLEC collocation hotels may be considered Verizon wire centers for purposes of defining dedicated transport."[44] Verizon proposes that the Commission require the definitions of dark fiber transport and dedicated transport to reflect this distinction.[45]

35 AT&T does not oppose Verizon's proposed modifications.[46]

36 We grant Verizon's petition on this issue and modify paragraphs 168, 171, and 380 of Order No. 17 to reflect Verizon's proposed modification to the definitions of "dark fiber dedicated transport" and "dedicated transport," and to the discussion of ILEC unbundling obligations in reverse collocations. Verizon's proposed modification more fully reflects the FCC's unbundling requirements for reverse collocation. We also find that including Verizon's proposal in the amendment will likely minimize future disputes on the issue.

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[41] Order No. 17, ¶¶ 168, 171, 380.
[42] *Id*., ¶ 380; *see also* Triennial Review Order, ¶ 369 n.1126.
[43] Verizon Petition, ¶ 22.
[44] *Id*., ¶ 23.
[45] *Id.*, ¶ 25.
[46] AT&T Reply, ¶ 2.

d) Enhanced Extended Link (EEL) Combination.

37 The FCC describes enhanced extended links, or EELs, as "UNE combinations consisting of unbundled loops and unbundled transport (with or without multiplexing capabilities)."[47] An EEL is essentially a long loop, extended from an ILEC wire center to a location where a CLEC has a switch or some other network appearance.

38 Only AT&T proposed including in the amendment a definition for EELs, and no party addressed the issue in brief before the Arbitrator.[48] AT&T's proposed definition of "Enhanced Extended Link (EEL) Combination" provides:

> An EEL consists of, at AT&T's option, any two or more of the following: an unbundled loop, transmission functionality such as concentration and multiplexing, and unbundled dedicated transport. An EEL provides AT&T the capability to serve a customer by extending a customer's loop from the customer's premises (including points where customer loops are aggregated) to another premise or office designated by AT&T). AT&T may order new EELs and/or request the conversion of existing services to EEL functionality.[49]

39 The Arbitrator recommends in paragraph 177 of Order No. 17 that the amendment include AT&T's proposed EELs definition, as the term is used in amendment provisions addressing commingling, conversions, and combinations.[50]

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[47] Triennial Review Order, ¶ 575.
[48] *See* AT&T March 14, 2005, Amendment,§ 2.14.
[49] *Id*.
[50] Order No. 17, ¶ 177.

40 Verizon objects to AT&T's proposed definition, asserting that the definition suggests AT&T may order multiplexing as a UNE, separately from transport, to be combined with a loop.[51] Verizon asserts the FCC did not intend that EELs be a combination of a loop UNE or transport UNE with multiplexing.[52] Verizon requests the Commission reject AT&T's definition or include the definition of EEL in Verizon's Commission approved tariff.[53] Verizon asserts the tariff definition reflects that multiplexing is not a UNE, but a component of transport available as part of the loop-transport combination. Verizon also objects to AT&T's definition as allowing AT&T to extend a loop to another premise or office designated by AT&T. Verizon asserts that an EEL allows AT&T to combine an existing loop and transport, which may not be available on a particular route, and which may only be available at an ILEC wire center.[54]

41 AT&T requests the Commission affirm the Arbitrator's decision, asserting that the definition does not allow AT&T to order multiplexing on a stand-alone basis.[55]

42 We grant Verizon's petition for review on this issue and modify paragraph 177 to replace AT&T's definition with the definition in Section 4 of Verizon's Commission-approved tariff, WN-U21. The tariff defines EELs as "a combination of unbundled loops, unbundled dedicated transport, and includes multiplexing where required." After considering Verizon's petition, we find that that Verizon's tariff definition is more consistent with the FCC's description than AT&T's proposed definition, and that AT&T's definition would likely promote, rather than discourage, disputes among the parties.

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[51] Verizon Petition, ¶¶ 26-27.
[52] *Id.*, ¶ 27.
[53] *Id.*, ¶¶ 29, 31.
[54] *Id.*, ¶ 30.
[55] AT&T Reply, ¶ 3.

e) Entrance Facility Definition and Access to Section 251(c)(2) Interconnection Facilities (Issues No. 9 and 20).

43 Similar to the definitions of dark fiber and dedicated transport, the parties dispute whether certain language should be included in the definition of "entrance facility." The parties dispute whether the amendment should address access to interconnection facilities provided under Section 251(c)(2) and whether the definition of "entrance facility" should discuss access to these interconnection facilities. 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."[56] 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)."[57]

44 The FCC defines entrance facilities, generally, as "transmission facilities that connect competitive LEC networks with incumbent LEC networks."[58] In the Triennial Review Order, the FCC eliminated entrance facilities as UNEs, removing entrance facilities from the definition of "Dedicated Interoffice Transport."[59] After the D.C. Circuit found fault with removing the reference to entrance facilities from the definition of dedication transport, the FCC modified the definition of "Dedicated Interoffice Transport" in the Triennial Review Remand Order to include entrance facilities, but found no impairment in CLECs' access to entrance facilities, removing the obligation for ILECs to provide unbundled access.[60] The FCC also determined that ILECs must continue to provide access to entrance facilities for interconnection, *i.e.*, transmission and

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[56] Verizon Initial Brief, ¶ 88; Verizon September 10, 2004, Amendment 1, § 4.7.5; Verizon November 4, 2004, Amendment 2, § 4.7.11.
[57] AT&T March 14, 2005, Amendment, § 2.16.
[58] Triennial Review Remand Order, ¶ 136.
[59] Triennial Review Order, ¶ 366 n.1117.
[60] Triennial Review Remand Order, ¶ 137; *see also* 47 C.F.R. § 51.319(e)(2)(i).

routing of telephone exchange service and exchange access service at cost-based rates.[61]

45 The Arbitrator found that AT&T's definition of "entrance facility" properly includes the obligation to provide access for interconnection under Section 251(c)(2).[62] The Arbitrator recommends including AT&T's proposed definition in the amendment, and recommends including language proposed by MCI to clarify the CLECs' continued access to interconnection facilities.[63]

46 Verizon objects to the last phrase in AT&T's definition, asserting that there is no change in the law requiring the language and that the language will create, rather than prevent, disputes.[64] Verizon also opposes MCI's proposed language as modifying the terms of existing agreements.[65] Verizon agrees that it has a continuing obligation to provide access to Section 251(c)(2) interconnection facilities, but asserts that its existing agreements already address the obligation.[66] Verizon asserts that the Arbitrator did not take into account existing contract language on the issue.[67] If the Commission decides that new language is necessary, Verizon proposes the following sentence instead of AT&T's proposed phrase:

> As required by the Commission's decision in Docket No. UT-042013 in light of Paragraph 140 of the Triennial Review Remand Order, the discontinuation of Entrance Facilities as set forth in the Amendment does not alter any right [CLEC] may have under the existing Agreement to obtain interconnection facilities at cost-based rates pursuant to section 251(c)(2) of the Act.

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[61] Triennial Review Order, ¶ 265; Triennial Review Remand Order, ¶ 140.
[62] Order No. 17, ¶ 181.
[63] *Id*., ¶¶ 384-85.
[64] Verizon Petition, ¶¶ 38-39, 43.
[65] *Id*., ¶¶ 45-46.
[66] *Id*., ¶¶ 43-46.
[67] *Id*., ¶ 47.

47 AT&T and the Joint CLECs request the Commission affirm the Arbitrator's recommendation.[68] AT&T asserts that the FCC modified obligations concerning dedicated transport and entrance facilities in the Triennial Review Order, even if the FCC did not modify interconnection obligations.[69] AT&T asserts that it is appropriate for a definition to identify what is excluded from, or not a part of, the definition.[70] The Joint CLECs assert the language is necessary to "minimize an ambiguity that Verizon could and would use to its competitive advantage."[71] The Joint CLECs suggest that the Commission use the exact language of paragraph 140 of the Triennial Review Order in the definition.[72]

48 We find it appropriate to include in the amendment language addressing the FCC's clarification of continued access to entrance facilities for interconnection under Section 251(c)(2). AT&T's proposed language includes more than the FCC's discussion of the issue, in particular, a reference to reciprocal compensation. The amendment would be more clear, and would result in fewer disputes, if the definition of "entrance facilities" included the following reference to the FCC's clarification in paragraph 140 of the Triennial Review Remand Order:

> The FCC's finding in the Triennial Review Order of non-impairment with respect to entrance facilities does not alter the right of [CLEC] to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service."

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[68] AT&T Reply, ¶ 10; Joint CLEC Response, ¶ 9.
[69] AT&T Reply, ¶ 9.
[70] *Id*.
[71] Joint CLEC Response, ¶ 9.
[72] *Id*., ¶ 10.

49 We grant Verizon's petition, in part, on this issue, and modify paragraph 181 of Order No. 17 to remove AT&T's proposed phrase and add the above sentence. We affirm the Arbitrator's recommendation in paragraphs 384-85 of Order No. 17 to include MCI's proposed Section 10.6 in the amendment. Consistent with our decision above, we modify MCI's proposed language as follows:

> In accordance with Paragraph 140 of the ~~TRRO~~Triennial Review Order, nothing in this Section nor the FCC's finding of non-impairment with respect to entrance facilities alters [CLEC's] right to obtain interconnection facilities ~~(entrance facilities or dedicated transport)~~ pursuant to Section 251(c)(2) of the Act or to obtain access to such facilities at cost based rates ~~in order to interconnect [CLEC's] network with Verizon's network for the exchange of traffic~~.[73]

f) Line Conditioning, Line Splitting, and Maintenance, Testing, and Repair of Copper Loops (Issues No. 9, 14(a), 14(g), and 27).

50 Verizon objects to including definitions and provisions in the amendment concerning line conditioning, line splitting, and maintenance, testing and repair of copper loops. The Arbitrator addressed these topics in Order No. 17 in Issues No. 9 (definitions), Issues 14(a) and (g), and 27. The Arbitrator recommends including definitions of "line conditioning" and "line splitting " in the amendment, as well as including provisions governing line conditioning, line splitting, and maintenance, testing, and repair of copper loops and subloops. The Arbitrator recommended the amendment include new rules governing line splitting, as well as rules the FCC readopted in the Triennial Review Order addressing ILEC obligations for line conditioning and maintenance, testing, and repair of copper loops and subloops.[74]

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[73] MCI April 4, 2005, Amendment, § 10.6.
[74] Order No. 17, ¶¶ 295, 328-29, 512.

51 Verizon asserts that language concerning these topics is not appropriate in an amendment to reflect changes in law under the Triennial Review Order, asserting there is no change in law in the Triennial Review Order or the Triennial Review Remand Order concerning these services or obligations.[75] Verizon asserts that the purpose of the amendment is to address the rights and obligations of the parties that change as a result of the FCC's Orders, and that as to these topics, the parties' rights and obligations have not changed.[76] Verizon also asserts that the Arbitrator did not consider the effect of new amendment language on existing contract language, nor did the Arbitrator consider that the obligations cannot be implemented without "associated operational terms."[77] Verizon asserts that if a CLEC wishes to change their agreements to address these topics, then Verizon will work with the CLECs to include appropriate provisions in their interconnection agreements.[78]

52 Neither AT&T nor the Joint CLECs address the issue in their responsive briefs.

53 We affirm the Arbitrator's recommendations on these issues in paragraphs 205-6, 296, 328-29, and 512 of Order No. 17, and deny Verizon's petition for review on the issues. Under Section 252, state commissions "shall resolve each issue set forth in the petition and the response, if any,"[79] and must resolve by arbitration any open issues between the parties.[80] In their initial responses to Verizon's petition, the CLECs requested the Commission address in the arbitration the issues of line splitting, line conditioning, and maintenance, testing and repair of copper loops and subloops. The Arbitrator thus properly addressed and resolved the issues in Order No. 17.

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[75] Verizon Petition, ¶ 55.
[76] *Id*.
[77] *Id*., ¶¶ 56-58.
[78] *Id*., ¶ 60.
[79] 47 U.S.C. § 252(b)(C).
[80] 47 U.S.C. § 252(c).

54 In addition, the FCC in the Triennial Review Order adopted new rules governing line splitting and readopted and clarified its rules governing line conditioning and maintenance, testing and repair of copper loops and subloops, resolving an existing controversy over the issues. These issues are properly addressed in an amendment to implement changes of law under the Triennial Review Order.[81]

g) Sub-Loop.

55 The Arbitrator recommends including in the amendment AT&T's proposed definition of "sub-loop," finding the proposed definition consistent with the FCC's definition of "copper subloops."[82] AT&T's proposed amendment is as follows:

> 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.

56 Verizon asserts the Arbitrator erred in finding AT&T's proposed definition consistent with the FCC's definition of "copper subloop," and requests the Commission use the FCC's definition instead.[83] The FCC's definition provides:

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[81] Triennial Review Order, ¶¶ 250-52, 642-43.
[82] Order No. 17, ¶ 232.
[83] Verizon Petition, ¶¶ 61-64.

> A copper subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper cable that acts as a transmission facility between any technically feasible point in an incumbent LEC's outside plant, including inside wire owned, controlled or leased by the incumbent LEC, and the end-use customer premises. A copper subloop includes all intermediate devices (including repeaters and load coils) used to establish a transmission path between a point of technically feasible access and the demarcation point at the end-user customer premises, and includes the features, functions, and capabilities of the copper loop. Copper subloops include two-wire and four-wire analog voice grade subloops as well as two-wire and four-wire subloops conditioned to transmit signals needed to provide digital subscriber line services, regardless of whether the subloops are in service or held as spares.[84]

57 Neither AT&T nor the Joint CLECs reply to Verizon's comments.

58 We grant Verizon's petition for review on this issue and modify paragraph 232 of Order No. 17 to replace AT&T's proposed definition of "sub-loop" with the FCC's definition of "copper subloop." While AT&T's "subloop" definition is similar to the FCC's definition of "copper subloop," using the FCC's definition will reduce the likelihood of disputes over the amendment.

4) ISSUE NO. 21(b)(1): Should Verizon be prohibited from physically disconnecting, separating, or altering existing facilities when a CLEC requests conversion of existing circuits to an EEL unless the CLEC requests alteration?

59 This issue, and those in Issues No. 21 (b)(2), (b)(4), and 21(c) below, address the terms and conditions for when a CLEC seeks to convert wholesale services, such as special access, to UNEs, in particular EELs, or loop-transport combinations.

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[84] 47 C.F.R. § 51.319(b)(1).

60 In addressing Issue No. 21(b)(1), the Arbitrator considered the FCC's statements in the Triennial Review Order concerning the process for conversions.[85] The Arbitrator relied on the FCC's statements that conversions "should be a seamless process that does not affect the customer's perception of service quality," that conversions are "largely a billing process," and that "conversions 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."[86]

61 The Arbitrator found it reasonable to include in the amendment "operational procedures to ensure customer service quality is not affected by conversions."[87] The Arbitrator recommended including language proposed by AT&T and other CLECs to prohibit Verizon from physically disconnecting, separating or physically altering existing facilities when a CLEC requests conversion of access circuits to an EEL, unless the CLEC requests the work be performed.[88] The Arbitrator notes that such a provision would not preclude Verizon from notifying a CLEC of a potential problem with a conversion requiring disconnection, separation, alteration or change in the circuit, but precludes Verizon from taking action without the consent of the CLEC.[89]

62 Verizon requests the Commission clarify that the amendment should include language allowing Verizon to perform changes with the CLEC's consent, rather than waiting for the CLEC to request it.[90] Verizon asserts that CLEC conversion requests may be delayed without including this flexibility for Verizon.[91]

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[85] Order No. 17, ¶¶ 411, 415.
[86] Triennial Review Order, ¶¶ 586, 588.
[87] Order No. 17, ¶ 416, *quoting* Triennial Review Order, ¶ 586.
[88] *Id*., ¶ 416.
[89] *Id*.
[90] Verizon Petition, ¶ 35.
[91] *Id*., ¶¶ 36-37.

63 AT&T asserts that the language proposed by the Arbitrator allows for Verizon to notify a CLEC of a potential problem, and allows for the CLEC, once notified, to request disconnection, alteration or change.[92] AT&T requests the Commission affirm the Arbitrator's decision.

64 We grant Verizon's petition on this issue and modify paragraph 416 of Order No. 17 to require the parties to include language in the amendment allowing Verizon to contact a CLEC to notify the CLEC of problems occurring in a conversion. The language Verizon requests would require CLEC consent before Verizon makes alterations, but would specifically allow Verizon to contact the CLEC about a specific problem. While we do not believe the parties require specific language in an interconnection agreement to allow them to communicate with one another, Verizon's proposed language should be included if it would reduce the possibility that Verizon would not notify a CLEC of problems without the language. Including the language in the amendment will not harm CLECs and may reduce disputes between the parties.

5) ISSUES NO. 21(b)(2) and (b)(4): What charges, terms and conditions may Verizon impose when CLECs convert existing circuits to EELs, and when are CLECs entitled to EELs/UNE pricing?

65 The issue between the parties concerns the timing for completing conversions as well as the timing of billing for conversions, *i.e.*, the effective date of rates. Based on the FCC's finding that conversions from special access or wholesale products to EELs are largely a billing function, the Arbitrator recommends that the billing change from wholesale products to EELs be reflected in the next billing cycle after the CLEC requests a conversion.[93] The Arbitrator also recommends that

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[92] AT&T Reply, ¶ 7.
[93] Order No. 17, ¶¶ 430, 452, *citing* Triennial Review Order, ¶¶ 586, 588.

conversion orders be considered complete upon receipt of a written or electronic conversion request.[94]

66 Verizon objects to the Arbitrator's recommendations that conversion requests be considered complete on their submission, and that billing changes appear in the next billing cycle.[95] Verizon asserts that this ruling "disregard[s] practical concerns and established practice."[96] Verizon asserts that the FCC rejected the CLEC's proposal to require completion of conversion requests in 10 days.[97] Verizon asserts that it would be unreasonable to expect Verizon to implement billing changes immediately in all situations, such as a CLEC order for 100 EEL conversions on the last day of a billing cycle.[98] Verizon requests the Commission approve a 30-day interval for completing conversion requests, except for conversion orders exceeding a certain number of circuits, and provide that billing changes begin after the conversion work is performed.[99]

67 AT&T requests the Commission affirm the Arbitrator's recommendations as consistent with the FCC's findings in the Triennial Review Order.[100] AT&T asserts that the FCC rejected the CLEC's proposal for a 10-day period for completion of conversion requests, stating that 10 days was too long.[101] AT&T asserts that there is no industry standard for completing conversions within 30 days.[102]

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[94] *Id.*, ¶ 452.
[95] Verizon Petition, ¶ 33.
[96] *Id.*
[97] *Id.*, ¶ 34.
[98] *Id.*
[99] *Id.*, ¶ 35.
[100] AT&T Reply, ¶ 5.
[101] *Id.*, ¶ 6.
[102] *Id.*

68 The Joint CLECs request the Commission affirm the Arbitrator's recommendations as consistent with the Triennial Review Order,[103] specifically the FCC's finding that conversions are "largely a billing function," and suggesting that "pricing changes start the next billing cycle following the conversion request."[104]

69 The FCC stated in the Triennial Review Order that:

> We conclude that conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments. *We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts*. We decline to adopt ALTS's suggestions to require the completion of all necessary billing changes within ten days of a request to perform conversion *because such time frames are better established though negotiations between incumbent LECs and requesting carriers*. We recognize, however, that converting wholesale services and UNEs (or UNE combinations) is largely a billing function. We therefore expect carriers to establish appropriate mechanisms to remit the correct payment after the conversion request, such a providing that any pricing changes start the next billing cycle following the conversion request.[105]

70 The FCC did not find the ten-day proposal too long, or too short, but rejected a unilateral time period in favor of the parties negotiating the terms. Because Verizon and the CLECs cannot agree on terms, we are responsible under Section 252 for establishing terms in the parties' interconnection agreement. The FCC's statements in the Triennial Review Order are findings, but are not binding upon the Commission. We find it appropriate to include in the amendment an interval for completing conversions and to require pricing changes in the next billing

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[103] Joint CLEC Response, ¶ 6.
[104] *Id.*, ¶ 7.
[105] Triennial Review Order, ¶ 588 (emphasis added).

cycle following completion to protect both Verizon and the CLECs from unnecessary delay and gamesmanship.

71 We grant, in part, Verizon's petition for review on this issue, and modify paragraphs 430 and 431 of Order No. 17 to provide that Verizon must complete requests to convert individual circuits within 7 days after receiving the request and within 14 days of requests to convert multiple requests, up to 100 circuits. We also modify the Order to reflect that pricing changes will be effective in the next billing cycle after the conversion is complete.

6) ISSUE NO. 21(c): What are Verizon's rights to audit CLEC compliance with the FCC's service eligibility criteria?

72 The issue in dispute concerns whether Verizon or a CLEC is responsible for paying the costs of an audit of the CLEC's compliance with FCC eligibility criteria for ordering EELs, and the meaning of the requirement that a CLEC comply with the criteria "in all material respects."

73 The FCC held that ILECs have a limited right to audit compliance with the service eligibility criteria for ordering EELs, and that ILECs may obtain and pay for an independent auditor to audit compliance, on an annual basis.[106] 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."[107] The FCC also provided that "because the concept of materiality governs this type of audit, the independent auditor's report will conclude whether the competitive LEC complied *in all material respects* with the applicable service eligibility criteria."[108]

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[106] *Id.*, ¶ 626.
[107] *Id.*
[108] *Id*. (Emphasis added).

74 The FCC further determined that 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 circuits to the appropriate service, and make the correct payments on a going- forward basis."[109] 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."[110] 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."[111]

75 Order No. 17 recommended including in the amendment the CLECs' proposed language governing materiality, finding that:

> 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."[112]

Order No. 17 also sought to define the terms "material," and "in all material respects."[113]

76 Verizon objects to the Arbitrator's recommendation and continues to assert that its provisions governing "materiality" and payment for audits costs are

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[109] *Id.*, ¶ 627.
[110] *Id.*
[111] *Id.*, ¶ 628.
[112] Order No. 17, ¶ 469.
[113] *Id.*, ¶ 470.

consistent with the Triennial Review Order.[114] Verizon asserts that the Arbitrator's interpretation of materiality is not consistent with the Triennial Review Order, as the FCC intended that the AICPA standards would govern the meaning of materiality.[115]

77 AT&T requests the Commission affirm the Arbitrator's decision on the issues of materiality and payment for audit costs.[116] AT&T asserts that the language proposed by AT&T and recommended by the Arbitrator properly includes the phrases "in all material respects," and "in accordance with the standards established by the American Institute for Certified Public Accountants."[117] AT&T asserts that Verizon's proposed language imposes the costs of audits for any failure of compliance, rather than failure to comply "in all material respects" as determined by the auditor.[118] AT&T asserts that Verizon seeks to impose a standard of perfection rather than material compliance.[119]

78 The Joint CLECs make similar arguments.[120]

79 We affirm the Arbitrator's recommendation in paragraph 470 of Order No. 17, but strike the first four sentences of the paragraph attempting to define the term "material." Consistent with this decision, we grant, in part, and deny, in part, Verizon's petition for review on this issue.

80 The FCC provides that the auditor, not the ILEC, will determine material compliance consistent with AICPA standards. There is no need to define the term "material." We find the Arbitrator's recommendation to include the

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[114] Verizon Petition, ¶¶ 65-68.
[115] *Id.*, ¶ 70.
[116] AT&T Reply, ¶¶ 12, 14.
[117] *Id.*, ¶ 12.
[118] *Id.*, ¶ 13.
[119] *Id.*, ¶ 14.
[120] Joint CLEC Response, ¶¶ 11-14.

CLECs' language consistent with the FCC's requirements governing standards for compliance and payment of audit costs. Verizon proposes that:

> To the extent the independent auditor's report concludes the [CLEC] failed to comply with the service eligibility criteria *for any DS1 or DS1 equivalent circuit*, then … [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, *reimburse Verizon for the entire cost of the audit within thirty (30) days after receiving a statement of such costs from Verizon*. Should the independent auditor confirm [CLEC's] compliance with the service eligibility criteria *for each DS1 or DS1 equivalent circuit*, then [CLEC] shall *provide to the independent auditor for its verification a statement of [CLEC's] out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then reimburse [CLEC] for its out-of-pocket costs within thirty (30) days if the auditor's verification of same*.[121]

The italicized portions of Verizon's proposal are not consistent with the FCC's requirements for audit procedures and payment for audit costs.

7) ISSUE NO. 22: How should the Amendment reflect the obligation that Verizon perform routine network modifications?

81 This issue concerns the obligation that ILECs perform routine network modifications to allow access to unbundled network elements. The parties dispute whether the FCC's discussion of the issue in the Triennial Review Order effected a change in law, and whether the obligation should become effective as of the date the amendment is approved, or retroactively.

82 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.*

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[121] *See* Verizon Petition, ¶ 67.

FCC.[122] The Court found that ILECs could be required to "modify their facilities 'to the extent necessary to accommodate interconnection or access to network elements'."[123] 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.[124]

83 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.[125] 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."[126] The FCC held that ILECs are not required to construct new facilities, or to trench or place new cables for a CLEC.[127] The FCC adopted rules in the Triennial Review Order governing routine network modifications to resolve "a controversial competitive issue that has arisen repeatedly, in both this proceeding and in the context of several section 271 applications."[128] Those rules are codified in 47 C.F.R. § 51.319(8)(i) and (ii).

84 The Arbitrator found in Order No. 17 that the FCC's adoption of rules governing routine network modifications resulted in a change of law, recommending that amendment language governing routine network modification become effective on the effective date of the amendment, not before.[129]

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[122] *Iowa Utils. Bd. v, FCC*, 120 F.3d 753 (8th Cir. 1997).
[123] Triennial Review Order, ¶ 630, *quoting Iowa Utils. Bd.,* 120 F.3d at 813 n.33.
[124] *Id.*, ¶ 631.
[125] *Id.*, ¶¶ 632-34.
[126] *Id.*, ¶ 637.
[127] *Id.*, ¶¶ 632, 636.
[128] *Id.*, ¶ 632.
[129] Order No. 17, ¶ 483.

85 AT&T asserts the Arbitrator erred in deciding the issue. AT&T argues that the obligation to perform routine network modifications predated the Triennial Review Order, and that the FCC merely clarified the ILECs' obligation in that Order.[130] AT&T asserts that the D.C. Circuit recognized the lack of a change in law in its *USTA II* decision:

> In *Iowa Utilities I*, the Eighth Circuit struck down an FCC rule that required ILECs to provide interconnection and UNEs superior in quality to those that the ILECs provided for itself. [Citation omitted] But, the court nonetheless "endorse[d] the Commission's statement that 'the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.' "[131]

AT&T asserts that the Court found the new rules "consistent with the Act as interpreted by the Eighth Circuit."[132]

86 The Joint CLECs also request the Commission modify the Arbitrator's recommendation concerning routine network modifications. The Joint CLECs assert that "the Commission concluded long before passage of the TRO that an ILEC with responsibilities to provide UNEs under Section 251(c)(3) is obligated to undertake routine network modifications to the same extent that it undertakes such activities for its retail customers."[133] The Joint CLECs assert that Verizon has never been justified in rejecting orders because the orders required Verizon to make routine network modifications.[134] The Joint CLECs assert that the

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[130] AT&T Petition, ¶ 7.
[131] *Id.*, *quoting United States Telecom Ass'n v. FCC*, 359 F.3d 554, 577 (D.C. Cir. 2004) (*USTA II*) *cert. denied*, 125 S.Ct. 313 (2004).
[132] *Id.*, ¶ 8, *quoting USTA II*, 359 F.3d at 578.
[133] Joint CLEC Response, ¶ 16, *citing In re Investigation into U S WEST Communications, Inc.'s Compliance with Section 271, et al.*, Docket Nos. UT-003022 and UT-003040, 24th Supplemental Order, ¶ 19 (Dec. 20, 2002), *accord* 28th Supp. Order, ¶ 22.
[134] *Id.*

Commission has interpreted some interconnection agreements as automatically incorporating changes of law into the agreements.[135]

87 Verizon requests the Commission affirm the Arbitrator's decision. Verizon asserts that the FCC's routine network modification rules did not exist prior to the FCC's entering the Triennial Review Order.[136] Verizon asserts that the FCC did not simply clarify an existing obligation, but adopted new rules.[137] Verizon also asserts that the D.C. Circuit Court did not find there was no change in law, but found the new rules consistent with prior court decisions.[138] Verizon also notes that AT&T does not object to the Arbitrator's recommendation to include language concerning routine network modifications in the amendment, but disputes the effective date of the terms.[139]

88 Similar to the discussion above concerning line splitting, line conditioning and maintenance, testing, and repairs of copper loops and subloops, ILECs and CLEC have disputed the issue of routine network maintenance for some time. By adopting rules in the Triennial Review Order, the FCC effectively changed the legal landscape of the issue and resolved the dispute. Similar to the issues of line splitting, line conditioning, and maintenance, testing, and repairs, the Arbitrator recommends the amendment include language on the issue and provides the language will become effective on the effective date of the amendment. We find the Arbitrator's recommendation sound. We affirm the Arbitrator's recommendation in paragraph 483 of Order No. 17 and deny AT&T's petition for review of the issue.

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[135] *Id.*, ¶ 17.
[136] Verizon Reply, ¶ 5.
[137] *Id.*, ¶ 6.
[138] *Id.*, ¶ 7.
[139] *Id.*, ¶ 10.

FINDINGS OF FACT

89 Having discussed above in detail the documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse among the parties and the reasons and bases for those findings and conclusions, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

90 (1) Verizon Northwest Inc. is an ILEC, providing local exchange telecommunications service to the public for compensation within the state of Washington.

91 (2) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, and to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996.

92 (3) Adelphia Business Solutions Operations, Inc., Advanced Telecom Inc., Allegiance Telecom of Washington, Inc., AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle, BullsEye Telecom Inc., Comcast Phone of Washington, LLC, DIECA Communications Inc. d/b/a Covad Communications Company, DSL.net Communications, LLC, Focal Communications Corporation of Washington, Global Crossing Local Services Inc., ICG Telecom Group, Inc., Integra Telecom of Washington, Inc., KMC Telecom V Inc., MCI, Inc., through its regulated subsidiaries in Washington, and McLeodUSA Telecommunications Services, Inc., Pac-West Telecomm, Inc., Sprint

Communications Company, L.P., Winstar Communications LLC, and XO Communications Services, Inc., are authorized to operate in the State of Washington as competitive local exchange carriers.

93 (4) Arbitrator Ann E. Rendahl entered her Report and Decision, Order No. 17 in this proceeding, on July 8, 2005, recommending resolution of all issues presented for arbitration.

94 (5) On August 8, 2005, Verizon and AT&T filed separate petitions for review of the Arbitrator's Report and Decision.

95 (6) On August 18, 2005, Verizon, AT&T, and the Joint CLECs each filed responses to the petitions for review.

96 (7) In their initial responses to Verizon's petition for arbitration, the CLECs requested the Commission address in the arbitration the issues of line splitting, line conditioning, and maintenance, testing and repair of copper loops and subloops.

CONCLUSIONS OF LAW

97 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

98 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.

99 (2) The Arbitrator's recommendations concerning Issues No. 4 and 5 in paragraph 106 and 116-17 of Order No. 17 impose no obligation on any party to the proceeding, nor require any language to be included in the amendment to the parties' interconnection agreement.

100 (3) Parties should have the opportunity to file comments in staff investigation Docket No. UT-053025 as to whether the Commission should establish a central list of all ILEC wire centers in the state eligible for unbundled access to high capacity loops and transport.

101 (4) Where the Commission has approved in Verizon's UNE tariff a non-recurring charge for disconnecting UNEs, Verizon may assess the charge when CLECs disconnect a UNE, regardless of the reason for the disconnection.

102 (5) Including the FCC's definition of "business line" in the amendment to the parties' interconnection agreement instead of AT&T's proposed definition of "business switched access line" will make the amendment more clear and will likely reduce the opportunity for future disputes.

103 (6) Terms and conditions governing routine network modifications should be included in specific provisions of the proposed amendment governing routine network modifications, not in the definitions of terms.

104 (7) Verizon's proposed modification to the definitions of "dark fiber dedicated transport" and "dedicated transport" and the discussion of ILEC unbundling obligations in reverse collocations reflects the FCC's unbundling requirements for reverse collocation. Including Verizon's proposal in the parties' agreements will minimize future disputes on the issue.

105 (8) Verizon's definition of enhanced extended links, or EELs, in Section 4 of its UNE tariff WN-U21, is more consistent with the FCC's description of EELs than AT&T's proposed definition, and including Verizon's definition in the amendment would minimize disputes among the parties.

106 (9) The amendment to the parties' interconnection agreements should include language addressing the FCC's clarification of continued access to entrance facilities for interconnection under Section 251(c)(2 of the Act. Including in the definition of "entrance facilities" a reference to the FCC's clarification in paragraph 140 of the Triennial Review Remand Order would be clearer, and result in fewer disputes, than including AT&T's proposed definition.

107 (10) MCI's proposed Section 10.6 should be included in the amendment, but modified to be consistent with paragraph 140 of the Triennial Review Remand Order.

108 (11) Under Section 252 of the 1996 Act, state commissions are responsible for resolving any open issues between the parties, particularly "each issue set forth in the petition and the response, if any." *47 U.S.C. §§ 252(b)(C), 252(c).*

109 (12) Given that the CLECs raised the topics of line splitting, line conditioning, and maintenance, testing and repair of copper loops and subloops in their responses to Verizon's petition, the Arbitrator properly addressed and resolved the issues in Order No. 17.

110 (13) As the FCC adopted new rules governing line splitting and readopted and clarified its rules governing line conditioning and maintenance, testing and repair of copper loops and subloop in the Triennial Review Order, the

issues are properly addressed in an amendment to implement changes of law under the Triennial Review Order.

111 (14) Replacing AT&T's proposed definition of "sub-loop" with the FCC's definition of "copper subloop" will reduce the likelihood of disputes over the amendment.

112 (15) Verizon's proposed language allowing Verizon to contact a CLEC about problems occurring in a conversion should be included in the amendment. While carriers do not require specific language in an interconnection agreement to allow them to communicate with each another, including Verizon's proposed language in the amendment will not harm CLECs, may reduce disputes between the parties, and may reduce the possibility that Verizon would not otherwise notify a CLEC of problems.

113 (16) While the FCC preferred that parties negotiate terms for completion of conversions and pricing changes, where the parties cannot agree on these terms, state commissions are responsible under Section 252 for establishing terms in the parties' interconnection agreement.

114 (17) In order to protect both Verizon and CLECs from unnecessary delays and gamesmanship in ordering and processing conversions, the amendment to the parties' interconnection agreements should include an interval for completing conversions and require pricing changes in the next billing cycle following completion. In particular, Verizon must complete requests to convert individual circuits within 7 days after receiving the request and within 14 days of receiving requests to convert multiple requests, up to 100 circuits.

115 (18) The Arbitrator erred in defining the term "material" in identifying the ILEC's and CLECs' responsibilities in audits of CLEC conversion requests.

Under the Triennial Review Order, the auditor will determine material compliance consistent with AICPA standards for materiality.

116 (19) The CLECs' proposed language governing standards for compliance and payment of audit costs is consistent with the FCC's requirements in the Triennial Review Order, and should be included in the amendment to the parties' agreements.

117 (20) Verizon's proposed language for compliance with FCC service eligibility criteria is inconsistent with the FCC's audit requirements, and is not appropriate to include in the amendment.

118 (21) Where the FCC resolved a long standing dispute concerning whether the ILECs are obligated to provide routine network modifications, the issue is properly addressed in an amendment to implement changes in law under the Triennial Review Order.

119 (22) Where there has been a change in law, language in an amendment to interconnection agreements will become effective on the effective date of the amendment.

ORDER

THE COMMISSION ORDERS:

120 (1) Verizon Northwest Inc.'s Petition for Commission Review of Arbitrator's Report and Decision is granted, in part, and denied, in part, consistent with the findings and conclusions in this Order.

121 (2) The Petition for Review of Order No. 17 filed by AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle, is denied.

122 (3) The Arbitrator's recommendations in Order No. 17 concerning Issues No. 4, 5, and 22, definitions of "dark fiber loop," "DS1 loop," and "DS3 loop" in Issue No. 9, and definitions and terms for line conditioning, line splitting, and testing, maintenance, and repair of copper loops in Issues No. 9, 14(a), (g), and 27, are affirmed.

123 (4) The Arbitrator's recommendations in Order No. 17 concerning whether Verizon may charge non-recurring charges for disconnection of UNEs in Issue No. 8, the definitions of "business switched access line," "EELs," and "subloop" in Issue No. 9, definitions of "dark fiber" and "dedicated transport" in Issues No. 9 and 19, the definition and terms concerning "entrance facility" in Issues No. 9 and 20, and certain terms and conditions for conversions to EELs in Issues No. 21(b)(1), 21(b)(2), 21(b)(4), and 21(c)), are modified consistent with the findings and conclusions in this Order.

Dated at Olympia, Washington, and effective this 22nd day of September, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.