



April 12, 2004

Via Overnight Delivery

Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Comm.
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98502-7250

RECEIVED
RECORDS MANAGEMENT
94 APR 13 AM 10:14
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Docket No. UT-043013

Dear Executive Secretary Washburn:

Enclosed are the original and 15 copies of the Motion to Dismiss and Response of Eschelon Telecom of Washington, Inc. to Petition for Arbitration of Verizon Northwest, Inc. filed electronically in connection with the above-referenced docket. Also enclosed is a Certificate of Service.

If you have any questions concerning this filing, please contact me at (612) 436-6225.

Sincerely,

Kim K. Wagner
Legal Secretary
Eschelon Telecom, Inc.
(612) 436-6225 (Direct Voice)
(612) 436-6816 (Department Fax)

Enclosures

cc: Service List (via email)

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for Arbitration of an)
 Amendment to Interconnection Agreements of)
)
 VERIZON NORTHWEST INC.)
)
 with)
)
 COMPETITIVE LOCAL EXCHANGE)
 CARRIERS AND COMMERCIAL MOBILE)
 RADIO SERVICE PROVIDERS IN)
 WASHINGTON)
)
 Pursuant to 47 U.S.C. Section 252(b) and the)
 Triennial *Review Order*.)
)
)
)

DOCKET NO. UT-043013

RECEIVED
 RECORDS MANAGEMENT
 04 APR 13 AM 10:15
 STATE OF WASH.
 UTIL. AND TRANS.
 COMMISSION

**MOTION TO DISMISS AND RESPONSE OF ESCHELON TELECOM OF
WASHINGTON, INC. TO PETITION FOR ARBITRATION OF VERIZON
NORTHWEST INC.**

Eschelon Telecom of Washington, Inc. (Eschelon) files this Motion to Dismiss and Answer in response to the Petition for Arbitration (Petition) of Verizon Northwest, Inc. (Verizon). Eschelon disagrees with portions of the draft amendment proposed by Verizon and has proposed its own draft, which is attached.

MOTION TO DISMISS

Verizon's Petition should be dismissed for several reasons. First, Verizon is required pursuant to the terms of the Bell Atlantic/GTE Merger Conditions to make UNEs available under its existing agreements until the TRO is final and non-appealable. That is not the case at this time. Second, Verizon's Petition does not meet the requirements of an arbitration filing under Section 252(b)(2) of the Telecommunications

Act (Act). Third, under Section 252 of the Act only a CLEC can initiate negotiations that lead to arbitration. Section 252(a)(1) states in part: "During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent receives a request for negotiation under this section..." Eschelon has not requested negotiation. For these reasons the Commission should dismiss Verizon's Petition. If the Commission does not dismiss Verizon's Petition it should modify or reject portions of Verizon's proposal as indicated on the proposed alternative amendment.

PROPOSED AMENDMENT

Eschelon proposes the changes to Verizon's proposed amendment as indicated on the attached redline of Verizon's proposal. Among the more significant changes to Verizon's proposal are the following:

Section 1.1--Eschelon proposes that the current Agreement between the parties be amended to extend the Agreement's term for at least one year so that the Parties can have some experience under this Amendment before having to negotiate or arbitrate a new agreement. Eschelon also deletes language that would purport to authorize Verizon to refuse to provide UNEs under circumstances or law other than those specified by Verizon.

Section 1.2--Add a statement of Eschelon's rights as to UNEs and Combinations.

Section 1.5--Add provisions prohibiting discrimination.

Section 2--Add several terms and their definitions for purposes of the Amendment.

Section 3--Delete language that would limit Eschelon's rights under other federal or state law.

Section 3.1.5--Add description of procedure for retirement of copper loops.

Section 3.2. -3.3--Add description of Eschelon's rights regarding line splitting and line conditioning.

Section 3.6--Section addressing the customized routing of OS/DA calls.

Section. 3.8--Add language on commingling that clarifies Eschelon's rights.

Section 3.8.3--Add section governing combinations and clarifying Eschelon's right to combine network elements and Verizon's obligations to allow combinations and to combine elements upon request.

Section 3.9--Modify the section to reflect Verizon's duty to perform routine network modifications on a non-discriminatory manner including making the same modifications that it makes for its own retail customers. Also added language making it clear that there will be no additional charge for such routine network modifications because the costs of the modifications are recovered in the Commission approved loop rates.

Section 3.10.1.3-5--Clarify Eschelon's rights with respect to nonconforming elements and the transition to other services or elements.

Section 3.11.5-7--Sections governing conversions of wholesale services.

Pricing Attachment.--Changes the section to make it clear that Commission approved rates will be charged and that Verizon must provide cost data for those prices not set by the Commission, for purposes of negotiation of those rates.

The changes and additions to Verizon's proposed Amendment are mostly self-explanatory and are supported by the Act and state law. Eschelon asks that a briefing

schedule be determined by the Commission for purposes of presenting the legal, policy and factual basis for the proposed Amendment.

CONCLUSION

The Commission should dismiss this proceeding for the reasons set forth herein. If the matter is not dismissed the Commission should adopt the amendment proposed by Eschelon.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis D. Ahlers". The signature is written in a cursive style with a large initial "D".

Dennis D. Ahlers
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AMENDMENT NO. __

to the

INTERCONNECTION AGREEMENT

between

[VERIZON LEGAL ENTITY]

and

[CLEC ESCHELON TELECOM OF WASHINGTON, INC. FULL NAME]

This Amendment No. [NUMBER] (the "Amendment") is made by and between Verizon [LEGAL ENTITY] ("Verizon"), a [STATE OF INCORPORATION] corporation with offices at [VERIZON STATE ADDRESS], and [FULL CLEC NAME], Eschelon Telecom of Washington, Inc. (Eschelon) a [CORPORATION/PARTNERSHIP] with offices at 730 2nd Ave. So., Suite 900, Minneapolis, MN. 55402 ("~~***CLEC Acronym TXT***ESCHELON"), and shall be deemed effective [~~FOR CALIFORNIA~~] upon Commission approval pursuant to Section 252 of the Act (the "Amendment Effective Date").] [~~FOR ALL OTHER STATES~~]- on _____ (the "Amendment Effective Date").] Verizon and ~~***CLEC Acronym TXT***ESCHELON~~ are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in Verizon's service territory in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME OF AGREEMENT]Washington (the "State"/"Commonwealth").~~

WITNESSETH:

NOTE: ~~DELETE~~ THE FOLLOWING WHEREAS SECTION ONLY IF CLEC'S AGREEMENT HAS USED AN ADOPTION LETTER:

[~~WHEREAS, Verizon and ***CLEC Acronym TXT***ESCHELON are Parties to an Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 dated [INSERT DATE] (the "Agreement"); and~~

NOTE: ~~INSERT~~ THE FOLLOWING WHEREAS SECTION ONLY IF CLEC'S AGREEMENT USED AN ADOPTION LETTER:

[~~WHEREAS, pursuant to an adoption letter dated [INSERT DATE OF ACTUAL ADOPTION LETTER] (the "Adoption Letter"), ***CLEC Acronym TXT***ESCHELON adopted in the [State or Commonwealth] State of [STATE/COMMONWEALTH NAME], Washington the interconnection agreement between [NAME OF UNDERLYING CLEC AGREEMENT] and VERIZON (such Adoption Letter and underlying adopted interconnection agreement referred to herein collectively as the "Agreement"); and~~

WHEREAS, the Federal Communications Commission (the "FCC") released an order on August 21, 2003 in CC Docket Nos. 01-338, 96-98, and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Agreement in order to give contractual effect to provisions of the TRO as set forth herein; and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree that the Agreement should be amended by the addition of the rates, terms and conditions set forth in the TRO Attachment and the Pricing Exhibit to the TRO Attachment attached hereto. The TRO Attachment and the Pricing Exhibit to the TRO Attachment shall apply notwithstanding any other provision of the Agreement or a Verizon tariff or a Verizon Statement of Generally Available Terms and Conditions ("SGAT").
2. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.
3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
5. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Section 4 of this Amendment, in all other respects the terms and provisions of the Agreement shall remain in full force and effect after Amendment Effective Date. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement." Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
6. Stay or Reversal of the TRO. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, nothing contained in the Agreement, this Amendment, or any Verizon tariff or SGAT shall limit ~~the Parties'~~ Verizon's rights to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the [***State Commission TXT***], the FCC, any court or any other governmental authority related to, concerning, or that may affect Verizon's ~~either Parties'~~ obligations or rights under the Agreement, this Amendment, any Verizon tariff or SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit. Notwithstanding any other change of law provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted, and for the duration of such stay the original provisions of the Agreement shall remain in effect as if they were not amended by this Amendment. Should the D.C. Circuit or the United States Supreme Court reverse or vacate any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed

or vacated provisions shall be voidable at the election of either Party, and the original provisions of the Agreement shall become effective as if they had not been amended by this Amendment.

4.27. Joint Work Product. This Amendment is a joint work product, and any ambiguities in this Amendment shall not be construed by operation of law against either Party.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the Amendment Effective Date.

*****CLEC Full Name TXT*****

VERIZON*IF Verizon Company Full Name 2 TXT
!= *******

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

[FOR CALIFORNIA, FLORIDA AND PENNSYLVANIA ONLY, ADD:]

Date: _____

Date: _____

TRO Attachment

1. General Conditions

1.1 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT: ~~(a) Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements ("Combinations"), or UNEs commingled with wholesale services ("Commingling"), to ***CLEC Acronym TXT***ESCHELON under the terms of the Amended Agreement. The Parties agree that this Amendment shall change the effective termination date of the Agreement, including this Amendment to April 13, 2005, only to the extent required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and, (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to ***CLEC Acronym TXT*** to the extent that provision of access to such UNEs, Combinations, or Commingling is not required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.~~

1.2 Use of Network Elements.

1.2.1 ESCHELON may use any Network Element or any Combination to provide any feature, function, capability, or service option that such Network Element or Combination is capable of providing. Verizon shall not impose limitations, restrictions, or requirements on requests for, or the use of, Network Elements for the service ESCHOLON seeks to offer.

1.2.2 When purchasing access to a Network Element or to a feature, function, or capability of a Network Element, ESCHOLON is entitled to exclusive use of that Network Element or of the feature, function or capability of that Network Element. ESCHOLON's purchase of access to a Network Element does not relieve Verizon of the duty to maintain, repair, or replace the Network Element.

1.2.3 ESCHOLON may not access a Network Element or Combination for the sole purpose of providing Non-qualifying services. ESCHOLON may, however, use a Network Element or Combination to provide Non-qualifying services as long as it accesses or uses the same Network Element for a qualifying purpose.

1.3 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent Verizon is required by a change in Applicable Law to provide to ***CLEC Acronym TXT***ESCHELON pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 a UNE, a Combination, or Commingling that is not offered under the Amended Agreement to ***CLEC Acronym TXT***ESCHELON as of the Amendment Effective Date, the rates, terms, conditions for such UNE, Combination, or Commingling shall be as determined by the Washington Public Utilities Commission, provided in an applicable Verizon tariff, or, in the absence of an applicable Verizon tariff, as mutually agreed in writing by the Parties.

1.4 Verizon reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC, or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) ~~should not be~~ is not be a Network Element under 47 U.S.C. § 251(c)(3), (b) ~~should be~~ is not be a Network Element that Verizon is required by 47 U.S.C. § 251(c)(3) to provide to ***CLEC Acronym TXT***ESCHELON, or (c) ~~should be~~ is be an item that Verizon is not required to

offer to ~~***CLEC Acronym TXT***~~ESCHELON at the rates set forth in the Amended Agreement. ESCHELON reserves the right to argue in any proceeding before the ~~***State Commission TXT***~~, the FCC, or another governmental body of competent jurisdiction that an item whether or not identified in the Agreement or this Amendment as a Network Element: (a) should be considered a Network Element for which unbundled access should be required under 47 U.S.C. § 251(c)(3); or (b) should be made available by Verizon on an unbundled basis either pursuant to 47 U.S.C. §§ 251 or 271 or applicable state law.

1.5 **Non-Discriminatory Provision of Network Elements.** Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, Verizon shall offer Network Elements to ESCHOLON at rates and on terms and conditions that are just, reasonable, and non-discriminatory. Verizon shall provide ESCHOLON with Network Elements, as well as access to Network Elements, of at least the same level of quality as Verizon provides itself, its customers, subsidiaries, or Affiliates, or any third party. If Verizon denies ESCHOLON access to any Network Element based on a claim that it is not Technically Feasible, Verizon shall have the burden of proving that the provision of the Network Element or access to the Network Element is not Technically Feasible. To the extent Verizon proves technical infeasibility, Verizon shall provide ESCHOLON alternative suitable arrangements that (i) do not impair ESCHOLON 's ability to provide services and (ii) are technically equivalent to, and subject to the same terms and conditions as, the access initially sought by ESCHOLON .

1.5.1 Verizon shall permit ESCHOLON to connect ESCHOLON 's facilities, or facilities provided to ESCHOLON by third parties, with each of Verizon's Network Elements or Combinations at any Technically Feasible point designated by ESCHOLON . ESCHOLON may designate any Technically Feasible method of access to Network Elements.

1.6 For each Network Element, Verizon shall provide a demarcation point acceptable to ESCHOLON , and if necessary, access to the demarcation point.

2. TRO Glossary

Notwithstanding any other provision in the Agreement or any Verizon tariff or SGAT, the following terms, as used in the Amended Agreement, shall have the meanings set forth below:

2.1 Call-Related Databases.

Databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases.

2.2 Combination.

The provision of unbundled Network Elements in combination with each other, including, but not limited to, the Loop and Switching Combinations (also known as Network Element Platform or UNE-P) and the Combination of Loops and Dedicated Transport (also known as an EEL).

2.3 Commingling.

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

2.22.4 Dark Fiber Transport.

An unactivated optical transmission facility within a LATA, without attached multiplexing, aggregation or other electronics, between Verizon switches (as identified in the LERG) or ~~w~~Wire ~~e~~Centers, that is provided on an unbundled basis, pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Dark fiber facilities between (i) a Verizon ~~w~~Wire ~~e~~Center or switch and (ii) a switch or ~~w~~Wire ~~e~~Center of ~~***CLEC Acronym~~ ~~TX~~~~T~~~~***~~ESCHELON or a third party are not Dark Fiber Transport.

2.32.5 Dedicated Transport.

A DS1 or DS3 transmission facility between Verizon switches (as identified in the LERG) or ~~w~~Wire ~~e~~Centers, within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis, pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Transmission facilities or services provided between (i) a Verizon wire center or switch and (ii) a switch or ~~w~~Wire ~~e~~Center of ~~***CLEC Acronym~~ ~~TX~~~~T~~~~***~~ESCHELON or a third party are not Dedicated Transport.

2.42.6 DS1 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 1.544 Mbps.

2.52.7 DS3 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 44.736 Mbps.

2.62.8 DS1 Loop.

A digital transmission channel Loop suitable for the transport of 1.544 Mbps digital signals, that is provided on an unbundled basis, pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. ~~DS1 Loops include, but are not limited to, two-wire and four-wire Copper Loops capable of providing high-bit rate DSL services, including T1 services.~~ This loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-1 Loop requires the electronics necessary to provide the DS-1 transmission rate.

2.72.9 DS3 Loop.

A digital transmission channel Loop suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS-1 channels) that is provided on an unbundled basis, pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 54. This Loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-3 Loop requires the electronics necessary to provide the DS-3 transmission rate.

2.82.10 Enterprise Switching.

Local Switching or Tandem Switching that, if provided to ~~***CLEC Acronym~~ ~~TX~~~~T~~~~***ESCHELON~~ would be used for the purpose of serving ~~***CLEC Acronym~~ ~~TX~~~~T~~~~***ESCHELON~~'s customers using DS1 or above capacity Loops.

2.92.11 Feeder.

The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving ~~w~~~~W~~~~i~~~~r~~~~e~~ ~~c~~~~e~~~~n~~~~t~~~~e~~~~r~~ and a remote terminal or feeder/distribution interface.

2.102.12 FTTH Loop.

A Loop consisting entirely of fiber optic cable, whether dark or lit, between the main distribution frame (or its equivalent) in an end user's serving wire center and the demarcation point at the end user's customer premises.

2.112.13 House and Riser Cable.

A distribution facility in Verizon's network, other than in a FTTH Loop, between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the ~~D~~~~d~~~~e~~~~m~~~~a~~~~r~~~~c~~~~a~~~~t~~~~i~~~~o~~~~n~~ ~~P~~~~p~~~~o~~~~i~~~~n~~~~t~~ for such facility, that is owned and controlled by Verizon.

2.122.14 Hybrid Loop.

A local Loop composed of both fiber optic cable and copper wire or cable.

2.132.15 Line Sharing.

The process by which ~~***CLEC Acronym~~ ~~TX~~~~T~~~~***ESCHELON~~ provides xDSL service over the same copper Loop that Verizon uses to provide voice service by utilizing the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions (the High Frequency Portion of the Loop, or "HFPL"). The HFPL includes the features, functions, and capabilities of the copper Loop that are used to

establish a complete transmission path between Verizon's distribution frame (or its equivalent) in its Wire Center and the demarcation point at the end user's customer premises, and includes the high frequency portion of any inside wire (including any House and Riser Cable) owned and controlled by Verizon.

2.16 Line Splitting.

The process in which one competitive LEC provides narrowband voice service over the low frequency portion of a Copper Loop and a second competitive LEC provides xDSL service over the HFPL of the same Loop.

2.142.17 Local Switching.

The line-side, and trunk-side facilities associated with the line-side port, on a circuit switch in Verizon's network (as identified in the LERG), plus the features, functions, and capabilities of that switch, unbundled from loops and transmission facilities, including: (a) the line-side Port (including the capability to connect a Loop termination and a switch line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription, and access to 911); (b) line and line group features (including all vertical features and line blocking options the switch and its associated deployed switch software are capable of providing that are provided to Verizon's local exchange service Customers served by that switch); (c) usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks); and (d) trunk features (including the connection between the trunk termination and a trunk card).

Local Switching encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks.

Local Switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any Technically Feasible customized routing functions.

2.18 Loop.

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

2.152.19 Mass Market Switching.

~~Local Switching or Tandem Switching~~ that Verizon offers on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and that is provided to ~~***CLEC Acronym TXT***~~ESCHELON to serve ~~***CLEC Acronym TXT***~~ESCHELON's end user customers over DS0 Loops.

2.20 Nonconforming Facilityt

Any Network Element or Combination facility that Verizon was providing to ~~***CLEC Acronym TXT***~~ ESCHELON on an unbundled basis pursuant to the Agreement or a Verizon tariff or SGAT prior to October 2, 2003, but which Verizon is no longer obligated to provide on an unbundled basis under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, by operation of either the TRO or a subsequent nonimpairment finding issued by the [~~***State Commission TXT***~~] or the FCC. By way of example and not by way of limitation, Nonconforming Facilities may include any of the following: (a) any unbundled dedicated transport or dark fiber facility that is no longer encompassed within the amended terms applicable to DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport; (b) DS1 Dedicated Transport, DS3 Dedicated Transport, or Dark Fiber Transport on a Route or Routes as to which the [~~***State Commission TXT***~~] or the FCC, on or after October 2, 2003, finds telecommunications carriers to be nonimpaired without access to such facilities; (c) Enterprise Switching; (d) Mass Market Switching in any market in which the [~~***State Commission TXT***~~] or the FCC, on or after October 2, 2003, finds telecommunications carriers to be nonimpaired without access to such facilities; (e) Local Switching subject to the FCC's four-line carve out rule, as described in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No 96-98, 15 FCC Rcd 3822-31 (1999) (the "Four-Line Carve Out Rule"); (f) OCn Loops and OCn Dedicated Transport; (g) the Feeder portion of a Loop; (h) Line Sharing; (i) an EEL that does not meet the service eligibility criteria established in the TRO; (j) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with ~~***CLEC Acronym TXT***~~'s use of Verizon Mass Market Switching; (k) Signaling that is not provisioned in connection with ~~***CLEC Acronym TXT***~~'s use of Verizon's Mass Market Switching; (l) FTTH Loops (lit or unlit) in a new build environment; (m) FTTH Loops (lit or unlit) in an overbuild environment, subject to the limited exceptions set forth herein; or (n) any facility or class of facilities as to which the [~~***State Commission TXT***~~] or the FCC, on or after October 2, 2003, makes a general finding of nonimpairment.

2-172.21 Packet Switching.

The routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, or the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper Loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the Loops; and the ability to combine data units from multiple Loops onto one or more trunks connecting to a packet switch or packet switches.

2-182.22 Qualifying Service.

A telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of the incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone services and local data service, and access services, such as digital subscriber line services and high-capacity circuits.

2-192.23 Route.

A transmission path between one of Verizon's wire centers or switches and another of Verizon's wire centers or switches within a LATA. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more Verizon intermediate wire centers or switches (e.g., Verizon wire center or switch "X"). Transmission paths between identical end points (e.g., Verizon wire center or

switch "A" and Verizon wire center or switch "Z") are the same "route", irrespective of whether they pass through the same intermediate Verizon wire centers or switches, if any.

2-202.24 Signaling.

Signaling includes, but is not limited to, signaling links and signaling transfer points.

2-212.25 Sub-Loop for Multiunit Premises Access.

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

2-222.26 Sub-Loop Distribution Facility.

The copper portion of a Loop in Verizon's network that is between the minimum point of entry ("MPOE") at an end user customer premises and Verizon's feeder/distribution interface.

2-232.27 Tandem Switching.

2.28 The trunk-connect facilities on a Verizon circuit switch that functions as a tandem switch, plus the functions that are centralized in that switch, including the basic switching function of connecting trunks to trunks, unbundled from and not contiguous with loops and transmission facilities. Tandem Switching creates a temporary transmission path between interoffice trunks that are interconnected at a Verizon tandem switch for the purpose of routing a call. A tandem switch does not provide basic functions such as dial tone service.Wire Center.

3. UNE TRO Provisions

3.1 Loops.

3.1.1 Hi-Cap Loops. Notwithstanding any other provision of the Agreement or a Verizon tariff or SGAT, as of October 2, 2003:

3.1.1.1 DS1 Loops. Upon ~~***CLEC Acronym~~ TX~~T~~TX~~T~~ ESCHELON's written request, Verizon shall provide ~~***CLEC Acronym~~ TX~~T~~TX~~T~~ ESCHELON with nondiscriminatory access to a DS1 Loop on an unbundled basis under the Amended Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

3.1.1.2 DS3 Loops. Upon ~~***CLEC Acronym~~ TX~~T~~TX~~T~~ ESCHELON's written request, Verizon shall provide ~~***CLEC Acronym~~ TX~~T~~TX~~T~~ ESCHELON with nondiscriminatory access to a DS3 Loop on an unbundled basis under the Amended Agreement, in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

3.1.1.2.1 Cap on DS3 Loops. ~~***CLEC Acronym
TXT***ESCHELON~~ may obtain on an unbundled basis a maximum of two (2) DS-3 Loops (or two (2) DS-3 equivalents) at any single end user location. Any Loop previously made available to ~~***CLEC Acronym
TXT***ESCHELON~~ at said end user location above the two (2) Loop cap shall as of the Amendment Effective Date be considered a Nonconforming ElementFacility.

3.1.1.3 Nonimpairment. Without limiting any other rights Verizon or ~~***CLEC Acronym
TXT***ESCHELON~~ may have under the Amended Agreement or under Applicable Law, subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing ~~***CLEC Acronym
TXT***ESCHELON~~ with nondiscriminatory access to DS-1 Loops or DS3 Loops under the Amended Agreement at a specific end user location if the [~~***State Commission
TXT***~~] or the FCC finds that ~~***CLEC Acronym
TXT***ESCHELON~~ or CLECs generally are not impaired without access to such DS1 Loops or DS3 Loops at such end user location (or class of locations). Any DS1 Loops or DS3 Loops previously made available to ~~***CLEC Acronym
TXT***ESCHELON~~ at the subject end user location shall be considered Nonconforming Facilities-Elements immediately on the effective date of the nonimpairment finding and thereafter.

3.1.2 FTTH Loops.

3.1.2.1 New Builds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~***CLEC Acronym
TXT***ESCHELON~~ shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed such a Loop to an end user's customer premises that previously was not served by any Verizon Loop.

3.1.2.2 Overbuilds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~***CLEC Acronym
TXT***ESCHELON~~ shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed the ~~such~~subject Loop parallel to, or in replacement of, an existing copper Loop; *provided, however*, that if such a Loop replaces a copper Loop that Verizon has retired, and there are no other available copper Loops or Hybrid Loops, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide ~~***CLEC Acronym
TXT***ESCHELON~~ with nondiscriminatory access on an unbundled basis to a 64 kilobits per second transmission path from Verizon's serving ~~w~~Wire eCenter to the demarcation point at the end user's customer premises capable of voice grade service over the FTTH Loop.

3.1.3 Hybrid Loops Generally.

3.1.3.1 Packet Switching. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~***CLEC Acronym~~

~~TX~~~~T~~~~T~~~~***~~ESCHELON shall not be entitled to obtain access to the Packet Switching Capability of any Hybrid Loop on an unbundled basis.

3.1.3.2 Broadband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~as of October 2, 2003,~~ when ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON seeks access to a Hybrid Loop for the provision of "broadband services," as such term is defined by the FCC, then ~~in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51,~~ Verizon shall provide ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON with access ~~under the Amended Agreement~~ to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (but only where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between the main distribution frame (or equivalent) in the end user's serving ~~w~~Wire Center and the end user's customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.3.3 Narrowband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~as of October 2, 2003,~~ when ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON seeks access to a Hybrid Loop for the provision ~~to its customer~~ of "narrowband services," as such term is defined by the FCC, then ~~in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51,~~ Verizon shall either (a) provide access ~~under the Amended Agreement~~ to a spare home-run copper Loop serving that customer on an unbundled basis, ~~or in Verizon's sole discretion,~~ or (b) provide access ~~under the Amended Agreement,~~ on an unbundled basis, to a voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises, using time division multiplexing technology.

3.1.3.4 Feeder. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~as of October 2, 2003,~~ ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON shall not be entitled to obtain access to the Feeder portion of a Loop on an unbundled, standalone basis.

3.1.4 IDLC Hybrid Loops.

Notwithstanding any other provision of the Agreement, Section 3.1.3 above, or any Verizon tariff or SGAT, if ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), Verizon shall, ~~as and to the extent required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51,~~ provide ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON unbundled access to a Loop capable of voice-grade service to the end user customer served by the Hybrid Loop.

3.1.4.1 Verizon will endeavor to provide ~~***CLEC Acronym TX~~~~T~~~~***~~ESCHELON with (i) an existing copper Loop; or (ii) a

Loop served by existing Universal Digital Loop Carrier ("UDLC"). Standard recurring and non-recurring Loop charges will apply. In addition, a non-recurring charge will apply whenever a line and station transfer is performed.

3.1.4.2 If neither a copper Loop nor a Loop served by UDLC is available, Verizon shall, upon request of ~~***CLEC Acronym~~ TX***ESCHELON, construct the necessary copper Loop or UDLC facilities. In addition to the rates and charges payable in connection with any unbundled Loop so provisioned by Verizon, ~~***CLEC Acronym~~ TX***ESCHELON shall be responsible for the following charges: (a) an engineering query charge for preparation of a price quote; (b) upon ~~***CLEC Acronym~~ TX***ESCHELON's submission of a firm construction order, an engineering work order nonrecurring charge; and (c) construction charges, as set forth in the price quote. If the order is cancelled by ~~***CLEC Acronym~~ TX***ESCHELON after construction work has started, ~~***CLEC Acronym~~ TX***ESCHELON shall be responsible for ~~cancellation charges and a pro-rated charge for construction work performed prior to the cancellation.~~

3.1.4.3 Verizon's performance in connection with providing unbundled Loops pursuant to this Section 3.1 shall ~~not be~~ subject to standard provisioning intervals or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.

3.1.5 Retirement of Copper Loops. Prior to retiring any copper Loop that has been replaced with a FTTH Loop, Verizon shall comply with the network disclosure requirements set forth in Section 251(c)(5) of the Act and in Sections 51.325 through 51.335 of the FCC's Rules and any applicable requirements of state law. If ESCHOLON is leasing a copper Loop when Verizon submits its notice pursuant to the foregoing sentence, Verizon shall also provide ESCHOLON with a copy of such notice pursuant to the notice provisions of the Amended Agreement.

3.2 Line Sharing.

Notwithstanding any other provision in the Agreement or any Verizon tariff or SGAT, as of October 2, 2003:

3.2.1 Line Sharing.

3.2.1.1 New Line Sharing. Verizon shall be under no obligation to provision new Line Sharing arrangements under the Agreement or this Amendment; *provided, however*, that as and to the extent required by 47 U.S.C. § 251(e)(3) and 47 C.F.R. Section Part 51.319, and subject to Section 3.8.3 below, Verizon ~~offers shall~~ provide new Line Sharing arrangements on a transitional basis, pursuant to rates, terms, and conditions offered by Verizon in a separate agreement that is subject to FCC-prescribed pricing rules.

~~3.2.1.2~~ Grandfathered Line Sharing. Any existing Line Sharing arrangement over a copper Loop or Sub-Loop in place with an end user customer of ~~***CLEC Acronym~~ TX***ESCHOLON is hereby will

~~be grandfathered at existing rates, provided that ***CLEC Acronym TXT***ESCHELON began providing xDSL service to that end user customer using Line Sharing over that Loop or Sub-Loop prior to October 2, 2003, and only so long as ***CLEC Acronym TXT***ESCHELON, or its successor or assign, has not ceased providing xDSL service to that end user customer at the same location over that Loop or Sub-Loop.~~

3.2.2 Line Splitting. ESCHELON may provide integrated voice and data services over the same Loop by engaging in "Line Splitting" as set forth in paragraph 18 of the FCC's Line Sharing Reconsideration Order (CC Docket Nos. 98-147, 96-98), released January 19, 2001. Any Line Splitting between two CLECs shall be accomplished by prior negotiated arrangement between those CLECs. To achieve a Line Splitting capability, CLECs may utilize supporting Verizon OSS to order and combine in a Line Splitting configuration an unbundled xDSL Compatible Loop terminated to a collocated splitter and DSLAM equipment provided by a participating CLEC, unbundled switching combined with shared transport, collocator-to-collocator connections, and available cross-connects, under the terms and conditions set forth in their Interconnection Agreement(s).

Line Conditioning. Verizon shall condition a copper Loop at the request -ESCHELON when seeking access to (i) a copper Loop under Section [3.1] of this Attachment or under the Agreement, the high frequency portion of a copper Loop under Section [3.2] of this Attachment, or (iii) a copper Sub-Loop under Section [3.3] of this Attachment, to ensure that the copper Loop or copper Sub-Loop is suitable for providing xDSL services, including those provided over the high frequency portion of the copper Loop or copper Sub-Loop, whether or not Verizon offers advanced services to the end-user customer on that copper Loop or copper Sub-Loop. If Verizon seeks compensation from ESCHELON for line conditioning, ESCHELON has the option of refusing, in whole or in part, to have the line conditioned; and ESCHELON's refusal of some or all aspects of line conditioning will not diminish any right it may have to access the copper Loop, the high frequency portion of the copper Loop, or the copper Sub-Loop.

3.2.2.1 Line conditioning is defined as the removal from a copper Loop or copper Sub-Loop of any device that could diminish the capability of the Loop or Sub-Loop to deliver high-speed switched wireline telecommunications capability, including DSL service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

3.2.2.2 Verizon shall recover the costs of line conditioning from ESCHELON in accordance with the FCC's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in Section 51.507(e) of the FCC's rules.

3.2.2.3 Insofar as it is technically feasible, Verizon shall test and report troubles for all the features, functions, and capabilities of conditioned copper Loops, and may not restrict its testing to voice transmission only.

3.2.2.4 Where ESCHELON is seeking access to the high frequency portion of a copper Loop or copper Sub-Loop and Verizon claims that conditioning that Loop or Sub-Loop will significantly degrade, as defined in Section 51.233 of the FCC's rules, the voiceband services that Verizon is currently providing over that Loop or Sub-Loop, Verizon must either:

3.2.2.4.1 Locate another copper Loop or copper Sub-Loop that has been or can be conditioned, migrate Verizon's voiceband service to that Loop or Sub-Loop, and provide ESCHELON with access to the high frequency portion of that alternative Loop or Sub-Loop; or

3.3 Make a showing to the Commission that the original copper Loop or copper Sub-Loop cannot be conditioned without significantly degrading voiceband services on that Loop or Sub-Loop, as defined in Section 51.233 of the FCC's rules, and that there is no adjacent or alternative copper Loop or copper Sub-Loop available that can be conditioned. If, after evaluating Verizon's showing the Commission concludes that a copper Loop or copper Sub-Loop cannot be conditioned without significantly degrading the voiceband service, ESCHELON

3.4 Sub-Loop.

3.3.13.4.1 Sub-Loop for Access to Multiunit Premises. As of October 2, 2003, all provisions in the Agreement governing ~~***CLEC Acronym TXT***~~ ESCHELON access to Inside Wire, House and Riser or House and Riser Cable are hereby deleted and replaced with this Section 3.3.1, which shall supersede any other provision in the Agreement or in any Verizon tariff or SGAT in effect on the Amendment Effective Date prior to October 2, 2003. Upon request by ~~***CLEC Acronym TXT***~~ ESCHELON, Verizon shall provide to ~~***CLEC Acronym TXT***~~ ESCHELON access to the Sub-Loop for Multiunit Premises Access in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

3.3.1.13.4.1.1 Inside Wire Sub-Loop. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, ~~u~~ Upon request by ~~***CLEC Acronym TXT***~~ ESCHELON, Verizon shall provide to ~~***CLEC Acronym TXT***~~ ESCHELON access to a House and Riser Cable pursuant to this Section 3.3.1.1 at the rates and charges provided in the Agreement. Verizon shall not reserve a House and Riser Cable for ~~***CLEC Acronym TXT***~~ ESCHELON. ~~***CLEC Acronym TXT***~~ ESCHELON may access a House and Riser Cable only between the MPOE for such cable and the demarcation point at a technically feasible access point. It is not technically feasible to access inside wire sub-loop if a technician must access the facility by removing a splice case to reach the wiring within the cable.

3.3.1.1.13.4.1.1.1 ~~***CLEC Acronym TXT***~~ ESCHELON must satisfy the following conditions before ordering access to a House and Riser Cable from Verizon:

3.3.1.1.1.13.4.1.1.1.1 ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON shall locate its facilities within cross connect distance of

the point of interconnection on such cable. Facilities are within cross connect distance of a point of interconnection if they are located in the same room (not including a hallway) or within twelve (12) feet of such point of interconnection.

~~3.3.1.1.1.23~~ 4.1.1.1.2 If suitable space is available, ~~***CLEC Acronym TXT***~~ ESCHELON shall install its facilities no closer than fourteen (14) inches of the point of interconnection for such cable, unless otherwise agreed by the Parties.

~~3.3.1.1.1.33~~ 4.1.1.1.3 ~~***CLEC Acronym TXT***~~ ESCHELON's facilities cannot be attached, otherwise affixed or adjacent to Verizon's facilities or equipment, cannot pass through or otherwise penetrate Verizon's facilities or equipment and cannot be installed so that ~~***CLEC Acronym TXT***~~ ESCHELON's facilities or equipment are located in a space where Verizon plans to locate its facilities or equipment.

~~3.3.1.1.1.43~~ 4.1.1.1.4 ~~***CLEC Acronym TXT***~~ ESCHELON shall identify its facilities as those of ~~***CLEC Acronym TXT***~~ ESCHELON.

~~3.3.1.1.23~~ 4.1.1.2 To provide ~~***CLEC Acronym TXT***~~ ESCHELON with access to a House and Riser Cable, Verizon shall not be obligated to (a) move any Verizon equipment, (b) secure any right of way for ~~***CLEC Acronym TXT***~~ ESCHELON, (c) secure space for ~~***CLEC Acronym TXT***~~ ESCHELON in any building, (d) secure access to any portion of a building for ~~***CLEC Acronym TXT***~~ ESCHELON or (e) reserve space in any building for ~~***CLEC Acronym TXT***~~ ESCHELON.

~~3.3.1.1.33~~ 4.1.1.3 Verizon shall perform cutover of a Customer to ~~***CLEC Acronym TXT***~~ ESCHELON service by means of a House and Riser Cable subject to a negotiated interval. Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to ~~***CLEC Acronym TXT***~~ ESCHELON's facilities, and Verizon shall determine how to perform such installation. ~~***CLEC Acronym TXT***~~ ESCHELON shall coordinate with Verizon to ensure that House and Riser Cable facilities are converted to ~~***CLEC Acronym TXT***~~ ESCHELON in accordance with ~~***CLEC Acronym TXT***~~ ESCHELON's order for such services.

~~3.3.1.1.4~~ 3.4.1.1.4 If proper ~~***CLEC Acronym~~ TXT***ESCHELON facilities are not available at the time of installation, Verizon shall bill ~~***CLEC Acronym~~ TXT***ESCHELON, and ~~***CLEC Acronym~~ TXT***ESCHELON shall pay to Verizon, the Not Ready Charge set forth in the Agreement and the Parties shall establish a new cutover date.

~~3.3.1.1.5~~ 3.4.1.1.5 Verizon shall perform all installation work on Verizon equipment in connection with ~~***CLEC Acronym~~ TXT***ESCHELON's use of Verizon's House and Riser Cable. All ~~***CLEC Acronym~~ TXT***ESCHELON equipment connected to a House and Riser Cable shall comply with applicable industry standards.

~~3.3.1.1.6~~ 3.4.1.1.6 Verizon shall repair and maintain a House and Riser Cable at the request of ~~***CLEC Acronym~~ TXT***ESCHELON. ~~***CLEC Acronym~~ TXT***ESCHELON shall be solely responsible for investigating and determining the source of all troubles and for providing Verizon with appropriate dispatch information based on its test results. Verizon shall repair a trouble only when the cause of the trouble is a Verizon House and Riser Cable. If (a) ~~***CLEC Acronym~~ TXT***ESCHELON reports to Verizon a Customer trouble, (b) ~~***CLEC Acronym~~ TXT***ESCHELON requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by a Verizon House and Riser Cable in whole or in part, then ~~***CLEC Acronym~~ TXT***ESCHELON shall pay Verizon the charge set forth in the Agreement for time associated with said dispatch. In addition, this charge also applies when the Customer contact as designated by ~~***CLEC Acronym~~ TXT***ESCHELON is not available at the appointed time. If as the result of ~~***CLEC Acronym~~ TXT***ESCHELON instructions, Verizon is erroneously requested to dispatch to a site on Verizon company premises ("dispatch in"), a charge set forth in the Agreement will be assessed per occurrence to ~~***CLEC Acronym~~ TXT***ESCHELON by Verizon. If as the result of ~~***CLEC Acronym~~ TXT***ESCHELON instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), a charge set forth in the Agreement will be assessed per occurrence to ~~***CLEC Acronym~~ TXT***ESCHELON by Verizon.

~~3.3.1.2~~ 3.4.1.2 Single Point of Interconnection. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, ~~u~~ Upon request by ~~***CLEC Acronym~~ TXT***ESCHELON and provided that the conditions set forth in Subsections ~~3.4.1.2.1~~ 3.4.1.2.1 and ~~3.4.1.2.2~~ 3.4.1.2.2 are satisfied, the Parties shall negotiate in good faith an amendment to the Amended Agreement memorializing the terms, conditions and rates under which Verizon will provide a single point of

interconnection at a multiunit premises suitable for use by multiple carriers:

~~3.3.1.2.13.4.1.2.1~~ Verizon has distribution facilities to the multiunit premises, and either owns and controls, or leases, the House and Riser Cable at the multiunit premises; and

~~3.3.1.2.23.4.1.2.2~~ ~~***CLEC Acronym TXT***~~ ESCHELON certifies that it will place an order for access to an unbundled Sub-Loop network element under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 via the newly provided single point of interconnection.

~~3.3.23.4.2~~ Distribution Sub-Loop Facility. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51,~~ upon site-specific request, ~~***CLEC Acronym TXT***~~ ESCHELON may obtain access to the Distribution Sub-Loop Facility at a technically feasible access point located near a Verizon remote terminal equipment enclosure at the rates and charges provided for Unbundled Sub-Loop Arrangements (or the Distribution Sub-Loop) in the Agreement. It is not technically feasible to access the sub-loop distribution facility if a technician must access the facility by removing a splice case to reach the wiring within the cable.

~~3.4.3.5~~ Unbundled Local Circuit Switching.

~~3.4.13.5.1~~ General Requirements. Verizon shall provide Mass Market Switching to ~~***CLEC Acronym TXT***~~ ESCHELON under the Amended Agreement ~~in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.~~ Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, ~~as of October 2, 2003,~~ with the exception of the foregoing obligation to provide Mass Market Switching, Verizon shall have no other obligation to provide any other form of Local Switching or Tandem Switching (such as Enterprise Switching) to ~~***CLEC Acronym TXT***~~ ESCHELON, and any Local Switching or Tandem Switching previously made available to ~~***CLEC Acronym TXT***~~ ESCHELON shall be considered a Nonconforming Facility that shall be subject to the transition provisions of Section 3.8 below. For the avoidance of doubt: (a) Enterprise Switching is a Nonconforming Facility as of the Amendment Effective Date ~~October 2, 2003~~; and (b) Local Switching subject to the FCC's Four-Line Carve Out Rule is a Nonconforming Facility by operation of law in effect prior to the Amendment Effective Date.

~~3.4.23.5.2~~ Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to continue to provide ~~***CLEC Acronym TXT***~~ ESCHELON with nondiscriminatory access to Mass Market Switching on an unbundled basis under the Amended Agreement upon a finding by the ~~***State Commission TXT***~~ or the FCC that requesting telecommunications carriers are not impaired without access to Mass Market Switching in a particular market, or where the ~~***State Commission TXT***~~ or the FCC has found that all impairment would be cured by implementation of a transition plan for unbundled circuit switching in a particular market.

~~3.4.33.5.3~~ Signaling and Call-Related Databases. Verizon shall provide access to Signaling and Call-related Databases under the Amended Agreement ~~in~~

accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Specifically, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, Verizon shall provide Signaling and Call-Related Databases only in conjunction with the provision of Local Switching or Tandem Switching that Verizon is otherwise obligated to make available to ~~***CLEC Acronym TXT***~~ ESCHELON under the Amended Agreement; *provided, however*, that Verizon shall continue to provide nondiscriminatory access to the 911 and E911 Call-Related Databases in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Where Local Switching or Tandem Switching associated with a particular Signaling facility or Call-Related Database is or becomes a Nonconforming Facility, the associated Signaling facility or Call-Related Database associated with that Local Switching or Tandem Switching facility shall also be subject to the same transitional provisions in Section 3.8 (except for the 911 and E911 Call-Related Databases, as noted above).

3-5.3.6 Customized Routing. Where Verizon has deployed an AIN capability that allows routing of OS/DA calls to ESCHELON's FGD trunks, or where Verizon uses existing switch features and functions to route OS/DA calls to ESCHELON's FGD trunks, Verizon shall provide customized routing of OS/DA calls placed by ESCHELON customers to the particular outgoing trunks and associated routing tables designated by ESCHELON, using FGD protocol, including trunks terminating at OS/DA platforms designated by ESCHELON. Where Verizon has not deployed such AIN capability and has not used such existing switch features, Verizon shall provide OS/DA services to ESCHELON as unbundled network elements.

3.7 Unbundled Interoffice Facilities.

3-5.13.7.1 General Requirements. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003: (a) Verizon shall provide Dedicated Transport and Dark Fiber Transport under the Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51; and (b) Verizon shall provide Dedicated Transport and Dark Fiber Transport to ~~***CLEC Acronym TXT***~~ ESCHELON only if ~~***CLEC Acronym TXT***~~ ESCHELON obtains access to the subject facility in order to provide a "Qualifying Service" on a common carrier basis.

3-5.23.7.2 Dedicated Transport. On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51:

3-5.2.13.7.2.1 Upon ~~***CLEC Acronym TXT***~~ ESCHELON's written request, Verizon shall provide ~~***CLEC Acronym TXT***~~ ESCHELON with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt: (a) a transmission facility or service between a Verizon switch or wire center and a switch or wire center of ~~***CLEC Acronym TXT***~~ ESCHELON or a third party is not Dedicated Transport; and (b) a transmission facility or service that uses an OCn interface or a SONET interface is not Dedicated Transport. Subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue

providing the Nonconforming Facilities described in clauses (a) and (b) above under the Agreement or the Amended Agreement.

~~3.5.2.23.7.2.2~~ Cap on Dedicated Transport. ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON may obtain on an unbundled basis a maximum of twelve (12) DS3 Dedicated Transport circuits (or twelve (12) DS3-equivalents, e.g. 336 DS1s) on any single Route on which unbundled transport is otherwise available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a Nonconforming Facility.

~~3.5.2.33.7.2.3~~ Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON with nondiscriminatory access to DS1 Dedicated Transport or DS3 Dedicated Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding by the [~~***State Commission~~ ~~TXT***~~] or the FCC that requesting telecommunications carriers are not impaired without access to DS1 Dedicated Transport or DS3 Dedicated Transport, respectively, on the subject Route(s) or on all Routes. Any DS1 Dedicated Transport or DS3 Dedicated Transport previously made available to ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON on the subject Route(s) shall be considered Nonconforming Facilities immediately on the effective date of the nonimpairment finding and thereafter.

~~3.5.33.7.3~~ Dark Fiber Transport. ~~On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 54:~~

~~3.5.3.13.7.3.1~~ Upon ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON 's written request, Verizon shall provide ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON with nondiscriminatory access to Dark Fiber Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt, Dark Fiber Transport does not include a dark fiber facility between (a) a Verizon switch or wire center and (b) a switch or wire center of ~~***CLEC~~ ~~Acronym~~ ~~TXT***~~ ESCHELON or any third party, and subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue providing such Nonconforming Facility under the Amended Agreement.

~~3.5.3.23.7.3.2~~ Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON with nondiscriminatory access to Dark Fiber Transport on an unbundled basis under the Agreement or the Amended Agreement on a particular Route upon a finding by the [~~***State Commission~~ ~~TXT***~~] or the FCC that requesting telecommunications carriers are not impaired without access to unbundled Dark Fiber Transport on the subject Route(s) or on all Routes. Any Dark Fiber Transport previously made available to ~~***CLEC Acronym~~ ~~TXT***~~ ESCHELON on the subject Route(s)

shall be considered a Nonconforming Facility as of the effective date of the nonimpairment finding.

3-6-13.8.8 Commingling and Combinations.

3-6-13.8.1 Commingling. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, but subject to the conditions set forth in the following Section 3.8.23-7-23-6.2, Verizon will ~~not prohibit,~~ permits, the Commingling of an unbundled Network Element or a Combination of ~~unbundled Network Elements~~ obtained under the Agreement or Amended Agreement pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 54, or under a Verizon UNE tariff ("Qualifying UNEs"), with wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement ("Qualifying Wholesale Services"), ~~but only to the extent and so long as commingling and provision of such Network Element (or combination of Network Elements) is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 54.~~ Moreover, ~~to the extent and so long as required by 47 U.S.C. § 251(c)(3) and 47 U.S.C. Part 51,~~ Verizon shall, upon request of ~~***CLEC Acronym~~ ***ESCHELON, perform the functions necessary to Commingle or combine Qualifying UNEs with Qualifying Wholesale Services. Subject to Section 3.8.3 below, the rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the Qualifying Wholesale Services, and the rates, terms and conditions of the Amended Agreement or the Verizon UNE tariff, as applicable, will apply to the Qualifying UNEs; *provided, however,* that a nonrecurring charge will apply for each UNE circuit that is part of a commingled arrangement, as set forth in the Pricing Attachment to this Amendment. This charge is intended to offset Verizon's costs of implementing and managing commingled arrangements. Verizon shall not deny access to a Network Element or a Combination of Network Elements on the grounds that one or more of the Network Elements is connected to, attached to, linked to, associated with, or combined with, a facility or service obtained from Verizon; or shares part of Verizon's network with access services or inputs for Non-qualifying Services. When ESCHELON purchases Commingled Network Elements and Qualifying Wholesale Services from Verizon, Verizon shall charge ESCHELON on an element-by-element and service-by-service rate. "Ratcheting," as that term is defined by the FCC, shall not be required. Qualifying UNEs that are commingled with Qualifying Wholesale Services are not included in the shared use provisions of the applicable tariff. Verizon's performance in connection with the provisioning of commingled facilities and services shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or under Applicable Law elsewhere. In addition, Verizon shall cooperate fully with ESCHELON to ensure that operational policies and procedures implemented to effect Commingled arrangements shall be handled in such a manner as to not operationally or practically impair or impede ESCHELON's ability to implement new Commingled arrangements and convert existing arrangements to Commingled arrangements in a timely and efficient manner and in a manner that does not affect service quality, availability, or performance from the end user perspective. No change to Verizon's wholesale or access tariffs may in any fashion impact the availability or provision of Commingling under this TRO Attachment or the Agreement, absent an amendment to this TRO Attachment and the Agreement

3-6-23.8.2 Service Eligibility Criteria for High-Capacity Loop/Transport Certain Combinations and Commingled Facilities and Services. Notwithstanding any

other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT to the contrary:

~~3.6.2.1~~3.8.2.1 Verizon shall not be obligated to provide:

~~3.6.2.1.1~~3.8.2.1.1 an unbundled DS1 Loop in combination with unbundled DS1 or DS3 Dedicated Transport, or commingled with a DS1 or DS3 interoffice access transport services;

~~3.6.2.1.2~~3.8.2.1.2 an unbundled DS3 Loop in combination with unbundled DS3 Dedicated Transport, or commingled with a DS3 interoffice access transport services;

~~3.6.2.1.3~~3.8.2.1.3 unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;

~~3.6.2.1.4~~3.8.2.1.4 unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service; or

~~3.6.2.1.5~~3.8.2.1.5 unbundled DS3 Dedicated Transport commingled with DS3 channel termination service,

unless and until ~~***CLEC Acronym TXT***~~ESCHELON :-(a) certifies in writing (via email or letter) to Verizon that ~~***CLEC Acronym TXT***~~ESCHELON 's for each DS1 circuit or DS1 equivalent circuit that it is in compliance with each of the High-Cap EEL service eligibility criteria set forth in Section 3.6.2.247 C.F.R. § 51.348. Anything to the contrary in this Section 3.6.2 notwithstanding, ~~***CLEC Acronym TXT***~~ESCHELON shall not be required to provide certification to obtain access to lower capacity EELs, other Combinations or individual Network Elements. ~~***CLEC Acronym TXT***~~ESCHELON must remain in compliance with said service eligibility criteria for so long as ~~***CLEC Acronym TXT***~~ESCHELON continues to receive the aforementioned combined or eCommingled facilities and/or services from Verizon. The service eligibility criteria shall be applied to each DS1 circuit or DS1 equivalent circuit. If the circuit is, becomes, or is subsequently determined to be, noncompliant, the noncompliant circuit will be treated as a Nonconforming ElementFacility subject to the provisions of Section 3.8 below. The foregoing shall apply whether the circuits in question are being provisioned to establish a new circuit or to convert an existing wholesale service, or any part thereof, to unbundled network elements. For existing circuits, the CLEC must re-certify in writing for each DS1 circuit or DS1 equivalent within 30 days of the Amendment Effective Date. Circuits not re-certified shall be Nonconforming FacilitiesElements.

~~3.6.2.2~~3.8.2.2 Each written certification to be provided by ~~***CLEC Acronym TXT***~~ESCHELON pursuant to Section 3.6.2.1 above must contain the following information for each DS1 circuit or

DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff; (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There must be one such identification number per every 24 DS1 circuits; and (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.

~~3.7.2.3~~3.8.2.3 The charges for conversions are as specified in the Pricing Attachment to this Amendment and apply for each circuit converted.

~~3.7.2.4~~3.8.2.4 Until such time as Verizon implements its ASR-driven conversion process in the East, conversion of access circuits to unbundled Network Elements will be performed manually pursuant to Verizon's conversion guidelines. The effective bill date for conversions is the first of the month following Verizon's receipt of an accurate and complete ASR or electronic request for conversion pursuant to Verizon's conversion guidelines.

~~3.7.2.5~~3.8.2.5 All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. If such change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as specified in the pricing attachment.

~~3.6.2.6~~All requests for conversions will be handled as a project and will be excluded from all ordering and provisioning metrics.

~~3.6.2.3~~3.8.2.6 Once per calendar year, Verizon may request, on thirty (30) day advanced written notice, obtain and pay for an independent auditor to audit ***CLEC Acronym TXT***ESCHELON's compliance in all material respects with the High-Cap EEL service eligibility criteria applicable to EELs. Any such audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants, and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment. To the extent the independent auditor's report concludes that ~~***CLEC Acronym~~ TXT***ESCHELON failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then (i) ~~***CLEC Acronym~~ TXT***ESCHELON must convert all noncompliant circuits to the appropriate service, true up any difference in payments to the initial date of non-compliance, make the correct payments on a going-forward basis, reimburse Verizon for the entire cost of the audit within thirty (30) days after receiving a statement of such costs from Verizon. Should the independent

auditor confirm ~~***CLEC Acronym TXT***~~ESCHELON 's compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit, then ~~***CLEC Acronym TXT***~~ESCHELON shall provide to the independent auditor for its verification a statement of ~~***CLEC Acronym TXT***~~ESCHELON 's out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then reimburse ~~***CLEC Acronym TXT***~~ESCHELON for its out-of-pocket costs within thirty (30) days of the auditor's verification of the same. ~~***CLEC Acronym TXT***~~ESCHELON shall maintain records adequate to support its compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit for at least eighteen (18) months after the service arrangement in question is terminated.

3.8.3 Combinations.

3.8.3.1 ESCHELON may, combine a Network Element with any other Network Element to the extent Technically Feasible. Verizon, however, may not require ESCHOLON to combine Network Elements.

3.8.3.2 Verizon shall, upon ESCHOLON 's request, perform the functions necessary to combine Network Elements in any manner, even if those Network Elements are not ordinarily combined in Verizon's network; provided, however, that such Combination (i) is Technically Feasible; and (ii) would not undermine the ability of other carriers to obtain access to Network Elements or to interconnect with Verizon's network. If Verizon denies ESCHOLON access to any Combination based on a claim that it is not Technically Feasible, or that it would undermine the ability of other carriers to access Network Elements or to interconnect, Verizon must, upon ESCHOLON request, prove to the Commission that the requested Combination would impair the ability of other carriers to obtain access to Network Elements or to interconnect with Verizon's network.

3.8.3.3 Upon ESCHOLON 's request, Verizon shall perform the functions necessary to combine Network Elements with elements possessed or provided by ESCHOLON in any Technically Feasible manner.

3.8.3.4 Except when requested by ESCHOLON , Verizon shall not separate requested Network Elements that Verizon currently combines.

3-73.9 Routine Network Modifications.

3-7-13.9.1 General Conditions. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall make ~~such all~~ routine network modifications ~~to, at the rates and charges set forth in the Pricing Attachment to this Amendment, as are necessary to permit access by~~ ~~***CLEC Acronym TXT***~~ESCHELON ~~to the any Loop, Dedicated Transport, or and Dark Fiber Transport facilities available under the Amended Agreement, including DS1 Loops and DS1 Dedicated Transport, and DS3 Loops and DS3 Dedicated Transport~~ where such Loop, Dedicated Transport, or Dark Fiber Transport facility has already been constructed. Verizon shall

perform all routine network modifications to unbundled Loop, Dedicated Transport, and Dark Fiber Transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier. At a minimum, Verizon must make the same routine modifications to their existing loop facilities that they make for their own customers. Where facilities are unavailable, Verizon will not perform trenching, pull cable, construct new Loops or Transport or install new aerial, buried, or underground cable to provision an order of ***CLEC Acronym TXT***ESCHELON. Routine network modifications applicable to Loops, Dedicated Transport, or Dark Fiber Transport may include, but are not limited to: rearranging or splicing of in-place cable at existing splice points; adding an equipment case; adding a doubler or repeater; adding a smart jack; adding a line card; installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer; accessing manholes; and deploying bucket trucks to reach aerial cable. Routine network modifications also include, but are not limited to, activities needed to enable ***CLEC Acronym TXT***ESCHELON to obtain access applicable to Dark Fiber Loops and light Dark Fiber Transport. Routine network modifications may entail include, but are not limited to, splicing of in-place dark fiber at existing splice points; accessing manholes; deploying bucket trucks to reach aerial cable; or installing equipment casings and routine activities, if any, needed to enable ***CLEC Acronym TXT***ESCHELON to light a Dark Fiber Transport facility that it has obtained from Verizon under the Amended Agreement. Routine network modifications do not include the construction of a new Loop or the installation of new aerial or buried cable for ***CLEC Acronym TXT***ESCHELON a requesting telecommunications carrier, or the placement of new cable. Verizon shall not charge any additional charges for such routine network modifications as the costs associated with these modifications are already included in the Commission approved rates.

3.7.23.9.2 Performance Plans. Verizon's performance in connection with the provisioning of Loops or Transport (including Dark Fiber Transport) for which routine network modifications are necessary shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.

3.8.10 Transitional Provisions for Nonconforming Facilities Elements.

3.8.13.10.1 Nonconforming Facilities Elements – Switching. In accordance with, but only to the extent required by, 47 U.S.C. § 251(e)(3) and 47 C.F.R. Part 51, Verizon and ***CLEC Acronym TXT***ESCHELON will abide by the following transitional procedures with respect to Mass Market Switching and Enterprise Switching:

3.8.1.4.3.10.1.1 Mass Market Switching. Upon a finding by the [***State Commission TXT***] or the FCC that no impairment exists in a particular market with respect to Mass Market Switching, Verizon will continue accepting orders under the Amended Agreement for Mass Market Switching for a transitional period of five (5) months. Thereafter, Verizon shall be under no obligation to accept new orders for Mass Market Switching. Counting from the effective date of the [***State Commission TXT***]'s or FCC's order finding no impairment in a particular market or markets, but not including any days during which such order is stayed, ***CLEC Acronym TXT***ESCHELON shall submit orders to Verizon to migrate the

embedded base of its end user customers in the subject market off of Verizon's Mass Market Switching product to any other switching service or product made available by Verizon, subject to Section 3.8.3 below, under separate agreement, or to ~~***CLEC Acronym TXT***~~ ESCHELON's own or a third party's facilities, in accordance with the following schedule: (a) ~~during by the end of~~ month 13, ~~***CLEC Acronym TXT***~~ ESCHELON must submit orders to migrate one-third of its embedded base of end user customers; (b) ~~during by the end of~~ month 20, ~~***CLEC Acronym TXT***~~ ESCHELON must submit orders to migrate one-half of the remaining embedded base of end user customers; and (c) ~~during by the end of~~ month 27, ~~***CLEC Acronym TXT***~~ ESCHELON must submit orders to migrate the remainder of its embedded base of end user customers. For purposes of the foregoing schedule, customers already in a "rolling" transition plan established by the [~~***State Commission TXT***~~] or the FCC shall not be included in the embedded base. Mass Market Switching provided under this Amended Agreement shall be subject to the rates in effect under the Agreement as of the day before the effective date of the order finding no impairment in a particular market or markets.

~~3.8.1.23.10.1.2~~ Enterprise Switching. Verizon will provide ~~***CLEC Acronym TXT***~~ ESCHELON with at least thirty (30) days advance written notice of the date on which Verizon will cease provisioning Enterprise Switching to ~~***CLEC Acronym TXT***~~ ESCHELON. Verizon agrees to continue provisioning Enterprise Switching to ~~***CLEC Acronym TXT***~~ ESCHELON under the terms of the Amended Agreement during a transitional period, which transitional period shall end on the date set forth in the notice. Beginning January 1, 2004, ~~***CLEC Acronym TXT***~~ ESCHELON shall have ninety (90) days in which to submit orders to Verizon to migrate its embedded base of end user customers served by Verizon's Enterprise Switching product to any other switching service or product made available by Verizon, subject to Section 3.8.3 below, under separate agreement, or to ~~***CLEC Acronym TXT***~~ ESCHELON's own or a third party's facilities.

~~3.10.1.3~~ Other Nonconforming Elements or Facilities. With respect to any Nonconforming Facility or Element not addressed in Section 3.8.1 above, Verizon will notify ~~***CLEC Acronym TXT***~~ ESCHELON in writing as to any particular unbundled facility or element previously made available to ~~***CLEC Acronym TXT***~~ ESCHELON that is or becomes a Nonconforming Element or Facility, as defined herein. Such notice ("Transition Notice") shall identify the type of Nonconforming Element generally, identify and describe the legal authority under which Verizon has determined that it is subject to treatment as a Nonconforming Element, and provide, with respect to each instance of such Nonconforming Element (e.g., such as a circuit, customer location, transport route, geographic market or other granular attribute) specific information identifying each instance of each Nonconforming Element obtained by ESCHELON, including without limitation, for each such Nonconforming Element, the Verizon account number; the ESCHELON

identification number associated with each such Nonconforming Element to the extent contained in Verizon's records; the street address associated with the locations at which each such Nonconforming Element is provided; the CLLI codes associated with the locations at which each such Nonconforming Element is provided.

3.10.1.4 By the end of the applicable transition period specified in section 3.8.2.1. above, ESCHELON shall designate one of the following Alternative Service Arrangements for each Nonconforming Element identified in the Transition Notice.

3.10.1.4.1 Conversion to Access Service: ESCHELON may elect to convert a Nonconforming Element to the analogous access service, if available. Where the Nonconforming Elements are converted to an analogous access service, from and after the date on which Verizon processes ESCHELON's order, Verizon shall provide such access services at the rates applicable under the term plan selected by ESCHELON, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the date on which Verizon processes ESCHELON's order. Conversion to an analogous access service shall be accomplished via the applicable LSR or ASR process, or with respect to a significant number of Nonconforming Elements, via letter and spreadsheet, which will be coordinated by the Parties on a project basis. Until the date on which Verizon processes ESCHELON's order with respect to a particular Nonconforming Element and converts it to the analogous access service, Verizon agrees to continue providing such Nonconforming Element under the rates, terms, and conditions of the Agreement.

3.10.1.4.2 Conversion to Resale Arrangement: ESCHELON may elect to convert a Nonconforming Element to a resale arrangement (either under the Agreement or otherwise), if available. Where the Nonconforming Elements are converted to such a resale arrangement, from and after the date on which Verizon processes ESCHELON's order, Verizon shall provide such resale arrangements under the rates, terms, and conditions applicable under the this Agreement (or if applicable, the relevant Verizon tariff), with the effective bill date being the first day following the date on which Verizon processes ESCHELON's order. Conversion to a resale arrangement shall be accomplished via the applicable LSR or ASR process, or with respect to a significant number of Nonconforming Elements, via letter and spreadsheet, which will be coordinated by the Parties on a project basis. Until the date on which Verizon processes ESCHELON's order with respect to a particular Nonconforming Element and converts it to a resale arrangement, Verizon agrees to continue providing

such Nonconforming Element under the rates, terms, and conditions of the Agreement.

3.10.1.4.3 Conversion to Alternative Verizon Service Arrangement: ESCHELON and Verizon may mutually agree to convert a Nonconforming Element to some other service arrangement (e.g., a separate agreement at market-based or other rates). Conversion to some other service arrangement shall be accomplished via a process to be mutually agreed-upon by the Parties. Until the date on which the conversion is completed per the terms agreed-upon by the Parties, Verizon agrees to continue providing such Nonconforming Element under the rates, terms, and conditions of the Agreement.

3.10.1.4.4 Disconnection of a Nonconforming Element: ESCHELON may elect to disconnect a Nonconforming Element. Disconnection of a Nonconforming Element shall be accomplished via the applicable LSR or ASR process, or with respect to a significant number of Nonconforming Elements, via letter and spreadsheet, which will be coordinated by the Parties on a project basis. Billing for such Nonconforming Element shall cease as of the effective date of disconnect specified by ESCHELON in its order (which date shall be no earlier than fifteen (15) days from the date of ESCHELON 's order.

3.10.1.5 Transfer of Service to ESCHELON or a Third Party: ESCHELON may elect to replace a Nonconforming Element with a service provisioned on ESCHELON 's own facilities or those of a third-party. With respect to such Nonconforming Elements, Verizon shall cooperate fully with ESCHELON to accomplish a seamless transition that does not affect service quality, availability, or performance from the end user perspective. Verizon and ESCHELON shall use commercially reasonable efforts to expedite the preparation of the relevant facilities or the applicable third-party facilities to meet the transition schedules. At the end of the applicable transition period specified in 3.8.2.2, if ESCHELON has not designated an Alternative Service Arrangement for a Nonconforming Element listed in the Transition Notice, Verizon may convert such Nonconforming Elements to an analogous access service, if available, and provide such access services at the month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the applicable transition period; provided that if no analogous access service is available, Verizon may disconnect such Nonconforming Elements.

~~The Parties acknowledge that such notice was issued prior to the execution of this Amendment with respect to certain Nonconforming Facilities. During a transitional period of thirty (30) days from the date of such notice, Verizon agrees to continue providing the Nonconforming Facilities addressed in the subject notice(s) to ***CLEC Acronym TXT*** under the terms of the Amended Agreement. At the end of that thirty~~

~~(30) day period, unless ***CLEC Acronym TXT*** has submitted an LSR or ASR, as appropriate, to Verizon requesting disconnection of the Nonconforming Facility, Verizon shall, subject to Section 3.8.3 below, convert the subject Nonconforming Facilities to an analogous access service, if available, or if no analogous access service is available, to such other service arrangement as ***CLEC Acronym TXT*** may have separately secured from Verizon (e.g., a separate agreement at market-based rates or resale); provided, however, that where there is no analogous access service, if ***CLEC Acronym TXT*** has not separately secured from Verizon, subject to Section 3.8.3 below, a substitute service within such thirty (30) day period, then Verizon may disconnect the Nonconforming Facilities; and provided, further, that with respect to any dark fiber facility that, pursuant to the terms of this Amendment, is (or becomes) a Nonconforming Facility, the transition period shall be ninety (90) days from the date of the aforementioned notice; and provided further, that unless ***CLEC Acronym TXT***, subject to Section 3.8.3 below, has separately secured from Verizon a suitable transitional services agreement for such dark fiber facilities within that ninety (90) day period, Verizon may disconnect the Nonconforming Facility in question. Where the Nonconforming Facilities are converted to an analogous access service, Verizon shall, subject to Section 3.8.3 below, provide such access services at the month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the thirty (30) day notice period. ***CLEC Acronym TXT*** shall pay all applicable termination charges, if any, for any Nonconforming Facilities that ***CLEC Acronym TXT*** requests Verizon to disconnect, or that Verizon disconnects as permitted by terms of this Amendment or otherwise.~~

3.8.33.10.2 Limitation With Respect to Substitute Services. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent a Nonconforming Facility is replaced, in whole or in part, by a service, facility, or arrangement that Verizon is not required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide, including without limitation an analogous access service (a "Substitute Service"), any negotiations regarding the rates, terms or conditions of such Substitute Service shall not be deemed to have been conducted pursuant to this Amended Agreement or 47 U.S.C. § 252(a)(1) (or 47 C.F.R. Part 51), and the rates, terms, and conditions of any such Substitute Service shall not be subject to arbitration pursuant to 47 U.S.C. § 252(b). Verizon does not agree to negotiate pursuant to 47 U.S.C. § 252(a)(1) the rates, terms, or conditions of any Substitute Service. Any reference in this Amended Agreement to Verizon's provision of a service that Verizon is not required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide is solely for the convenience of the Parties and shall not be construed in a manner contrary to this Section 3.8.3.

3.11 Conversion of Network Elements and Services.

3.9.13.11.1 The charges for conversions are as specified in the Pricing Attachment to this Amendment and apply for each circuit converted.

3.9.23.11.2 Until such time as Verizon and ~~***CLEC Acronym TXT***~~ ESCHELON mutually agree on an automated process in the East, conversion of access circuits to unbundled Network Elements will be performed manually on a project basis pursuant to Verizon's conversion guidelines. The effective bill date for conversions is the first of the month following Verizon's receipt of a written request from ***CLEC Acronym TXT*** ESCHELON reasonably identifying the circuits or other facilities that are the subject of the conversion request, ~~an accurate and complete ASR or electronic request for conversion pursuant to Verizon's conversion guidelines.~~

- ~~3.9.33.11.3~~ All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. ~~If such change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as specified in the pricing attachment.~~
- ~~3.9.43.11.4~~ For so long as ~~All~~ requests for conversions ~~will be~~ handled via a manual process as a project, ~~they and~~ will be excluded from all ordering and provisioning metrics.
- ~~3.9.53.11.5~~ Upon ESCHELON 's request, Verizon shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element, or Combination of Network Elements, that is available to ESCHELON under this TRO Attachment or the Amended Agreement. Unless otherwise agreed to in writing by the Parties, such conversion shall be completed in a manner so that the correct Charge is reflected on the next billing cycle after ESCHELON 's request.
- ~~3.11.6~~ Verizon shall perform any conversion from a wholesale service or group of wholesale services to a Network Element or Combination of Network Elements without adversely affecting the service quality perceived by ESCHELON 's customer.
- ~~3.11.7~~ In connection with any conversion between a wholesale service or group of wholesale services and a Network Element or Combination of Network Elements, Verizon shall not impose any untariffed termination charges. Further, Verizon shall not impose any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a Network Element or Combination of Network Elements.

1. General

1.1 As used in this Pricing Attachment:

1.1.1 "Services" means and includes any Network Element or other service, facility, equipment or arrangement, provided pursuant to this Amendment; and,

1.1.2 "Charges" means the rates, fees, charges and prices for a Service.

1.2 Charges for Services provided under the Amended Agreement shall be those set forth in Exhibit A of this Pricing Attachment and in the Amended Agreement (including any cross references therein to applicable tariffs). Parties intend that the Charges set forth in Exhibit A reflect the rates and charges required or approved by the [***State Commission TXT***] or the FCC. The Charges set forth in Exhibit A of this Pricing Exhibit shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction. For Charges rate elements provided in Exhibit A of this Pricing Attachment that do not include a specific rate Charge, if any, whether marked as "TBD" or otherwise, Verizon is developing such Charges and has not finished developing such Charges as of the Amendment Effective Date. ~~When Verizon finishes developing such a Charge, Verizon shall notify ***CLEC Acronym TXT*** in writing of such Charge in accordance with, and subject to, the notices provisions of the Amended Agreement and thereafter shall bill ***CLEC Acronym TXT***, and ***CLEC Acronym TXT*** shall pay to Verizon, for Services provided pursuant to this Amendment on the Amendment Effective Date and thereafter in accordance with such Charge. Any Charges set out in a notice provided by Verizon to ***CLEC Acronym TXT*** pursuant to this Section 1.2 shall be deemed to be a part of Exhibit A of this Pricing Attachment immediately after Verizon sends such notice to ***CLEC Acronym TXT*** and thereafter.~~

~~4.3~~In the absence of Charges for a Service established pursuant to Section 1.2 of this Attachment, the Charges for the Service shall be the Charges required, approved, or otherwise allowed to go into effect, by the [***State Commission TXT***] or the FCC (including, but not limited to, in a tariff that has been filed with the [***State Commission TXT***] or the FCC), provided such Charges are not subject to a stay issued by any court of competent jurisdiction.

~~4.41.3~~ In the absence of Charges for a Service established pursuant to Sections 1.2 through ~~4.3~~ of this Pricing Attachment, the Charges for the Service shall be mutually agreed to by the Parties in writing. Within thirty (30) days after the Amendment Effective Date, Verizon shall provide to ESCHELON the cost data necessary to establish a Charge where a specific rate for such Charge is not reflected in Exhibit A so that the Parties may negotiate a mutually agreeable rate. If after sixty (60) days after the Amendment Effective Date, the Parties have not mutually agreed to such Charge(s), then either Party may seek resolution and determination of such Charge(s) with the ***State Commission TXT***.

Exhibit A

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Petition for Arbitration)
of an Amendment to Interconnection)
Agreements of)
VERIZON NORTHWEST INC.)
with)
COMPETITIVE LOCAL EXCHANGE)
CARRIERS AND COMMERCIAL)
MOBILE RADIO SERVICE PROVIDERS)
IN WASHINGTON)
Pursuant to 47 U.S.C. Section 252(b) and the)
Triennial Review Order.)


DOCKET NO. UT-043013

CERTIFICATE OF SERVICE

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RECORDS MANAGEMENT
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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

I hereby certify that the foregoing Motion to Dismiss and Response of Eschelon Telecom of Washington, Inc. to Petition for Arbitration of Verizon Northwest, Inc. was served April 12, 2004, electronically upon all parties on the attached service list:

Dated: April 12, 2004.


Dennis D. Ahlers

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LGCRP; Kopta, Greg; Knowles, Rex; Ahlers, Dennis D.; 'Karen. Johnson; 'Brian.
Thomas; Art Butler; Brooks Harlow; Mark Trincherro; Lisa Rackner; Josh Thieriot; Myra
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