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January 31, 2006

VIA E-MAIL AND FEDERAL EXPRESS

Ms. Carole Washburn, Executive Secretary
Washington Utilities & Transportation Committee
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Re: Docket No. UT-043013

Dear Ms. Washburn:

Please find enclosed an original and six copies of Verizon's Brief on Conforming Language, Amendment to Interconnection Agreement and a Certificate of Service.

Please contact us if you have any questions, and thank you in advance for your assistance.

Very truly yours,

Veronica Moore
Assistant to Timothy J. O'Connell

Enclosures

cc: ALJ Ann Rendahl
Parties of Record

Oregon
Washington
California
Utah
Idaho

Seattle-3269025.1 0010932-00035

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Amendment for Interconnection Agreements of VERIZON NORTHWEST INC. with COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON Pursuant to 47 U.S.C. Section 252(b), And the *Triennial Review Order*	Docket No. UT-043013 VERIZON'S BRIEF ON CONFORMING LANGUAGE

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January 31, 2006

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In accordance with the procedural schedule established by the Notice of December 22, 2005, Verizon Northwest Inc. ("Verizon") respectfully submits its Brief Regarding Conforming Language. This brief is intended to be reviewed in conjunction with Exhibit 1, which is a marked-up version of the proposed Amendment that shows Verizon's and the CLECs' disputed language.

DISPUTED ISSUES

In this section, Verizon addresses the few disputes that remain. Verizon's proposals are consistent with the Arbitrator's decision[1] and the Commission's order,[2] even as to issues which were decided adverse to Verizon's position. The CLECs' proposed alternative language invariably seeks unreasonable interpretations of the prior proceedings in this docket. Verizon's proposals should be adopted.

Section 1

In this section, Verizon's proposed Amendment[3] correctly states, among other things, that Verizon has no obligation to provide specific UNEs that are no longer required by federal law and, moreover, that this is true "notwithstanding" the underlying Agreement. *E.g.*, Amendment § 1.[4] Verizon's proposed language thus conforms to the purpose of this proceeding, which is to eliminate from the interconnection agreements any provisions, based on prior, vacated FCC

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[1] Arbitrator's Report and Decision, *Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc.*, Docket No. UT-043013, Order No. 17 (Wash. UTC July 8, 2005) ("Arb. Decision")

[2] Final Order, *Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc.*, Docket No. UT-043013, Order No. 18 (Wash. UTC Sept. 22, 2005) ("Commission Order").

[3] Proposed Amendment to Interconnection Agreement Between Verizon Northwest Inc. and CLECs ("Amendment") (attached as Exh. 1).

[4] While Verizon's language originally included the word "tariff" in these "notwithstanding" clauses, Verizon has now eliminated such references to the word "tariff." This wholly conforms to the Arb. Decision, and should moot the CLECs' objections to these clauses.

decisions, that obligated Verizon to provide as UNEs those elements that the FCC held in the *TRO*,[5] the *TRRO*,[6] and related orders need not be provided as UNEs. It would frustrate that purpose, and impose obligations contrary to federal law, if CLECs could claim that some stray language in an underlying agreement reinstated these outdated unbundling obligations. The Commission, therefore, should adopt the "notwithstanding" language wherever it appears.

<u>Section 2.2 and similar sections – Federal Unbundling Rules vs. State Law</u>

Verizon's proposed section 2.2 states as follows:

> Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements ("Combinations"), or UNEs commingled with wholesale services ("Commingling") to [the CLEC] under the terms of this Amendment in accordance with, but only to the extent required by, the Federal Unbundling Rules and the Arbitration Orders, and (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to [the CLEC] under the terms of this Amendment to the extent that provision of access to such UNEs, Combinations, or Commingling is not required by the Federal Unbundling Rules and the Arbitration Orders.

Section 2.2 is identical to the former section 2.1 that Verizon had proposed, with the exception that it gives effect to this Commission's "Arbitration Orders" in addition to the "Federal Unbundling Rules." Verizon's proposal is therefore consistent with the Arbitrator's holding that former section 2.1 was "consistent with change of law language" in certain carriers' agreements, which already contained language allowing "automatic" discontinuance of the provision of elements as UNEs once the legal obligation to provide those elements as UNEs was

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

[6] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*"), *petitions for review pending, Covad Communications Co., et al. v. FCC, et al.*, Nos. 05-1095, *et al.* (D.C. Cir., to be argued Feb. 24, 2006).

eliminated. Arb. Decision at 29.[7] The same holding should *a fortiori* apply to section 2.2, and the Commission should reach the same conclusion here.

The CLECs, however, propose two additions to section 2.2, both of which are mirrored in their proposals to modify numerous other sections of the Amendment. First, the CLECs propose to make section 2.2 "[s]ubject to Sections 2.5 and 4.4 below."[8] This addition is improper. Section 2.5 proposes that "nothing contained herein shall be construed to limit or preclude [the CLEC]'s exercise of any pre-existing right it may have under the Agreement to dispute or condition Verizon's discontinuance of any UNEs or facilities." Amendment § 2.5 (CLEC-added language). But the whole point of this Amendment is to discontinue unbundled access to the elements that were eliminated by the *TRO*, *TRRO*, and related orders. The Commission should not adopt language that is solely designed to generate even further disputes as to these very elements.

The CLECs' proposal to cross-reference section 4.4 should also be rejected, for the same reasons that the Commission should reject the CLECs' proposals as to that section (*see infra* at 34-36).

Second, the CLECs propose to state in section 2.2 – and throughout the Amendment[9] – that Verizon is required to provide UNEs in accordance with "applicable state law." But the Arbitrator has already correctly rejected such CLEC proposals, noting that the Commission has expressly held that "state commissions *may not* require ILECs . . . to unbundle network elements

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[7] Consistent with the Arbitrator's holding, Verizon has not proposed to include section 2.2 as to those carriers that have adopted agreements with change-of-law language similar to AT&T's.

[8] The CLECs also cross-reference section 4.4 in several other places: *See* Amendment, §§ 2.4, 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.3.2, 3.6.2.3, 3.7.1, 3.11.2.

[9] *See* Amendment §§ 2.3, 2.6, 3.1.2, 3.2.2, 3.2.4, 3.3.1, 3.3.2, 3.3.2.1, 3.3.2.2, 3.3.2.2.2, 3.6.2.1, 3.10A.1, 3.10B, 3.10C, 3.11.1.1, 3.11.2.1. In similar fashion, the CLECs object to numerous occasions on which Verizon refers to the "Federal Unbundling Rules. *See id.* §§ 3.2.3, 3.4.1, 3.4.3.1, 3.5.1, 3.5.2, 3.5.3, 3.5.4, 3.6.1.1, 3.7.1.

that the FCC has 'delisted' as UNEs." Arb. Decision at 21 (emphasis added). The Arbitrator also pointed out that the FCC has repeatedly held that state commissions cannot contradict the FCC's unbundling determinations. *See id.* at 22 (citing *TRO* ¶ 195, and *BellSouth Declaratory Ruling*[10] ¶ 22). As the Arbitrator held, "state unbundling decisions that impose on ILECs a requirement that the FCC declined to make or directly chose not to impose under Section 251 would directly conflict with and substantially prevent implementation of federal unbundling rules, and would 'exceed the Acts' reservation of state authority with regard to unbundling determinations.'" *Id.* at 22 (citing and quoting *BellSouth Declaratory Ruling* ¶¶ 17, 23). Thus, "[t]o the extent CLECs in this proceeding propose language that implies or requires that certain 'delisted' UNEs, such as mass market switching, be available pursuant to state law, the language is rejected." *Id.* at 23.

While the Arbitrator noted that it might be possible for a state commission to adopt "other consistent unbundling obligations," *id.*, the Arbitrator also observed that such issues are "purely hypothetical, as this order does not establish state unbundling requirements." *Id.* at 24. This is precisely why the CLECs' proposed references to "state law" should be rejected. After all, the CLECs' language does not merely encompass the "hypothetical" situation where the Commission might issue an unbundling regulation that is unrelated to the FCC's orders. Instead, the CLECs repeatedly use the term "applicable state law" precisely to suggest that they might gain access to the *very elements* that the FCC held are not UNEs under § 251(c)(3). *See, e.g.*, Amendment § 3.1.2 (referring to "applicable state law" that might allow access to overbuilt fiber-to-the-home ("FTTH") loops); *id.* § 3.2.4 (referring to "applicable state law" that might

[10] Memorandum Opinion and Order and Notice of Inquiry, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling*, 20 FCC Rcd 6830 (2005) ("*BellSouth Preemption Declaratory Ruling*").

allow access to the capacities of IDLC loops).

Consistent with the previous decision, the Commission should again reject any CLEC language suggesting that the Commission can "impose unbundling obligations inconsistent with FCC decisions." Arb. Decision at 23. To the degree that the Arbitrator directed the parties to modify the Amendment to reflect that Verizon's unbundling obligations could be modified by state action consistent with the FCC's determinations on unbundling, Verizon's proposed language accomplishes the Arbitrator's requirement far better than the CLECs' inherently ambiguous reference to "applicable state law." Verizon's contract term recognizes that unbundling obligations may arise from "Arbitration Orders" which would be the mechanism for state commissions to impose modifications on interconnection agreements.

Section 2.5 – Pre-existing discontinuance rights

All parties agree that the Amendment, in section 2.5, should state that the Amendment does not override any rights that Verizon "may have under the Agreement as to discontinuance of Discontinued Elements." Amendment § 2.5. The CLECs, however, propose to modify the language to refer to "the Parties" – that is, Verizon's and the CLECs' – rights that may exist as to the discontinuance of Discontinued Elements. But it makes no sense to say that the Amendment does not override any pre-existing CLEC rights as to discontinuance: it most certainly does override any such rights that may have existed. Indeed, the whole point of this Amendment is to discontinue various elements that were eliminated by the *TRO*, the *TRRO*, and associated orders.

Section 3.1 – FTTH and FTTC loops

Section 3.1.1. In the *Triennial Review Order*, the FCC found that CLECs are not impaired, on a national basis, without unbundled access to "loops consisting of fiber from the central office to the customer premises," known as fiber-to-the-premises ("FTTP") or FTTH

loops. *TRO* ¶ 211. Thus, the FCC held that "[i]ncumbent LECs do not have to offer unbundled access to newly deployed or 'greenfield' fiber loops." *Id.* ¶ 273. The FCC has held that its finding of no impairment also applies to "fiber-to-the-curb" ("FTTC") loops, defined as "local loop[s] consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE."[11] The Arbitrator's decision recognizes this fact. *See* Arb. Decision at 77.

Verizon's proposed Amendment accordingly provides that a CLEC "shall not be entitled to obtain access to a FTTH or FTTC Loop, **or any segment thereof**, on an unbundled basis when Verizon deploys such a Loop to the customer premises of an end user that has not been served by any Verizon Loop other than a FTTH or FTTC Loop." Amendment § 3.1.1. As the Florida commission found, Verizon's language accurately implements the FCC's rules: "in no event is Verizon obligated to offer unbundled access to FTTP loops (or any segment or functionality thereof) which terminate at an end user's customer premises that previously has not been served by any Verizon loop facility." Florida Order[12] at 66. [13]

The CLECs, however, propose to delete the phrase "or any segment thereof," even though they have no lawful claim to any segment of the fiber loop. To the extent the CLECs suggest that, where Verizon builds a fiber loop that includes copper from a premises to the curb (and then fiber from the curb to the central office), Verizon must unbundle the copper segment,

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[11] 47 C.F.R. § 51.319(a)(3)(i)(B) (as modified by Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 20293, App. B (Final Rules) (2004) ("*FTTC Reconsideration Order*")).

[12] Order On Arbitration, *Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP (Fla. PSC Dec. 5, 2005) ("Florida Order").

[13] The Commission may, of course, notice decisions of other state utility commissions. RCW 34.05.452(5).

they are wrong. Indeed, the whole point of the *FTTC Reconsideration Order* was to explain that the FCC's no-impairment finding as to fiber loops includes those loops that have copper distribution facilities leading from the premises to the curb. *See FTTC Reconsideration Order* ¶ 10. Conversely, if the CLECs are attempting to argue that they are entitled to FTTH subloops, they are wrong there too: The FCC's subloop rule applies only to "copper subloop[s]," which are "comprised entirely of copper wire or copper cable." 47 C.F.R. § 51.319(b)(1). The Commission should therefore reject the CLECs' objection to Verizon's language, which appropriately implements the Arbitrator's Decision.

Section 3.1.2. Verizon's section 3.1.2 generally provides that in overbuild situations, Verizon is not required to provide an FTTH or FTTC loop, but instead "must maintain the existing copper loop" for the CLECs' access until Verizon chooses to retire that loop. Amendment § 3.1.2. Then, upon retirement, Verizon "shall provide nondiscriminatory access to a 64 kilobits per second TDM transmission path (or an equivalent transmission path using other technologies) capable of voice grade service." *Id.* This provision therefore implements the Arbitrator's decision, which adopted Verizon's (former) section 3.1 and AT&T's (former) sections 3.2.2.3 and 3.2.2.4 with respect to the retirement of Verizon's copper loops. *See* Arb. Decision at 122.

The CLECs' new proposal, however, goes far beyond anything in the Arbitrator's decision or the FCC's rules. They propose to require that, "where the retired loop is a DS-1 copper loop, Verizon must provide, at the CLECs' request, up to 24 such voice grade transmission paths or a DS-1 equivalent transmission path." Amendment § 3.1.2 (CLEC-added language). But there is no basis for the CLECs to claim a right to *multiple* voice grade paths when a loop is retired. The FCC's rules clearly state that CLECs are entitled only to "**a**" single

voice grade path in such situations. 47 C.F.R. § 51.319(a)(3)(iii)(C) (emphasis added). Similarly, the *TRO* specified that "in situations where the incumbent LEC elects to retire the copper loop, it must provide unbundled access to *a 64 kbps transmission path* over its FTTH loop." *TRO* ¶ 277 (emphasis added). Neither the *TRO* nor the rules suggest that ILECs are required to unbundle "24 . . . voice grade transmission paths," as the CLECs request, and none of the decisions in Verizon's arbitrations in other states impose such a requirement. The Commission should therefore reject the CLECs' addition.

Section 3.2.4.1 – IDLC Hybrid Loops

As to IDLC hybrid loops, the Arbitrator's decision adopted the language originally proposed by MCI, while clarifying that, when Verizon must use a loop different from the IDLC loop currently serving an end-user to fulfill a CLEC's order, "the choice of copper or UDLC loops is the ILEC's." Arb. Decision at 142-43. Mirroring the language that had been proposed by MCI, Verizon proposes, in those situations, to provide "an **existing** copper Loop or a Loop served by **existing** Universal Digital Loop Carrier ('UDLC'), **where available**." Amendment § 3.2.4.1.

The CLECs, however, dispute the language, in bold above, that would limit Verizon's obligations to providing an "existing" copper or UDLC loop. But there can be no serious claim that Verizon has an obligation to provide copper or UDLC facilities that are not in existence – *i.e.*, where Verizon would need to construct such facilities for the CLECs' use. The FCC has clearly held that it does not require incumbents to construct new loops so that CLECs may obtain them as UNEs. *See TRO* ¶ 7 ("We do not require incumbent LECs to trench new cable or otherwise to construct transmission facilities so that requesting carriers can access them as

UNEs."); Mass. Arb. Order[14] at 194 ("Verizon may charge the CLEC for constructing the loop."). The Commission should therefore reject the CLECs' proposed deletions to Verizon's proposed language.

Sections 3.4.1.1.2, 3.4.2.1.2, 3.5.1.1.2, 3.5.2.1.2 – Caps on high-capacity elements

The parties agree that the FCC's rules cap the number of UNE high-capacity loops and high-capacity transport circuits that a CLEC may obtain, in those instances where such elements are available as UNEs. In order to prevent CLECs from circumventing these caps, Verizon's proposed language in each of the relevant sections specifies that the caps apply to a CLEC "and its affiliates." This language is necessary so that one company (including all affiliates) will be able to obtain only the maximum amount of loops or transport facilities specified in the relevant FCC rule. Otherwise, a carrier with numerous affiliates – and many CLECs operate through multiple affiliates – could easily evade the FCC's caps: for example, when one affiliate reached the 10 DS1-loop cap, the carrier would be able to order another 10 loops through another affiliate. CLECs would also have an incentive to create new affiliates solely to avoid the caps. The Commission should reject this language and the potential gaming of the FCC's rules that it would encourage.

Section 3.6.1.2 – Data Production to CLECs

In section 3.6.1.2, the parties have generally agreed that Verizon may provide the CLECs with "data regarding the number of Business Lines and fiber-based collocators at non-impaired Wire Centers" under an appropriate non-disclosure agreement. Amendment § 3.6.1.2. There remain, however, a few disputes.

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[14] Arbitration Order, *Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements*, DTE 04-33 (Mass. DTE July 14, 2005) ("Mass. Arb. Order").

First, the CLECs seek to make these data disclosures mandatory, by providing that the data "shall" include the number of business lines and fiber-based collocators. Verizon has used "may" rather than "shall" in section 3.6.1.2 because the FCC's rules do not require Verizon to provide any back-up data at all. Verizon's language correctly reflects that it voluntarily agrees to provide the data at issue, but that it is not doing so pursuant to a regulatory mandate. Moreover, it is not possible to predict how circumstances may change, such that the kinds of data specified in the Amendment are no longer the preferred or most useful back-up data. Verizon should not be locked into providing specific forms of data, particularly because interconnection agreements often continue on a month-to-month basis years beyond their customary 2-3 year terms.

Second, the CLECs propose that "Verizon shall provide the back-up data required by this section no later than ten (10) business days" after Verizon receives a CLEC's written request. Amendment § 3.6.1.2 (CLEC-added language). But a 10-day timeframe is arbitrary and unreasonable. If multiple CLECs request the same voluminous back-up data within the same period, Verizon might not be able to meet all of these requests within a 10-day period. Verizon expects to be able to produce back-up data reasonably promptly, but 10 days – which may translate into as few as five *business* days – is an unduly short timeframe in some instances, given the variables involved in producing data in response to one or a number of CLEC requests.

Third, the CLECs propose that, on a CLEC's request, "Verizon shall update the back-up data to the month in which [the CLEC] requests the back-up data; provided, however, that Verizon need not provide the back-up data for a particular Wire Center for a date later than the original date on which the data must have been current to establish . . . non-impairment." *Id.* This language misunderstands the purpose of the back-up data that Verizon has voluntarily agreed to provide. Verizon has agreed to provide such data for those wire centers that satisfy the

FCC's no-impairment criteria. The CLECs have no need for – and Verizon has not agreed to provide – back-up data for wire centers that no one claims satisfy the FCC's criteria. For the wire centers that *do* satisfy the criteria, the only relevant date is either the effective date of the *TRRO* – for wire centers that met the criteria at that time – or the date Verizon designates the wire center as meeting those criteria. That is because the FCC has determined that, once a wire center satisfies the no-impairment criteria, it cannot move back to impaired status. *See TRRO* ¶ 167 n.466. Therefore, the only relevant data are the data at the time the wire center satisfied the no-impairment criteria. There simply is no occasion where it would be relevant to furnish *updated* data about a wire center. In any event, some of the data that the FCC requires Verizon to use to compile its wire center list – such as ARMIS data (*see id.* ¶ 105) – are generated on an annual basis, so requiring any more frequent updates would be inconsistent with the nature of the data.

Fourth, the CLECs' proposal would require Verizon to produce "the names of the fiber-based collocators counted in each wire center, line counts identified by line type, the date of each count of lines relied upon by Verizon, . . . all business rules and definitions used by Verizon, and any documents, orders, records or reports relied upon by Verizon for the assertions made." Amendment § 3.6.1.2 (CLEC-added language). These extraordinarily overreaching requirements have no basis in the FCC's rules. The only possible reason for this provision would be to burden Verizon with pointless and costly data production in order to permit the CLEC to raise complaints about the "completeness" of Verizon's supporting data. This requirement is unnecessary, in that any CLEC counted as a fiber-based collocator can itself notify Verizon if it has been misclassified in any particular location. Moreover, by requiring identification of the particular CLECs collocating in each wire center, the CLECs would have

Verizon reveal carrier-proprietary information to potential competitors of those carriers.[15] Indeed, such data would be highly sensitive to the CLEC collocators themselves that might not be parties to any given dispute but would find that their competitive business information had been turned over to other CLEC competitors. In addition, the CLECs' proposal for Verizon to produce line counts identified by line type is at odds with the nature of the ARMIS data the FCC instructed ILECs to use. *See TRRO* ¶ 105. The Commission should reject the CLECs' unreasonable proposal out of hand.

Section 3.6.1.3 – Electronic certification

In section 3.6.1.3, Verizon proposes CLECs "shall use" Verizon's electronic ordering system to submit their self-certifications that EELs they have obtained in the past or seek to obtain in the future comply with the FCC's current eligibility criteria, as such ordering systems are "updated from time to time in accordance with any Change Management requirements that may apply under the Agreement." Amendment § 3.6.1.3. Although Verizon has invested considerable resources in developing those electronic systems for the use of the CLECs and has modified them to accept self-certifications, the CLECs dispute this entire section and claim the right to submit their self-certifications through other, unspecified methods.

Verizon's electronic ordering systems permit a CLEC to self-certify its EELs by placing a "c" (for "certify") in the appropriate box on the access service request ("ASR") or local service request ("LSR") that the CLEC uses to submit EEL-related requests and orders. Because CLECs must submit an ASR or LSR to submit an order in any event (irrespective of whether certification is required for the order), Verizon's electronic certification minimizes the

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[15] The CLECs also object to Verizon's proposed language that would allow Verizon to "mask the identity of fiber-based collocators in order to prevent disclosure to [a CLEC] of other carriers' confidential or proprietary network information." Amendment § 3.6.1.2.

paperwork, time, and resources needed to submit, certify, and process an order, to the benefit of all parties.

This electronic ASR system has been designed and implemented by Verizon with ample participation by CLECs to provide for efficient ordering and provisioning of UNEs. Allowing a CLEC to certify to its entitlement to a requested UNE by submitting a paper letter, for example, would increase the cost and error rate of the ordering and provisioning process, because Verizon would have to attempt to match each letter-certification with the proper electronic order manually. Such matching, moreover, could not likely be achieved because the circuit at issue would not have a circuit identification number assigned at the time when the CLEC submitted the respective ASR. As a result, the CLEC, in its separate letter sent through the mail or other means, could not identify the circuit(s) (which might be among tens or hundreds of circuits that the CLEC ordered on a given day) that it is self-certifying. These inherent inefficiencies of the CLECs' proposal demonstrate the reasonableness of requiring CLECs to utilize the electronic systems for self-certification. The Commission should therefore adopt Verizon's proposal, as other Commissions and Arbitrators have.[16]

Section 3.6.2.1 – Provision-then-Dispute Requirements

The *TRRO* set up a "provision-then-dispute process" for high-capacity loops and transport. After an ILEC receives "a request for access to a dedicated transport or high-capacity

[16] *See, e.g.*, Supplemental Arbitration Decision, *Petition of Verizon-Rhode Island for Arbitration of an Amendment to Interconnection Agreements*, Docket No. 3588, at 1 (R.I. PUC Dec. 13, 2005) ("Because the FCC did 'not specify the form for such a self-certification,' [Verizon]-RI's request for a mandatory use of an electronic ASR form for new requests of EELs appears reasonable and should be granted.") (quoting *TRO* ¶ 624) (attached as Exh. 2); Memorandum, Staff Recommendation on Reconsideration, *Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP, at 4 (Fla. PUC Jan. 12, 2006) ("[S]taff recommends that the Commission clarify that a CLEC should use the same method to submit EEL certifications as it does for ordering EELs. Moreover, for new orders or orders for conversions, staff believes the certification should accompany the order.") (attached as Exh. 3), *approved by* Vote Sheet (Fla. PUC Jan. 24, 2006) (attached as Exh. 4).

loop UNE that indicates that the UNE meets the relevant factual criteria," the ILEC "must immediately process the request," and raise any dispute later. *TRRO* ¶ 234.

The parties have agreed to implement this *TRRO* process, and have further agreed that, if Verizon disagrees with a CLEC's self-certification, it will "seek resolution of the dispute by the Commission or the FCC." Amendment § 3.6.2.1. The parties disagree, however, about Verizon's proposed language allowing it to use "any dispute resolution process set forth in the Agreement." *Id.* But Verizon's language is drawn straight from *TRRO* ¶ 234, which expressly states that, if "an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue *through the dispute resolution procedures provided for in its interconnection agreements*." *TRRO* ¶ 234 (emphasis added). The Commission should therefore adopt Verizon's language.

Section 3.6.2.2 – True-up

The parties generally agree that, if a CLEC has provided a self-certification that is erroneous for a high-capacity element(s) and if the Commission resolves a dispute over that certification in Verizon's favor, the CLEC should reimburse Verizon for the "additional charges" that would have applied if the element had been ordered under Verizon's special access tariff. Amendment § 3.6.2.2. There are a few disputes, however, over the terms and conditions that would apply to such charges.

First, Verizon proposes that the true-up will be calculated using the "month-to-month" tariffed charge in such situations, while the CLECs propose to use any "other" rate "selected by [the CLEC]." *Id.* § 3.6.2.2 (CLEC-added language). When a CLEC orders a circuit as a UNE that, under the FCC's rules, it had no right to obtain as a UNE, it should not be the *CLECs* prerogative to pick the price from Verizon's special access tariff (or, potentially, some other

source that the CLECs have not specified here). That is particularly true in the case of discounted rates, where the benefit of the discount requires the acceptance of additional conditions, such as maintaining the circuit for a specified term. Verizon's proposed language is also consistent with the FCC's determination that CLECs must make a "reasonably diligent inquiry" (*TRRO* ¶ 234), by giving them sufficient incentive to do just that.

Second, Verizon has proposed that the true-up will go "back to the date of provisioning (including, but not limited to, late payment charges for the unpaid difference between UNE and access tariff rates.)". Because the CLECs have agreed that Verizon is entitled to impose special access pricing in such situations, it is only fair that a CLEC is liable for a true-up back to the date on which the CLEC erroneously (or fraudulently) obtained the relevant high-capacity element. At the time the retroactive rates are applied, the CLEC will likely have been using Verizon's special access facility for many months without paying the full tariffed rate for the facility. The CLEC should also be required to pay late fees on the past due amounts, just as any other debtor who contests a debt without paying it is subject to late fees and/or interest if the creditor prevails in the dispute, to compensate the creditor for the time-value-of-money that should have been paid, as well as the collection risks.

Third, Verizon's proposed language provides that month-to-month access pricing "shall apply until such time" as the CLEC "requests disconnection of the subject facility or an alternative term that Verizon offers under its interstate special access tariff for the subject facility or service." Amendment § 3.6.2.2. The CLECs have no grounds for objecting to this language. Any modified pricing must necessarily continue until *some* future point, and it is reasonable to place the responsibility on the CLEC to determine that point, by either requesting disconnection or conversion to some other arrangement.

Finally, Verizon's language would define the true-up payment by referring to Verizon's "interstate" special access tariff. The CLECs dispute the word "interstate," but agree to the term "special access tariff." But the Amendment should make clear which special access tariff is at issue – interstate or intrastate – given that these tariffs often differ from each other (*i.e.*, the interstate tariffed rate is higher for some elements and lower for others). If the Amendment does not specify which tariffed rate applies, this uncertainty will only lead to further disputes down the road.

Section 3.6.2.2.1 – Dark Fiber

In section 3.6.2.2.1, Verizon has proposed terms to address the case of non-impaired dark fiber transport, for which there is "no analogous service under Verizon's access tariffs." For dark fiber transport that is no longer subject to unbundling, Verizon proposes that the "monthly recurring charges" shall be "the charges for the commercial service that Verizon determines to be analogous to the subject Dark Fiber Transport." Amendment § 3.6.2.2.1.

The CLECs agree to all of section 3.6.2.2.1, but would insert the word "reasonably" into the sentence above. This insertion would only lead to further needless litigation over the alleged unreasonableness of Verizon's replacement service, even though that replacement service would not be subject to this Commission's section 252 jurisdiction in the first place. *See, e.g.*, *Qwest Declaratory Ruling*[17] ¶ 8 n.26 (holding that the various provisions of § 252 apply to "only those agreements that contain an ongoing obligation relating to section 251(b) or (c)"). As noted above, Verizon has the right under federal law to reprice discontinued elements, and this right cannot be limited by a CLEC's professed notion of what counts as "reasonabl[e]."

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

Section 3.6.2.3 – When Verizon may reject self-certified orders

In section 3.6.2.3, the parties agree that, under certain circumstances, Verizon may reject orders for high-capacity facilities without first seeking dispute resolution (*i.e.*, upon Commission or FCC approval of any updates to Verizon's wire center list). *See* Amendment § 3.6.2.3. The CLECs maintain, however, that Verizon should be required to undertake the provision-then-dispute process even in cases where Verizon has made its non-impaired wire center list widely available for scrutiny by CLECs for many months, as Verizon did by a notice on March 2, 2005, and by publishing the list on its website. The CLECs thus propose to delete section 3.6.2.3's reference to Verizon's publicly available list of wire centers.

The CLECs seem to believe that Verizon's language would allow Verizon to post a *new* wire center designation on its web site (or otherwise provide a CLEC notice about the new designation) and then reject new orders immediately. But this is incorrect. Verizon's language in section 3.6.2.3 allowing it to refuse self-certifications applies only to the *initial* list of wire centers, *i.e.*, the list that has been publicly available for some nine months. As for future designations, section 3.6.2.3 explicitly provides that "subsequent revisions to the Wire Center List" will be "governed by Section 3.6.3," and section 3.6.3 does not allow Verizon to cease processing orders immediately after the list is updated.

The CLECs also object to Verizon's proposed language allowing it to rely on a wire center list that has been "confirmed through previous dispute resolution" or "otherwise permitted by the Commission or the FCC." Amendment § 3.6.2.3. But Verizon should be entitled to rely on its wire center list in such situations. Indeed, where a wire center list fits within one of those criteria – that is, where it has already been adjudicated to satisfy the FCC's no-impairment criteria – there is no basis for doubting the outcome of any additional dispute resolution about

that wire center. There would therefore be no need to force Verizon to supply UNEs to a CLEC, pending the outcome of such a dispute.

Section 3.6.3.1 – Transition period for future wire center changes

In section 3.6.3.1, Verizon has agreed that, when it makes future amendments to its wire center lists, the eliminated elements will become Discontinued Elements under the Amendment effective twelve months after the list is updated. *See* Amendment § 3.6.3.1. The CLECs propose, however, a delay of 18 months for "Dark Fiber Transport." *Id.*

There is no basis, however, for creating a longer delay for dark fiber. When the FCC, in the *TRRO*, created an 18-month period, it did so based on its view that that CLECs would need that long to transition their *entire embedded base* and that a "flash cut" would "substantially disrupt service to millions of mass market customers." *TRRO* ¶ 226. But that rationale is inapplicable when just one or a few additional wire centers are added to the existing list. In that case, CLECs will not have to modify their entire embedded base, but likely only one or a handful of arrangements. Twelve months is a substantial period of time – hardly a "flash cut" – and should provide CLECs with ample time to identify or self-provision an alternative means of serving their customers.

Section 3.8.2.3 – Information provided in bills

The *TRRO* unambiguously entitles Verizon to increase its rates, by specified amounts, for the embedded base of UNE Platform arrangements and UNE high-capacity loops and dedicated transport facilities that Verizon no longer has an obligation to unbundle. *See TRRO* ¶¶ 145, 198, 228. The *TRRO* also makes clear that the increased rates apply as of March 11, 2005. *See, e.g., id.* ¶ 198 (stating that the increased rates apply "as of the effective date of this Order"). The CLECs, however, have proposed a provision (section 3.8.2.3) that would impose significant and entirely unnecessary costs on Verizon when it seeks to bill the CLECs these increased rates. The CLECs' proposal would require Verizon either to modify its electronic billing systems or to engage in substantial manual processing of CLECs' bills so that the bills that include these increased rates – whether as a true-up back to March 11, 2005, or on a monthly basis – state: (1) "the time period for which such transition rate or true up applies"; (2) "the applicable transition rate or true up"; and (3) "details that enable [the CLEC] to identify the specific facilities to which the transition rate or true up amounts apply." Amendment § 3.8.2.3 (CLEC-added language). The Commission should reject this proposal.

First, CLECs do not need Verizon to tell them "the time period" or the "applicable transition rate" – the FCC has already done so. The time period during which the transition rate applies begins on March 11, 2005 and ends for any given arrangement when the CLEC converts that arrangement from a UNE to an alternative arrangement, but in all events no later than March 11, 2006 (or September 11, 2006 for dark fiber). *See TRRO* ¶¶ 145, 198, 228. Therefore, a bill that includes the transition rate will necessarily either be a true-up back to March 11, 2005, or reflect additional charges for the month covered by the bill. Similarly, the FCC has made clear that the applicable rate is a $1 increase for UNE Platform arrangements and a 15 percent increase

for high-capacity loops and dedicated transport facilities. *See id.* The CLECs – which know (or should know) the Commission-established rates at which they obtained these UNE arrangements – can perform this math as easily as Verizon; there is no need for Verizon to expend considerable resources to modify its bill format to display information the CLECs already know.

Second, CLECs do not (or, at least, should not) need Verizon to identify for them the UNE Platform arrangements and UNE high-capacity loops and dedicated transport facilities that those CLECs obtained prior to the cut-off for ordering new UNE arrangements, and which form their "embedded base" for purposes of the transition rules. The CLECs are using these arrangements to serve customers and have been receiving monthly invoices from Verizon. The transition rate and the true-up, moreover, apply to the *entire* embedded base, until the CLEC submits a request to convert the arrangement to a lawful alternative (or to disconnect the arrangement), and in all events no later than March 11, 2006 (or September 11, 2006 for dark fiber). Because each CLEC has as much knowledge as Verizon of its embedded base and of the arrangements that it has converted or disconnected, there is no need to impose on Verizon the cost to add to every bill it sends to a CLEC a list of the UNE arrangements to which Verizon has applied the transition rate or true-up.

Finally, as with all other billing issues, if the CLEC disputes Verizon's calculation of the true-up or increased rate, it can raise that claim through the standard billing dispute resolution process. That is a far fairer and more efficient process than requiring Verizon to make modifications to its electronic billing systems or to implement manual bill processing procedures for a transition regime that will end in less than two months (or less than eight months for dark fiber).

Sections 3.9.1, 3.9.1.1, and 3.9.2 – Transition away from Discontinued Elements

1. In sections 3.9.1 and 3.9.2, the parties address the orders that CLECs must submit for their UNE services to be transitioned to alternative arrangements by the end of the *TRRO* transition period, March 11, 2006.

The first dispute centers on Verizon's language that would require the CLECs to submit such orders no later than "a date that allows Verizon adequate time, taking account of any standard intervals that apply, order volumes, and any preparatory activities that [the CLEC] must have completed in advance in order to implement the conversion or migration, to convert or migrate the Discontinued Element to the replacement service by March 10, 2006." Amendment § 3.9.1. The CLECs, instead, would eliminate such language, apparently on the theory that they have the right to submit their conversion orders at any time up to, and including, March 10, 2006. Similarly, whereas Verizon states that the CLECs should be responsible to place orders for any alternative services, the CLECs propose merely that they will "**make commercially reasonable efforts to** order such alternative services." *Id.* (CLEC-added language in bold). As well, in section 3.9.2, Verizon's proposed language would allow it to reprice, disconnect, or migrate the service itself if the CLEC has not submitted a "timely" order "taking account of any standard intervals that apply, order volumes, and any preparatory activities that [the CLEC] must have completed in advance." *Id.* §§ 3.9.1.1, 3.9.2. This right to reprice or disconnect would arise only after March 11, 2006, if the CLEC neglects to take the actions necessary to complete a migration by that date.

Verizon's language is appropriate and should be adopted. As noted above (in relation to sections 2.4.1 and 3.11.2.2), Verizon has the prerogative to reprice elements that are no longer subject to section 251 unbundling. And it is entirely appropriate to expect the CLECs to submit

the necessary orders in time for Verizon to complete the transition by the end of the *TRRO*'s prescribed twelve-month period.

By contrast, the CLECs' language would allow it to submit orders up until the last day of the transition (March 10, 2006), with no lead time. Indeed, the CLECs could claim that they were somehow unable to place orders at all, and that their failure to do so was excused by the fact that they made "commercially reasonable efforts." This is unadministrable: Verizon cannot be expected immediately to process CLECs' transition orders submitted at the last minute on the last day of the transition period. Indeed, this notion is inconsistent with the *TRRO*, where the FCC directed that each CLEC "*shall* migrate its embedded base . . . to an alternative arrangement *within* 12 months of the effective date of the *Triennial Review Remand Order*." 47 C.F.R. § 51.319(d)(2)(ii) (emphases added).[18] The FCC did not specify that CLECs can wait until 11:59 p.m. on March 10, 2006, and then seek to "flash cut" all of their UNE-P lines to other arrangements. Verizon's language thus reasonably recognizes that CLECs must submit orders sufficiently before the end of the transition period to give Verizon time to perform the activities necessary to implement the requested conversion, taking into account standard intervals and order volumes. *See* Texas Track II Arb. Award[19] at 25 ("The Commission believes that the FCC has signaled the need for CLECs to avail themselves of market alternatives to TELRIC-based UNE-P arrangements during the transition period. Consistent with this decision, the Commission endorses the FCC's transition by CLECs from UNE-P to other arrangements prior

[18] *See also TRRO* ¶ 199 (stating that the "transition plan . . . requires competitive LECs to submit orders to convert their UNE-P customers to alternative arrangements *within* twelve months of the effective date of this order") (emphasis added).

[19] Arbitration Award, Commission Decision Matrix, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the SBC Texas 271 Agreement*, Docket No. 28821 (Tex. PUC June 17, 2005) ("Texas Track II Arb. Award").

to the March 11, 2006 deadline.").

2. In section 3.9.1, the CLECs propose to add language stating that, "[u]pon [a CLEC's] request, Verizon shall defer the effectiveness of [conversion] orders to a later date, but no later than March 10, 2006 (or, in the case of dark fiber, September 10, 2006)." Amendment § 3.9.1 (CLEC-added language). The CLECs' intent is to preserve transitional pricing throughout the transition period, even if the arrangements are migrated earlier to an arrangement with a higher price. As noted above, however, the FCC did not specify that all conversions will take place on March 10, 2006, for the purpose of applying rates. To the contrary, the FCC held that, "[d]uring the twelve-month transition period . . . competitive LECs will continue to have access to UNE-P priced at TELRIC plus one dollar *until the incumbent LEC successfully migrates* those UNE-P customers . . . to alternative access arrangements." *TRRO* ¶ 199 (emphasis added). Likewise, the 12-month transition period – including pricing – "does not supersede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis." *Id.*

Thus, after the successful migration of former UNE arrangements, any entitlement to transition pricing ends. *See* Texas Track II Arb. Award, Temporary Rider Attach. at 5 (providing that SBC's obligation to serve the embedded base ends on the "earlier" of the "CLEC's disconnection," or the "CLEC's transition of an Affected Loop-Transport Element(s) to an alternative arrangement," or March 11, 2006); Illinois Arb. Order[20] at 78 ("The Commission disagrees with CLECs that the transition rate should remain in effect for the entire transition period, even if transition is completed before the deadline. The terms of an agreement

[20] Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 05-0442, at 82 (Ill. Commerce Comm'n Nov. 2, 2005) ("Illinois Arb. Order")

go into effect at the time the agreement say it does."); D.C. Final Order[21] ¶ 22 (holding that the "modified UNE pricing lasts only until the conversion to alternative arrangements, not during the transition period after conversion").

Finally, it is logistically difficult for Verizon to provision an arrangement without making corresponding billing changes, particularly when alternative service arrangements are not necessarily identical to the UNEs that they replace. Accordingly, because Verizon's proposed language comports precisely with the FCC's rules and because the CLECs' language imposes obligations that exceed anything required by the *TRRO*'s transition plans, the Commission should adopt Verizon's proposal.

3. In section 3.9.1.1, the parties agree that Verizon may reprice elements at the end of the transition period in instances where Verizon could not complete the conversion by that time. They disagree, however, as to the rate to be applied during the period between the end of the transition and the date on which the conversion is completed. Verizon's proposed language allows it to choose to reprice by applying a surcharge "to an existing rate(s) so as to be equivalent to" the charge for the replacement service. Amendment §§ 3.9.1.1, 3.9.2.1. In both sections, the CLECs modify Verizon's language to state that the billed surcharge should be that "which when added to the rate(s) Verizon is charging [the CLEC] for the Discontinued Element(s), is equal to the rate(s) for" the replacement service. *Id.* (CLEC-added language).

Although this dispute may seem to be semantic, the real disagreement is over whether the combined transitional rate plus surcharge must "equal" the rate for the replacement service or whether it is sufficient if the total combined charges are "equivalent to" the replacement rates.

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[21] Order, *Petition of Verizon Washington, D.C. for Arbitration*, TAC-19 (D.C. PSC Dec 15, 2005) ("D.C. Final Order").

This difference is significant, because whether Verizon's resale rates for the services that would replace UNE-P arrangements precisely "equal" the surcharged rates depends in part on usage levels and patterns on *each* line, and other factors that cannot be determined in advance. Therefore, Verizon cannot determine in advance the precise surcharge that would apply to a given UNE-P arrangement that is not converted to resale as of the close of the transition period, much less develop a unique surcharge for each of UNE-P arrangements to be converted, such that the total charge will always and precisely "equal" the would-be resale rate for each such arrangement. The CLECs' proposed requirement of "equal" rates would thereby prevent Verizon from making use of the re-pricing provisions of the Amendment and obtaining its rightful, post-transition rates until it can actually complete the conversion of the UNE-P arrangements to resale at some later time.

The CLECs' insistence on this requirement is particularly unreasonable in light of Verizon's ability and willingness to charge resale "equivalent" rates designed to replicate the total bill a CLEC would receive if their total set of UNE-P arrangements were converted to resale as of the close of the transition period. Though Verizon cannot develop unique, customized surcharges for *each* discontinued UNE-P arrangement, it can develop a surcharge to be applied to *all* UNE-P arrangements, based on historical data showing the average monthly usage over such arrangements. That surcharge may result in a charge that is slightly lower or slightly higher than the resale rate would be for a particular UNE-P arrangement, but any such minor discrepancies disappear when averaged out over the many UNE-P arrangements leased by each CLEC. Consequently, Verizon's proposed contract language authorizing it to charge the "equivalent" of the resale rate will result in proper charges to a CLEC in the aggregate for all of its UNE-P arrangements.

In any event, CLECs can and should avoid this issue altogether by taking timely action to migrate their customers to commercial UNE-P replacement arrangements, which most CLECs have already done.

4. Section 3.9.2 addresses the situation where a CLEC fails to request either disconnection or a replacement service by the end of the *TRRO* transition period(s). In such a situation, the CLECs and Verizon have agreed that Verizon can disconnect the Discontinued Facility if Verizon has provided 30 days' written notice. *See* Amendment § 3.9.2. The dispute centers on Verizon's ability to reprice that arrangement: Verizon's proposed language states that it may convert and reprice the UNE to an analogous access arrangement after it notifies the CLEC "in writing." The CLECs' language, however, would require notice "at least thirty (30) days in advance" of the conversion and repricing.

The CLECs' proposal is inappropriate. Verizon has already issued repeated notices notifying all CLECs that Verizon may reprice these elements if the CLEC fails to obtain replacement arrangements by the end of the FCC's transition period. In addition, the *TRRO* itself leaves no doubt that CLECs must transition to non-UNE replacements by the end of the transition period. There is no need for any further notice to CLECs, and in no event can Verizon be forced to provide such UNE arrangements at the transitional price beyond the end of the FCC-mandated transition periods, as the CLECs' language suggests. *See, e.g.*, Florida Order at 40 (ruling that Verizon has already "issued the appropriate carrier notices for the purposes of the TRO and the TRRO"); Mass. Arb. Order at 74 ("Verizon is not required to send advance notice concerning the end of transitional pricing"); D.C. Arb. Order[22] ¶ 81 (declining to require any

[22] Recommended Decision, *Petition of Verizon Washington, DC Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, TAC-19 (D.C. PSC Sept. 6, 2005) ("D.C. Arb. Order").

additional notice of discontinuation of elements de-listed in the *TRO* or *TRRO* because "CLECs have had ample opportunity to plan for meeting any migration and conversion requirements"), *aff'd as modified by* D.C. Final Order.

As the Texas Commission has confirmed, if CLECs do not reach commercial agreements for replacement services, the ILEC has the right to reprice their embedded base of UNE arrangements to the level of analogous services "without further notice or liability." Texas Track II Arb. Award, Temporary Rider Attach. at 7-9. If a CLEC is concerned about the rates for UNE replacements, it can easily avoid uncertainty by choosing a UNE replacement itself, rather than doing nothing (*i.e.*, failing to submit an LSR or ASR) and thus forcing Verizon to reprice the service as an alternative to disconnection.

<u>Section 3.9.3 – Conversion Charges</u>

Verizon has agreed that, "[e]xcept as provided for in a Verizon tariff or as otherwise agreed by the Parties (including, but not limited to, in the Agreement), Verizon shall not charge [the CLEC] any fees for the conversion (*i.e.*, records-only changes to convert circuits that are already in service, which do not require Verizon to perform any physical installation, disconnection, or similar activities) or disconnection of a Discontinued Facility." Amendment § 3.9.3. This language is fair and equitable, as it gives the CLECs the right to be free from conversion charges in many or most instances, while preserving Verizon's right to seek compensation where the CLEC's request either falls under a tariff provision or requires Verizon to perform physical work. This language is also consistent with the Commission's holdings that "Verizon may assess an already-approved disconnection charge when a CLEC disconnects a UNE," and that "[i]f Verizon decides to include [a disconnect] charge in Exhibit A, it may include the disconnect charge identified in its UNE tariff." Commission Order at 8-9.

By contrast, the CLECs propose that "Verizon shall not charge [the CLECs] any termination, re-connect or other non-recurring charges or fees associated with the conversion or migration of Discontinued Facilities to alternative arrangements." Amendment § 3.9.3 (CLEC-added language). Instead of recognizing that ILECs may assess conversion-related charges in certain instances, the CLECs have proposed a blanket prohibition on any and all charges for conversions and "migrations" – even tariffed charges or those the CLEC had agreed to pay. This language is fundamentally inconsistent with the Commission's acknowledgment that Verizon can impose tariffed or agreed-on charges, and should be rejected for that reason alone.

Moreover, by introducing the term "migration" into section 3.9.3, the CLECs are seeking to deny Verizon recovery for performing even extensive work at the CLEC's request. The Amendment does not define migration, and as the CLECs know, a migration (as opposed to a records-only conversion) could require installation of substantial new facilities and significant physical work. For example, if Verizon discontinued several DS1 transport circuits on a non-impaired route running to a central office where the DS1s terminated to a CLEC's collocation arrangement, the CLEC might request installation of a new collocation arrangement at a different central office on a route that does not meet the *TRRO* non-impairment criteria, and then request Verizon to perform extensive work to rearrange the circuits so that they terminate to that new collocation arrangement. The CLEC might then argue that all of the equipment and work provided by Verizon to implement such installation and rearrangement comprise a "migration" for which Verizon may not charge the CLEC. As another example, upon Verizon's discontinuance of a dark fiber transport circuit on a non-impaired route, the CLEC might order a "lit" service from Verizon's special access tariff, which could require Verizon to purchase and install electronics. The CLEC might then argue that, because it "migrated" to the lit service, it is

exempt from any non-recurring charges that apply for the lit service under Verizon's access tariff.

In these or similar situations, the Amendment should not prohibit Verizon from charging rates the Commission has approved for such activities in the past, rates to which the parties have already agreed in their existing interconnection agreements, or rates that properly apply in cases where the service to which the CLEC migrates is a tariffed service.[23] Consistent with the Commission's Final Order, the Commission should accept Verizon's language.

Section 3.11.2.4 – Tariffed termination charges

In section 3.11.2.4, the CLECs dispute Verizon's proposed language that would make the CLECs liable for "(. . . charges associated with [the CLEC]'s early termination of a special access discount plan), and charges to which the Parties have otherwise agreed (including, but not limited to, in the Agreement)." Amendment § 3.11.2.4.

The CLECs' refusal to accept this language is unreasonable for several reasons. First, this is a proceeding to resolve §§ 251/252 interconnection disputes arising out of the *TRO*, the *TRRO*, and related FCC orders. There is no basis to modify or limit the charges in Verizon's special access tariffs here. *See* Michigan Order[24] at 38-39 ("Special access is not a service generally covered by interconnection agreements, because it is not required or provided pursuant to 47 U.S.C. § 251(c)(3). Further, the Commission is not aware of any FCC determination that

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[23] In addition, the Commission may not have jurisdiction over the service to which the CLEC migrates, as the CLECs' language incorrectly suggests. The Commission cannot constrain the parties' rights to negotiate prices in the context of non-§ 251 commercial agreements, which are not subject to the negotiation and arbitration requirements in § 252. *See*, *e.g.*, Florida Order at 44 (holding that "Verizon shall be permitted to assess non-recurring charges," and that Verizon may "negotiate the appropriate non-recurring charges, if any, for the reconnection of service under a commercially negotiated alternative arrangement, since such charges may not be subject to this Commission's oversight").

[24] Order, *Collaborative Proceeding To Monitor and Facilitate Implementation of Accessible Letters Issued by SBC Michigan and Verizon*, Case No. U-14447 (Mich. PSC Sept. 20, 2005) ("Michigan Order").

CLECs should be relieved of contract terms for special access, based on the changes wrought in the industry in the *TRO* and the *TRRO*. . . . [T]he Commission is not in a position to void long term contractual commitments the CLECs made.").

Second, the CLECs' proposal would require Verizon to discriminate in favor of particular CLECs. That is, Verizon would have one set of termination liability terms for its tariffs, and another set for the amendments adopted in this proceeding. This result would be impermissible. The filed-rate doctrine bars any claims that would allow a customer to receive terms that are better than all other similarly situated customers. *See, e.g., AT&T v. Central Office Tel., Inc.*, 524 U.S. 214, 223 (1998) ("[T]he policy of nondiscriminatory rates is violated when similarly situated customers pay different rates for the same services. It is that antidiscriminatory policy which lies at the heart of the common-carrier section of the Communications Act.") (internal quotation marks omitted).

Third, the Commission simply has no authority to modify the terms of federal tariffs. Only the FCC has such authority. *See* Illinois Arb. Order at 134 ("[I]f the termination charge methodology described in the amendment departs from that found in SBC's tariffs, then this provision will set up a conflict between the enforcement of the tariff and enforcement of the interconnection agreement."); *id.* at 142 ("This Commission does not have the jurisdiction to alter requirements contained in FCC tariffs.").

Fourth, the FCC has repeatedly rejected CLEC attempts to evade early-termination charges provided for in tariffs. In particular, the *TRO* held that "[w]e decline to require incumbent LECs provide requesting carriers an opportunity to supersede or dissolve existing contractual arrangements through a conversion request. Thus, to the extent a competitive LEC enters into a long-term contract to receive discounted special access services, such competitive

LEC cannot dissolve the long-term contract based on a future decision to convert the relevant circuits to UNE combinations based on changes in customer usage." *TRO* ¶ 587. This holding has been confirmed in numerous other FCC rulings. In one case, it held: "We reject AT&T's proposed language and decline to override the termination penalties contained in Verizon's special access tariffs. AT&T voluntarily purchased special access services pursuant to Verizon's tariff and took advantage of discount pricing plans that offered lower rates in return for a longer term commitment. We will not nullify these contractual arrangements that AT&T previously accepted."[25] The FCC has noted that "any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts."[26] It has "reject[ed] comments by US LEC/XO that . . . early termination penalties . . . are obstacles to their ability to convert special access circuits to EELs."[27] And it has noted that "our current rules do not require incumbent LECs to waive tariffed termination fees for carriers requesting special access circuit conversion."[28]

In short, there is no basis for the CLECs' unjustified attempt to escape liability for tariffed termination charges, let alone to gain more favorable treatment than other tariff customers. The Commission should reject the CLECs' proposal.

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[25] Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, 17 FCC Rcd 27039, ¶ 348 (Wireline Comp. Bur. 2002) (footnotes omitted).

[26] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶ 486 n.985 (1999) ("*UNE Remand Order*"), vacated and remanded, *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 940 (2003).

[27] Memorandum Opinion and Order, *Joint Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, 17 FCC Rcd 9018, ¶ 200 (2002); *see also* Memorandum Opinion and Order, *Joint Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, 17 FCC Rcd 17595, ¶ 212 (2002).

[28] Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, ¶ 75 (2001), *aff'd, Z-Tel Communications, Inc. v. FCC*, 333 F.3d 262 (D.C. Cir. 2003).

Section 3.11.2.6 – EEL certification

Verizon has proposed that, when CLECs certify that an EEL they have ordered satisfies the FCC's eligibility criteria, they should do so by including the following remark in the ASR: "Certification: The circuit(s) requested in this ASR meet the eligibility criteria set forth in 47 C.F.R § 51.318(b)(2)." Amendment § 3.11.2.6. By contrast, the CLECs propose that they will make a certification – somewhere – "that the ordered circuit(s) meet the FCC's eligibility criteria." *Id.* (CLEC-added language). But for the same reasons explained above in reference to the *TRRO* ¶ 234 certification under section 3.6.1.3, the CLECs should use the more-efficient electronic certification system that Verizon has put in place for EEL certifications. Under this process, the ASR is the sole method by which a CLEC may submit an order to Verizon for an EEL. There is no reason to permit the CLEC to submit a separate, manual certification when it must use the mechanized ASR process to order an EEL in the first place. Moreover, any other form of certification would be meaningless and ineffective, as the CLEC would have no practical means of linking the certification to the specific circuit being certified. *Cf. TRO* ¶ 599 (holding that the eligibility requirements should be applied "*on a circuit-by-circuit basis*, so *each DS1 EEL* (or combination of DS1 loop with DS3 transport) *must satisfy the service eligibility criteria*") (emphases added).

The Amendment's language further provides that EEL certifications will be made in the "[r]emarks section of the ASR" until "provisions are made to populate other fields on the ASR to capture this certification." Amendment § 3.11.2.6. The CLECs would state that the "Change Management process" is the sole way that any such changes might be made. *Id.* (CLEC-added language). In the alternative, Verizon would offer the following language: "in accordance with any Change Management requirements that may apply under the Agreement." This language

appropriately preserves any underlying Agreement terms as to the Change Management process.

Section 3.11.2.9 – EEL audits

Verizon has proposed that, if Verizon "asserts [the CLEC's] non-compliance with the service eligibility criteria" based on an auditor's report, Verizon "shall provide [the CLEC, at its request,] a copy of the report (or portions related to the asserted non-compliance)." Amendment § 3.11.2.9. The CLECs propose, however, that in all cases, "Verizon shall direct its auditor to provide a copy of its report to [the CLEC] at the same time it provides the report to Verizon." *Id.* (CLEC-added language).

Under the FCC's rules and section 3.11.2.6 itself, however, Verizon must pay for the auditor unless the audit reveals noncompliance. *See TRO* ¶ 628. Until such time as Verizon takes action against the CLEC based on the audit report, the CLEC should not be entitled to receive the report at all, and certainly not in the absence of the CLEC's agreement to compensate Verizon for it. The CLECs' proposal has no basis in this Commission's decisions or the FCC rules.

Section 3.11.2.6 also provides that, if the auditor's report reveals material non-compliance by the CLEC, the CLEC will reimburse Verizon for the "cost of the independent auditor." Amendment § 3.11.2.6. The CLECs, however, add the word "reasonable" before the word "cost." This addition has no support in the *TRO*, which requires that "the competitive LEC must reimburse the incumbent LEC for *the cost* of the independent auditor" if the auditor finds noncompliance, without any mention of reasonableness. *TRO* ¶ 627 (emphasis added). While Verizon expects that any independent auditor's work should be conducted without unreasonable expenses, there would arise many needless disputes if a reasonableness standard were codified into the Amendment. Moreover, because Verizon will bear the full cost of the audit if it

uncovers no violations, Verizon has every incentive to ensure that its auditor does not engage in "gold plating" and, instead, performs the work at a reasonable cost.

Section 4.4 – Scope of Amendment

In section 4.4, the CLECs propose to state that the Amendment does not alter or modify "any rights and obligations under Applicable Law contained in the Agreement, other than those Section 251 rights and obligations specifically addressed in th[e] Amendment." Amendment § 4.4 (CLEC-added language). The CLECs also propose to insert references to section 4.4 into each of the specific sections of the Amendment that implement the *TRO's* and *TRRO*'s limitations on the availability of particular elements as UNEs, such as fiber-to-the-home ("FTTH") loops, hybrid loops, high capacity loops, and dedicated transport.

The CLECs' proposal should be rejected. First, to the extent that § 251 obligations have been defined by the FCC in the *TRO*, the *TRRO*, or other orders, any purported "Applicable Law" that contradicts or undermines the FCC's rules is therefore preempted. Given the preemptive effect of federal law, it cannot be true that all other "rights and obligations" under other sources of law continue to exist unchanged by anything that the FCC has done. The Arbitrator has correctly recognized that state commissions cannot reimpose unbundling obligations that the FCC has lifted (*see* Arb. Decision at 22-23), and the Commission should reject the CLECs' attempt to resurrect any preempted sources of law.

Second, the CLECs also propose that a CLEC's "execution of this Amendment shall not be construed as a waiver with respect to whether Verizon, prior to the Amendment Effective Date, was obligated under the Agreement to perform certain functions required by the TRO." Amendment § 4.4 (CLEC-added language). This sentence is intended to give the CLECs an improper basis for arguing that newly created *TRO*-related obligations, such as routine network

obligations and commingling, were not, in fact, new obligations, and therefore did not require an amendment.

Contrary to the CLECs' position, these obligations were newly imposed in the *TRO*. For instance, the FCC clearly stated that it was adopting a new regulation as to commingling: "We *eliminate* the commingling restriction that the Commission adopted as part of the temporary constraints in the *Supplemental Order Clarification*[29] and applied to stand-alone loops and EELs. We *therefore modify* our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services . . . and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request." *TRO* ¶ 579 (emphases added). Thus, the Arbitrator already correctly recognized that in the *TRO*, the FCC "eliminated a restriction against commingling that it earlier imposed in its *Supplemental Order Clarification* and applied to stand-alone loops and EELs." Arb. Decision at 107 (footnote omitted); *see also* D.C. Final Order ¶ 50 ("The TRO makes it clear that the commingling and conversion rules are new rules, not merely clarifications of existing rules."); Penn. Rec. Decision[30] at 98 (holding that commingling and conversions involved a "change of law").

As for routine network modifications, the *Triennial Review* Notice of Proposed Rulemaking[31] had specifically asked "about the extent to which incumbent LECs have an obligation to modify their existing networks in order to provide access to network elements," *TRO* ¶ 631, and the FCC then concluded that "[t]he routine modification requirement *that we*

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[29] Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 9587 (2000), *aff'd*, *Competitive Telecomms. Ass'n v. FCC*, 309 F.3d 8 (D.C. Cir. 2002).

[30] Recommended Decision, *Petition of Verizon Penn. Inc. and Verizon North Inc. for Arbitration of an Amendment to Interconnection Agreements*, P-00042092 (Pa. PUC Aug. 31, 2005) ("Penn. Rec. Decision").

[31] *See* Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781 (2001).

adopt today resolves a controversial competitive issue that has arisen repeatedly," *id.* ¶ 632 (emphasis added). Thus, the Arbitrator correctly recognized that "the FCC did not adopt rules governing routine network modifications until it entered the Triennial Review Order. The FCC's discussion of ILEC obligations to perform routine network modifications is intended to resolve an outstanding contentious issue, *i.e.*, an unresolved issue of law." Arb. Decision at 190. *See, e.g.*, Mass. Arb. Order at 230 ("the requirement that ILECs perform [routine network modifications] is a new obligation that must be incorporated as an Amendment to the parties' interconnection agreements"); D.C. Arb. Order ¶ 236 ("all the commenting parties appear to agree that amendment language regarding this issue is advisable"), *aff'd as modified by* D.C. Final Order; Florida Order at 124 ("The ICAs shall be amended to reflect Verizon's obligation to perform routine network modifications . . . ."). Consistent with the previous decision, the Commission should reject the CLECs' language suggesting otherwise.

Section 4.7 – Definitions

Section 4.7.8 – "Discontinued Element." Verizon's proposed definition for "Discontinued Element" differs depending on the nature of the CLEC's underlying agreement. For those CLECs that already have agreements that, as the Arbitrator has found, allow for the automatic discontinuation of elements that Verizon no longer has an obligation to provide as a UNE, Verizon's definition preserves those pre-existing discontinuance rights by referring to any facility that "ceases to be subject to an unbundling requirement under 47 U.S.C. § 251(c)(3) or 47 C.F.R. Part 51." Amendment § 4.7.8. Verizon also states that the list of discontinued elements is "[b]y way of example and not by way of limitation." *Id.* Though the affected CLECs object to this language, it is merely intended to confirm that Verizon retains the pre-existing discontinuance rights that are already part of the underlying Agreements.

By contrast, Verizon's proposed definition does not include the above language for AT&T and other adoptees whose Agreements do not include automatic discontinuance provisions.

Thus, in all cases, Verizon is merely attempting to preserve existing change-of-law provisions, whether those provisions require contract amendment or allow automatic discontinuation. Verizon's approach is therefore perfectly consistent with the Arbitrator's previous determination that:

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

Arb. Decision at 29 (emphasis added). The Commission should take that same approach here.

Verizon's proposed definition then specifically lists the "Discontinued Facilities" as of the Amendment's effective date, *i.e.*, those facilities at issue in the *TRO* or the *TRRO*. Verizon's proposal is a reasonable attempt to conform the existing interconnection agreements to current federal law. The CLECs, however, object wholesale to any language intended to implement the *TRRO*, such as the inclusion of entrance facilities, mass market switching, high-capacity loops and transport that satisfy the *TRRO*'s non-impairment criteria, and databases or signaling that are not provided in connection with the embedded base of mass market switching. The CLECs have no plausible objection to any of this language, which indisputably implements the clear holdings of the *TRRO*. *See TRRO* ¶ 5; *cf.* Arb. Decision at 70 ("AT&T's limitation to four specific elements cannot be justified."). The Commission should reject the CLECs' attempt to ignore the *TRRO*.

Section 4.7.14 – "Entrance Facility." Verizon defines this element as "Dedicated

Transport (lit or unlit) that does not connect a pair of Verizon Wire Centers." Amendment § 4.7.14. This corresponds exactly to the type of Dedicated Transport that Verizon does not have to provide under the FCC rules. *See* 47 C.F.R. § 51.319(e)(2)(i) ("Entrance facilities. An incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers."). The CLECs, by contrast, are using a now-outdated, pre-*TRRO* definition of "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 [the CLEC] or a third party." Amendment § 4.7.14 (CLEC-added language). That language should be rejected as inconsistent with the FCC's current rule.

The CLECs would also propose to add the following sentence: "In accordance with Paragraph 140 of the Triennial Review Order, nothing in this Section nor the FCC's finding of non-impairment with respect to entrance facilities alters [the CLEC]'s right to obtain interconnection facilities pursuant to Section 251(c)(2) of the Act or to obtain access to such facilities at cost based rates." *Id.* (CLEC-added language). But this language – which is drawn from the Commission's Final Order (at 18) – is already used verbatim in section 3.5.4, to which the CLECs have agreed. There is therefore no need to repeat the same language in the definition.

Sections 4.7.19 and 4.7.20 – "FTTH Loop" and "FTTC Loop." In both of these definitions, Verizon has added language clarifying that these elements are "not limited to those loops being used to provide service to 'mass market' or residential customers." Amendment §§ 4.7.19, 4.7.20. The CLECs object on the theory that the FCC's rules on FTTH and FTTC loops *are* so limited. The CLECs' position is wrong.

As an initial matter, the FCC's FTTH and FTTC definitions, as well as the substantive

rules on new builds and overbuilds, expressly encompass all "customer premises," and do not make any distinction between customer types. *See* 47 C.F.R. § 51.319(a)(3)(i) ("A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, *serving an end-user's customer premises*.") (emphasis added); 47 C.F.R. § 51.319(a)(3)(i)(B) ("A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the *customer's premises* or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective *customer's premises*.") (emphasis added); 47 C.F.R. § 51.319(a)(3)(ii) ("An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC deploys such a loop to an end user's *customer premises* that previously has not been served by any loop facility.") (emphasis added); 47 C.F.R. § 51.319(a)(3)(iii) ("An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility," except that the ILEC must maintain the existing copper loop connected to "the particular *customer premises*" unless the LEC retires the loop) (emphasis added).

In the version of the FCC's new unbundling rules attached to the *TRO*, an FTTH loop was defined as "a local loop consisting entirely of fiber optic cable, whether dark or lit, and serving a *residential end user's* customer premises." *TRO*, original App. B, § 51.319(a)(3) (emphasis added). The "new builds" rule, likewise, stated that an ILEC "is not required to

provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to *a residential unit* that previously has not been served by any loop facility." *Id.* § 51.319(a)(3)(i) (emphasis added).

However, this apparent limitation of unbundling relief to residential premises was inconsistent with the FCC's conclusion that "while we adopt loop unbundling rules specific to each loop type, our unbundling obligations and limitations for such loops do not vary based on the customer to be served." *TRO* ¶ 210. Therefore, the FCC soon corrected the original version of the rules restricting unbundling relief to just residential users, leaving no doubt that the FCC's fiber unbundling rules apply to *all* customer premises. In its *FTTC Order Errata*, the FCC stated that, "in rule section 51.319(a)(3)(ii), titled 'New builds,' we replace the words 'a residential unit' with the words 'an end user's customer premises.'"[32] In its *TRO Errata*, the FCC likewise deleted the word "residential" that originally modified "end user's customer premises" in the FTTH definition.[33] It also replaced the term, "residential unit," with "end user's customer premises" in the new builds rule. *TRO Errata* ¶ 38. In short, the FCC was careful to delete from the rules any qualification limiting the scope of the relief to a particular market segment, and chose instead to use the broad term "customer premises." This makes clear that, consistent with the text of the *TRO*, that the FCC did *not* intend to restrict fiber unbundling relief to just the mass market. The Commission cannot now read this same restriction back into the rules, as the CLECs ask it to do.

The majority of other state commission and arbitrators to have considered this issue have

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[32] Errata, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-388, 96-98 & 98-147, 2004 FCC LEXIS 6241, ¶ 11 (FCC Oct. 29, 2004) ("*FTTC Order Errata*").

[33] Errata, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 19020, ¶¶ 37-38 (2003) ("*TRO Errata*").

therefore applied the FCC's fiber unbundling rules as drafted. The **Massachusetts** D.T.E. found "nothing in the rules linking unbundling relief to a particular customer class." Mass. Arb. Order at 177. The **District of Columbia** commission confirmed that "the FCC's FTTH and FTTC rules do not apply solely to residential customers, but may also apply to enterprise customers." D.C. Final Order ¶ 59. The **Rhode Island** arbitrator soundly rejected the same argument the CLECs here make: "To be even clearer, the definition of 'FTTH' refers to customer premises without any limitation as to the type of customer." R.I. Arb. Decision[34] at 18. The **Michigan** commission found that: "the Joint CLECs' proposal to include a limitation for the definition of FTTH, FTTC, and hybrid loops should be rejected. . . . [T]here is no language within the FCC rule defining these loops that would so limit the definitions."[35] The **Texas** commission approved amendment language defining an FTTH Loop as "serving an end user's customer premises," without limiting the type of end user. *See* SBC Texas Agreement, at 4.12.[36] And the **Florida** commission found that, because the FCC modified its rules specifically to eliminate references to "residential units," this "firmly establish[ed] that the boundaries of the ILEC's release from unbundling obligations for newly built FTTH loops extend beyond residential units to an end user's customer premises, which could be residential or business in nature." Florida Order at 65.

In short, Verizon's language comports with the FCC's rules, so the Commission should adopt it.

Section 4.7.21 – "Hybrid Loop." Verizon's language (in bold) provides that a hybrid loop is "[a] local Loop composed of both fiber optic cable, **usually in feeder plant,** and copper

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[34] Arbitration Decision, *Petition of Verizon Rhode-Island Inc. for Arbitration of an Amendment to Interconnection Agreements*, Docket 3588 (R.I. PUC Nov. 10, 2005) ("R.I. Arb. Decision").

[35] Michigan Order at 6.

[36] *Approved by* Order Approving Interconnection Agreements, *Arbitration of Non-Costing Issues for Successor Agreements*, Docket No. 28821 (Texas P.U.C. Aug. 29, 2005) ("*Texas ICA Approval Order*").

wire or cable, **usually in the distribution plant**." Amendment § 4.7.21. The CLECs dispute the bolded phrases in that sentence, but Verizon's language is drawn straight from the FCC's rule. *See* 47 C.F.R. § 51.319(a)(2) ("A hybrid loop is a local loop composed of both fiber optic cable, *usually in the feeder plant*, and copper wire or cable, *usually in the distribution plant*.") (emphases added).

Further, the CLECs propose to begin the definition with the phrase "**any** local Loop," rather than "**a** local Loop." Amendment § 4.7.21 (CLEC-added language). Similarly, they propose to include "intermediate fiber-to-the-loop architectures as Fiber-to-the-Node and Fiber-to-the-Building" in the definition. *Id.* (CLEC-added language). But the rules for hybrid loops are different from the rules for fiber loops, *compare* 47 C.F.R. § 51.319(a)(2) *with id.* § 51.319(a)(3), and the CLECs should not be given any opportunity to claim that newly-built or overbuilt fiber loops must be unbundled under the terms applicable to hybrid loops.

Section 4.7.22 – "Inside Wire Subloop." Verizon proposes to begin this definition with the phrase "As required by the Arbitration Orders." Amendment § 4.7.22. This introductory phrase is used because Verizon does not own any inside wire in Washington, and the definition is therefore included only because the Arbitration Order held that it should be included (*see* Arb. Decision at 80-81, 147-49).

Section 4.7.25 – "Line Sharing." Verizon has agreed to state that line sharing can occur (if at all) over the high frequency portion of any "inside wire (including Inside Wire Subloop) owned or controlled by Verizon." Amendment § 4.7.25. Verizon has also proposed to exclude any "FTTH Loop" from the "Line Sharing" definition. Although the CLECs object to these phrases, Verizon's language is consistent with the Arbitration Decision, which found it "appropriate to include AT&T and MCI's proviso [relating to inside wire] only if it also includes

the phrase, 'other than FTTH Loop.'" Arb. Decision at 83. Verizon's language should therefore be adopted.

Section 4.7.31 – "Wire Center." Verizon's definition – with proposed language in bold – provides: "**As set forth in 47 C.F.R. § 51.5**, a Wire Center is the location of a Verizon local switching facility containing one or more central offices, as defined in **the Appendix to Part 36 of Chapter 47 of the Code of Federal Regulations**." The CLECs object to the bolded language, and would replace the latter bolded phrase with "47 C.F.R. § 51.5." Amendment § 4.7.31. Although the Arbitrator previously indicated that AT&T's proposed definition was appropriate (*see* Arb. Decision at 95), Verizon's language exactly corresponds to Rule 51.5, which provides that "A wire center is the location of an incumbent LEC local switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter." Verizon's language should therefore be adopted.

Pricing Attachment

The CLECs object to the entire Pricing Attachment. The Pricing Attachment, however, appropriately handles the charges that the Commission or the FCC might allow to be imposed for certain additional services. It should therefore be adopted.

In section 1.2 of the Pricing Attachment, for example, Verizon's language generally provides that charges for services under the Amendment shall be those set forth in "Exhibit A" and the underlying Agreement (including any cross references to applicable tariffs). Exhibit A will be superseded by any new charges that are required or allowed to go into effect by the Commission or the FCC, including a filed tariff. This language appropriately sets out the prices that will apply for the services in question, and the CLECs have no basis for disagreeing with such general language.

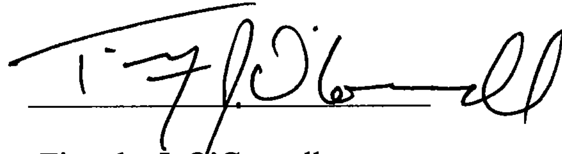
Section 1.3 then provides that, if the Commission or FCC approves or allows a charge to go into effect (including by tariff), then those charges shall apply under the Amendment as if set forth in Exhibit A, provided that the charges are not subject to a stay in court. These charges will be effective automatically, and shall not be retroactive absent a Commission or FCC decision on that point. Again, Verizon's language is appropriate. If the Commission or the FCC establishes a rate in a generic rate-setting proceeding, there is no legitimate reason to force Verizon to go through the entire change-of-law process before it can begin to charge rates the Commission has already approved for all carriers. As for Verizon's reference to tariffs, such tariffed rates would not become part of Exhibit A until and unless the Commission or FCC allowed them "to go into effect."

Finally, in section 1.4, Verizon's language provides that "Charges for Services that Verizon is required to provide under this Amendment shall apply as set forth in Sections 1.2 and 1.3 of this Pricing Attachment regardless of whether the text of the Amendment specifically states that a Charge applies for a particular Service." Amendment, Pricing Attachement § 1.4. In other words, Verizon cannot be forced to perform work for free merely because the Amendment does not "specifically" state that a charge applies for a given service. This language is equitable, and should be adopted.

CONCLUSION

For the reasons stated above, Verizon's proposed language is consistent with federal law and should be adopted. The CLECs' proposals are unlawful, and are inconsistent with the Arbitration Orders, the *TRO*, the *TRRO*, and/or the FCC's substantive rules.

Respectfully submitted,



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