Decision 06-02-035 February 16, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order.	Application 04-03-014 (Filed March 10, 2004)

DECISION ADOPTING AMENDMENT TO EXISTING INTERCONNECTION AGREEMENTS

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DECISION ADOPTING AMENDMENT TO EXISTING INTERCONNECTION AGREEMENTS

I. Summary

In this decision, we adopt an amendment to the existing interconnection agreements (ICAs) that various Competitive Local Exchange Carriers (CLECs) and Commercial Mobile Radio Service Providers have with Verizon California Inc. (Verizon). This change-of-law proceeding results from changes in federal unbundling obligations of Incumbent Local Exchange Carriers (ILECs). The parties have attempted to negotiate amendments to their ICAs in order to implement the changes in unbundling rules. The purpose of this consolidated proceeding is for the Commission to resolve those issues on which parties were unable to come to agreement.

II. Background

Verizon filed this petition for arbitration in March 2003 in an effort to implement change-of-law provisions emanating from the Federal Communications Commission's (FCC) Triennial Review Order (*TRO*)[1] and the subsequent Circuit Court of Appeals Decision addressing it (*USTA II).*[2]

The *USTA II* decision created a number of uncertainties. The decision found significant problems with major portions of the *TRO*, particularly with respect to the role given to states in undertaking an unbundled network element

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[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the § 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978 (2003).

[2] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), cert. Denied, *NARUC v. United States Telecom Ass'n*, Nos. 04-12, 04-15 and 04-18 (U.S. Oct. 12, 2004).

(UNE) impairment analysis, and the court remanded the proceeding back to the FCC.

On December 2, 2004, Verizon requested that this arbitration move forward based on what was then anticipated to be the content of the expected FCC order addressing the Circuit Court remand. Verizon's "Updated Amendment to Petition for Arbitration and Request for Resumption" (Updated Amendment) included a modification to its arbitration request that it represented would totally replace its earlier arbitration request in all particulars.

On December 15, 2004, the FCC announced its response to the remand directive. However, consistent with common FCC practice, announcement of a decision is not the same as release of the decision. It was not until February 4, 2005, nearly two months after Verizon's resumption request, that the FCC order was released. This order has come to be known as the *Triennial Review Remand Order*[3] (*TRRO*).

Following issuance of the *TRRO*, the assigned Administrative Law Judge (ALJ) issued a ruling in June 2005 to "restart" the arbitration. Within 15 days from the issuance date of the ruling, Verizon was to file an addendum to its "Updated Amendment" to indicate any changes in its arbitration request or that it had no changes. Within 30 days of the issuance of the ruling, all CLECs that had interconnection agreements with Verizon were to indicate their intention to participate in the arbitration. Within 45 days of the issuance of the ruling, all carriers intending to participate in the arbitration filed and served responses to

[3] Order on Remand, In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, CC Docket No. 01-338, adopted December 15, 2004, released February 4, 2005.

the Verizon arbitration request. That filing included a markup of the disputed issues in the amendment.

We confirm the terms of the October 6, 2005 Ruling by the assigned ALJ that any carrier with an interconnection agreement with Verizon that has a dispute over the change-of-law provisions related to the FCC's *TRO* and *TRRO* orders will be subject to the outcome of this proceeding. The Commission does not intend to conduct individual arbitrations to implement change-of-law provisions related to the two FCC orders.

The proceeding will proceed in two separate tracks. The first track involves disputed issues that do not require hearings, including issues relating to routine network modifications (RNMs). At a Prehearing Conference in this docket on January 5, 2006, the parties agreed that they believed the briefs they had previously submitted would resolve all the RNM issues currently before us in this arbitration, without the need for hearings. We concur with that conclusion. Parties filed Opening Briefs on the disputed issues on December 23, 2005, and Reply Briefs, on January 13, 2006. Those issues are the subject of this decision.

A separate procedural schedule was adopted for the Batch Hot Cut portion of the proceeding.

III. Disputed Issues

The parties brought 24 disputed issues, many with multiple sub-parts, for the Commission to resolve.

1. Issue 1: Sections 1, 2.2, 2.4, 2.6, 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.10, 3.9.3, 3.11.1, 3.11.2, 3.11.2.5 – Should the Amendment refer to Verizon's tariff?

Verizon proposes the various provisions to prevent any argument that the mere mention of UNEs in their tariffs creates a right to obtain as UNEs network elements for which the FCC has eliminated unbundling under § 251(c)(3). The CLECs state that are not aware of any Verizon tariff provisions that would provide them with access to any elements or serving arrangements that the amendment would take away, however, this is not to say that Verizon may not in the future offer such elements or arrangements on a tariffed basis. If so, it would be discriminatory and unreasonable for CLECs to be precluded by the provisions of the arbitrated amendment from obtaining those services.

AT&T California (AT&T),[4] in its capacity as a CLEC in Verizon's service territory, states that it does not object to Verizon placing its Telecommunications Act obligations in tariffs, provided that all such obligations are also included in the *TRO* Amendment and general interconnection agreement (ICA). AT&T does object, however, to the inclusion of obligations arising under the Act (including *TRO* obligations) *solely in a tariff*.

Under California statutes and the rules of this Commission, all tariff changes automatically become effective 30 days after filing unless suspended by the Commission.[5] Thus, if Verizon is allowed to provide its *TRO* obligations solely through a tariff, then Verizon can change that tariff at any time and all changes will automatically become effective in 30 days unless the Commission

[4] Pacific Bell Telephone Company d/b/a AT&T California, formerly known as SBC California.

[5] Cal. Pub. Util. Code § 455 (2005).

explicitly suspends the change. Such a procedure would give Verizon the opportunity to make potentially inappropriate changes to its *TRO* obligations.

AT&T points out that several federal appellate courts have ruled that tariffs may not take the place of binding ICAs for Sections 251 and 252's obligations required by the Act. AT&T requests a specific ruling that (1) terms and rates of the *TRO* Amendment will control over Verizon tariffs, and (2) any terms and rates contained in a Verizon tariff but omitted from the Verizon *TRO* Amendment must be subject to negotiation (and arbitration, if necessary) between the parties for inclusion in the ICA.

Verizon expresses concern that removing the tariff references would be a problem because one portion of a commingled arrangement is purchased under a Verizon tariff. Therefore the rates, terms and conditions of that tariff would apply to that portion of the arrangement. We do not share Verizon's concern. To the extent that a CLEC purchases a service under tariff, of course the terms of that tariff would apply. However, the language Verizon presents is broad enough that if Verizon implemented a tariff for commingling, that tariff would supersede this amendment. We agree with AT&T and the other CLECs that it is inappropriate to allow Verizon's tariff to take precedence in any form over the ICA; the terms and rates of the *TRO* amendment will control over Verizon tariffs.

The CLECs also assert that the tariff references should be rejected because they would deprive CLECs of a right to subscribe to unbundled service offerings that may be set forth in Verizon tariffs sometime in the future. Verizon's proposed language in Sections 1, 2.2, 2.4, 2.6, 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.10, 3.9.3, 3.11.1, 3.11.2, and 3.11.2.5 is rejected, and the references to Verizon's tariff shall be removed. The CLECs do not object to the tariff references in Sections 1 and 2.2. That language is adopted.

2. Issue 2: Scope of Amendment

(a.) Sections 2.1, 2.2, 2.3, 2.7, 3.1.2, 3.2.2, 3.2.3, 3.3.10, 3.6.1.1, 3.6.2.1, 3.12.1, 4.7.1, 4.7.21 – Are Verizon's obligations under the Amendment limited to "Federal Unbundling Rules" as Verizon contends; or should the Amendment include rates, terms and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under "Applicable Law" as CLECs contend? Should the Amendment include a definition for Federal Unbundling Rules? If so, what is the definition? Should the Amendment include a definition for Applicable Law? If so, what is the definition?

According to the CLECs, the Commission's on-going authority to impose on Verizon state law-based unbundling obligations, is well-grounded in the Act. Section 261 of the Act specifically preserves any unbundling obligations that the states, like California, may have imposed prior to the passage of the Telecom Act. The CLECs assert that state law is still relevant since neither the *TRO* nor the *TRRO* modified the applicability of state law in the underlying agreement. Thus, Verizon's attempt to eliminate state law entirely from the ICAs is highly improper. According to the CLECs, because the Act authorizes the Commission to regulate UNEs within the guidelines set forth by the FCC and preserves state authority to manage pre-Act unbundling schemes, this Commission clearly has the authority to determine the manner by which such UNEs should be declassified or continue to be provided.

The CLECs point out that the California Commission's unbundling regime pre-dates the federal Act, and as part of that regime, one of its first steps (in 1993) was to identify monopoly building blocks that Verizon should be required to unbundle. Among those were switching and switching features.

According to the CLECs, neither the Act nor the FCC has preempted the California Commission's unbundling authority.

Verizon asserts that the provisions presented by the CLECs are unlawful. According to Verizon, Federal law, not state law, governs Verizon's unbundling obligations. Verizon cites the FCC's decision in Memorandum Opinion and Order and Notice of Inquiry, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling,* 20 FCC Rcd 6830 (2005) (Bell South Preemption Declaratory Ruling). In that case, the FCC granted Bell South's request for a declaratory ruling that decisions by state commissions in Florida, Georgia, Kentucky and Louisiana—which had purported to require BellSouth to provide DSL service to customers that purchase voice telephone service from CLECs using unbundled loops leased from BellSouth--were contrary to the FCC's determinations in the *TRO* and were therefore preempted. In so ruling, the FCC stated that Section 251(d)(3)—notwithstanding any of the "savings clauses" in the 1996 Act—bars state commissions from ordering unbundling in circumstances where the FCC has determined that no unbundling should be required.

We concur with Verizon's conclusion that a state commission is preempted from ordering unbundling in those instances where the FCC has determined that no unbundling should be required. In the *TRO*, the FCC is clear about the role of the states in unbundling:

> We likewise do not agree with those that argue that the states may impose any unbundling framework they deem proper under state law, without regard to the federal regime. These commenters overlook the specific restraints on state action taken pursuant to state law embodied in section 251(d)(3), and the general restraints on state actions found in sections 261(b) and (c) of the Act. Their arguments similarly ignore long-standing federal preemption principles that establish a federal agency's authority to preclude state action if the agency, in adopting its federal policy, determines that state actions would thwart that policy. Under these principles,

> states would be precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in this Order.[6]

We are pre-empted from requiring additional unbundling. Therefore, it is appropriate to adopt Verizon's language in Sections 2.1, 2.2, 2.3, 2.7, 3.1.2, 3.2.2, 3.2.3, 3.3.10, 3.6.1.1, 3.6.2.1, 3.12.1, 4.7.1 and 4.7.21, and to reject the language proposed by the CLECs. Those sections all state that Verizon shall perform its unbundling obligations consistent with "Federal Unbundling Rules." The CLECs propose the use of the broader phrase "Applicable Law" to frame unbundling requirements. The language we adopt here makes it clear that federal unbundling rules govern since we are precluded from ordering any unbundling where the FCC has determined that no unbundling should be required. The CLECs assert that Verizon is attempting to do away with the underlying ICAs' recognition of still relevant applicable law, including state law. Nothing we are doing here would eliminate the reliance on applicable law in underlying ICAs. The phrase "federal unbundling rules" applies only to Verizon's UNE obligations under the terms of this Amendment.

[6] *TRO* ¶ 192 (footnotes omitted).

(b.) Section 4.4 (and the references to § 4.4 in Sections 2.4, 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.10, 3.6.2.3) – Should the CLECs' proposed language be added to this section to state that the Amendment does not alter or modify "any rights and obligations under Applicable Law contained in the Agreement, other than those Section 251 rights and obligations specifically addressed in the amendment"? Should the Commission approve the CLECs' additional language stating that "execution of this Amendment shall not be construed as a waiver with respect to whether Verizon, prior to the Amendment Effective Date, was obligated under the Agreement to perform certain functions required by the TRO"?

The CLECs assert that the scope of the Amendment must be narrowly defined to implement only changes in federal unbundling rules under Section 251(c)(3) resulting from the *TRO* and the *TRRO*. The CLECs urge the Commission to not allow any language in the Amendment that allows Verizon to modify any of its obligations pursuant to other "Applicable Law," as a defined term in most parties' underlying Agreement. According to the CLECs, the Amendment does not affect any of Verizon's obligations to provide access to UNEs under any other applicable law.

The CLECs state that their proposed references to applicable law would ensure that the Amendment does not override the underlying agreements' imposition of obligations pursuant to applicable law other than federal unbundling rules.

Verizon points out that any "applicable law" that contradicts or undermines the FCC's rules is preempted. We find that, to the extent that the underlying ICAs refer to "applicable law," those references are not overturned by the terms of this Amendment. The use of the phrase "federal unbundling

rules" rather than "applicable law" applies strictly to this Amendment and to the provision of UNEs under this Amendment.

Verizon also opposes the CLEC's proposed language in Section 4.4 saying it is intended to give the CLECs an improper basis for arguing that *TRO*-related obligations, such as routine network obligations and commingling, were not new obligations, and so did not require an amendment. Verizon states that both these obligations were imposed in the *TRO.*

We adopt Verizon's language in Section 4.4 (and the references to § 4.4 in Sections 2.4, 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.10, 3.6.2.3). The reference the CLECs make to applicable law is not appropriate for the reasons discussed in Issue 2 above. Also, CLECs want to include language that they do not waive the right to obtain certain functions from Verizon pursuant to the *TRO* simply because they signed the Amendment long after the effective date of Verizon's obligations under the *TRO*. As Verizon points out, the specific requirements for commingling and RNMs are new requirements in the *TRO* which are to be implemented when the Amendments go into effect. The CLECs should not be able to come back, after the Amendment is signed, to dispute why certain commingling arrangements or routine network modifications were not available to them in the past.

(c.) Section 2.7 – Should the Amendment state that replacement arrangements for elements the FCC has de-listed are not subject to the requirements of 47 U.S.C. § 252?

Verizon asserts that its language makes it clear that any reference to commercial agreements in the Amendment shall not be construed "to require or permit application of any requirement of 47 U.S.C. § 252 (including but not limited to, arbitration under 47 U.S.C. § 252(b) regarding the rates, terms or conditions upon which Verizon shall provide such facilities, services or

arrangements." According to Verizon, the CLECs' proposed language might open the door for CLECs to argue that an Amendment reference to commercial agreements makes such agreements subject to § 252, whether or not the parties agree. The CLECs disagree saying that Verizon's language seeks to limit the scope of arguments that CLECs may make in the future.

Verizon asserts that a reference to commercial agreements appropriately signifies that CLECs have other options in case of the elimination of a UNE. Verizon states that a reference to alternate arrangements is solely for clarity and the convenience of the parties, in order to describe the options available to CLECs and does not affect any substantive obligations.

While we do not object to Verizon's reference to the commercial agreements that are available to CLECs, we do object to Verizon's attempt to preclude CLECs' future arguments that such agreements should be subject to Commission approval under Section 252. CLECs should have the right to make that argument in the future, if they wish. Verizon's language in Section 2.7 will be rejected.

(d.) Sections 2.5, 2.5.1 – How should the Amendment address Verizon's pre-existing discontinuance rights, if any?

According to Verizon, the CLECs' proposed language seeks to modify Verizon's existing contract provisions that permit Verizon to discontinue delisted UNEs without an amendment. Verizon asserts that the Commission should reject the CLECs' back-door attempt to modify the existing change-of-law provisions, which are not at issue in this proceeding, and which the CLECs implicitly acknowledge may give Verizon discontinuation rights in addition to those granted under the Amendment.

The CLECs assert that Verizon is attempting to override the underlying agreement's change-of-law provisions to discontinue any future UNEs that may be removed by the FCC from the Section 251(c)(3) unbundling list.

The CLECs' language in Section 2.5.1 is adopted, and Verizon's proposed language in Section 2.5 that would permit "future" changes is rejected. The CLECs' proposed language states, in relevant part: "this Amendment itself is not intended to implement future changes in law regarding unbundling obligations…" In other words, the change-of-law provisions in the underlying ICA govern, and we make no change to those provisions in this Amendment.

3. Issue 3: Sections 2.4, 2.5, 2.7, 3.6.3.1, 3.9.1, 3.9.2, 3.9.2.1, 4.7.11 – Should the Amendment use Verizon's term "Discontinued Facility" or the CLECs' term "Declassified Network Element" to refer to elements that Verizon is no longer required to provide under Section 251(c)(3) or 47 C.F.R. Part 51? What is the appropriate definition for the term to be used in the Amendment? Should the Amendment reference or address commercial agreements that may be negotiated for services or facilities to which Verizon is not required to provide access as a UNE?

Verizon proposes to refer to an unbundled network element that the FCC no longer requires it to provide as a "Discontinued Facility," while the CLECs believe the phrase "Declassified Network Element" makes more sense. The CLECs state that the FCC's definition of a network element is that it is not merely a "facility," but also the "features, functions and capabilities that are provided by means of such facility…"[7] We concur with the CLECs that the de-listed UNEs should be referred to as "Declassified Network Elements." The CLECs'

[7] 47 C.F.R. 51.5.

proposed language will be adopted in Sections 2.4, 2.5, 2.7, 3.6.3.1, 3.9.1, 3.9.2, 3.9.2.1, and 4.7.11.

According to Verizon, by eliminating the introductory phrase "By way of example and not by way of limitation," in Section 4.7.11, the CLECs attempt to lock down a definitive, exhaustive list of facilities for which Verizon has no unbundling obligation under the FCC's rules. Also, Verizon states that the CLECs' proposed insertion of "251(c)(3)" suggests that, if a UNE such as UNE-P has been eliminated under Section 251(c)(3), it might still be available pursuant to some other source of law, such as state law. The phrase "251(c)(3)" shall be rejected in Section 4.7.11, for the reasons discussed in Issue 2.

The CLECs state that the list that Verizon has proposed covers every Section 251(c)(3) network element that FCC has relieved Verizon of the obligation to provide to CLECs. If the FCC in the future, adds others to the list of declassified network elements, then that will constitute a change of law, which under many of the CLECs' ICAs, will require Verizon to negotiate with the CLECs changes to their ICAs to reflect the new declassifications. The CLECs' proposed language in Section 4.7.11 relating to this issue is adopted. Future declassifications should be subject to the change-of-law provisions of the underlying ICA.

In Section 4.7.11, Verizon has proposed that the inclusion of high-capacity loops and high-capacity transport as "discontinued facilities" is subject to earlier amendment provisions that describe the FCC's criteria for measuring non-impairment as to those facilities. The CLECs object, because the Amendment—at least as the CLECs have proposed it—deals in detail with each subject it covers, so there is no need for an element-by-element cross-reference, such as Verizon would create. The CLECs' general expression, "and subject to the terms of this Amendment" is adequate to warn the reader that other sections of the

Amendment need to be referred to in order to discover the particular terms and limitations of the declassification of each declassified network element. Further, what if Verizon's references are incomplete, or if the sections to which it refers cover more than one element? We find that there are potential ambiguities in Verizon's language. Therefore, the CLEC language in Section 4.7.11 relative to this issue is adopted.

Verizon states that the CLECs propose to make the discontinuance of various high-capacity transport elements subject to "section 3.5.4" which is the section dealing with entrance facilities and interconnection under Section 251(c)(2). Verizon says that the CLECs are attempting to imply that high-capacity transport is still available on an unbundled basis for interconnection purposes. As we determine in Issue 20, the CLECs are correct. Transport continues to be available on an unbundled basis for interconnection purposes pursuant to Section 251(c)(2). Therefore, the CLECs' reference to Section 3.5.4 in Section 4.7.11 is appropriate and will be adopted. Verizon indicates that it does not object to deleting the reference to Section 3.5.4 in the phrase related to OCn loops. That phrase in Section 4.7.11 will be deleted.

4. Issue 4: General Terms with Respect to Notice and Discontinuation of De-listed Items:

(a.) Sections 2.4, 2.4.2, 2.5, 2.5.1, 3.4.1.2.5, 3.4.2.2.5, 3.4.3.2.5, 3.5.1.2.5, 3.5.2.2.5, 3.5.3.2.5 – How should the Amendment address notice of discontinuation of a de-listed item?

Verizon states that for future de-listed UNEs, it will cease providing a discontinued facility on at least 90 days' written notice. However, with respect to the elements affected by the *TRO* or the *TRRO*, Verizon states that it has already provided all the required notices of discontinuance prior to the Amendment's effective date.

The CLECs dispute Verizon's assertions saying that although the Amendment should reflect recent changes in federal law, those changes do not include any modification to the change-of-law provisions in the CLECs' existing agreements. The CLECs say that in its proposed Amendment language, Verizon improperly attempts to modify the change-of-law provision of the ICAs so that any future change of law limiting or eliminating Verizon's obligation to provide certain UNEs would automatically be incorporated into the parties' ICAs. The CLECs assert that the *TRRO* makes clear that the FCC's unbundling determinations are not self-effectuating, and accordingly, Verizon and the CLECs may implement changes of law only "as directed by section 252 of the Act."[8]

We believe that, to the extent that CLECs' ICAs include change-of-law provisions, any future changes in unbundling should be subject to such change-of-law provisions and not implemented unilaterally. We do agree, however, with Verizon's assertion that adequate advance notice has been given to the CLECs for changes arising out of the *TRO* and the *TRRO*. Verizon's proposed language in Section 2.4 which calls for 90-day notice of discontinuance of a discontinued facility will be rejected. We also reject Verizon's proposed language in Section 2.5 that would allow Verizon the right to exercise its right to cease providing Declassified Network Elements *in the future*. Again, these provisions would allow Verizon to exercise its rights unilaterally without regard for the ICA's change-of-law provisions.

The CLECs propose language in Section 2.5.1 to ensure that Verizon cannot circumvent Section 252 of the Act and use this Amendment as carte blanche to effectuate any future changes in unbundling rules without complying

[8] *TRRO* at ¶ 233.

with the terms of the parties' ICAs. We adopt Section 2.5.1. This section makes it clear that the Amendment itself "is not intended to implement future changes in law regarding unbundling obligations…"

Verizon's proposed language in Section 2.5 makes clear that nothing in the Amendment limits Verizon's future exercise of any pre-existing right it may have under the underlying ICA to cease providing access to declassified network elements. We are not altering the change-of-law provisions in the underlying ICAs so it is appropriate to adopt Verizon's language in Section 2.5.

The CLECs propose language which permits Verizon to convert the declassified UNE to an analogous special access service if the CLEC has not submitted a Local Service Request (LSR) or Access Service Request (ASR) by the end-date of the transition period. The CLECs' proposed language in Section 3.4.1.2.5, 3.4.2.2.5, 3.4.3.2.5, 3.5.1.2.5, 3.5.2.2.5, and 3.5.3.2.5 is adopted. While we strongly encourage CLECs to submit LSRs or ASRs in a timely fashion, we would prefer that CLECs' customers' service not be disconnected so it is preferable to have the serving arrangement moved to an analogous service out of Verizon's access tariffs. It is a "win/win" situation: Verizon may charge the higher special access rates at the end of the transition period, while the CLECs are protected against discontinuance by Verizon in the event that an LSR or ASR is not submitted by the relevant end-date.

(b.) Sections 2.4.1 and 2.4.2 – Should the Amendment permit Verizon to disconnect, convert, and/or reprice de-listed elements for which the CLEC has not requested disconnection or obtained alternative arrangements?

The CLECs point out that the language proposed by Verizon in Section 2.4.1 is at odds with the language proposed by the CLECs for Sections 3.4.1.2.5, 3.4.2.2.5, 3.4.3.2.5, 3.5.1.2.5, 3.5.2.2.5, and 3.5.3.2.5, discussed

above. Verizon's language provides Verizon with several options in the event the CLEC has not submitted an LSR or ASR: disconnection or conversion to an arrangement available under a Verizon access tariff. We have already determined in Section 3.4.1.2.5 that we would prefer that the CLEC's customer not be disconnected. Verizon's proposed language in Section 2.4.1, which allows disconnection of service as one option, is rejected. We also reject Section 2.4.2, which is contingent on Section 2.4.1.

5. Issue 5: Section 2.6 – Should the Amendment address packet switching? If so, how?

Verizon proposes language to indicate that it is not required to unbundle packet switching pursuant to Commission Decision (D) 05-09-045. The CLECs acknowledge that, under the terms of that decision, Verizon is not obligated to provide unbundled access to packet switching. Still, the CLECs say it is not appropriate to include this provision in the amendment because it has nothing to do with implementing the *TRO* or *TRRO.*

The CLECs also express concern over the overly-broad contract language and its potential effect on CLECs seeking access to packet switching under the general nondiscrimination provisions of Public Utilities Code § 453 and 47 U.S.C. Section 202. The CLECs state that Verizon represented to the Commission in the proceeding leading up to the issuance of D.05-09-045 that it could not provide CLECs with circuit switching functionality through the use of packet switches because making the network modifications that would be required to do so would be too costly, time consuming, and challenging.[9] However, Verizon has agreed in unfiled "commercial" agreements with certain CLECs to provide

[9] *See*, D.05-09-045, p. 38.

access to unbundled packet switching in UNE-P type combinations. According to the CLECs, as a consequence of Verizon's voluntary action in this regard, it is now obligated by the Public Utilities Code and federal law to provide other CLECs with similar access.

We agree that Verizon should not discriminate among CLECs. However, the service offering of unbundled packet switching that the CLECs refer to is provided under a separate commercial agreement. Presumably other CLECs could also obtain unbundled packet switching through similar agreements. There is no reason that Verizon's proposed language should not be included in this amendment because Verizon is not required to unbundle packet switching under Section 251(c)(3). Verizon's proposed language in Section 2.6 is adopted.

6. Issue 6: FTTH and FTTC Loops

(a.) Section 3.1.1 – What, if any, are Verizon's obligations to provide unbundled access to newly built FTTH and FTTC loops?

Verizon states that its proposed language provides that "Verizon is not required to provide nondiscriminatory access to a Fiber to the Home (FTTH) or Fiber-to-the-curb (FTTC) Loop, or any segment thereof, on an unbundled basis when Verizon deploys such a Loop to the customer premises of an end user that has not been served by any loop facility other than the FTTH or FTTC loop.

The CLECs propose to delete the phrase "or any segment thereof," even though Verizon asserts, they have no lawful claim to any segment of the fiber loop. The CLECs respond that such language would allow Verizon to deny CLECs the ability to access the copper from a customer premises to the curb where there is copper from a premise to the curb, because Verizon would view that as "part of the FTTC loop." The CLECs rely on FCC Rule 51.319(a)(3)(i) in support of their position, but we disagree with their conclusions on what the

rule says. The FCC's FTTH rule for New Builds (Rule 51.319(a)(3)(i) does not require the ILEC to provide access on an unbundled basis. The only access is for "Overbuilds," which is discussed in the following section. It is appropriate to include Verizon's phrase "other than a FTTH or FTTC Loop" in Section 3.1.1. As Verizon points out in its comments on the Draft Decision (DD), the FCC's rules only address overbuild situations where the FTTH or FTTC loop is replacing a *copper* loop, not where it is replacing another FTTC or FTTH loop.

Therefore, in Section 3.1.1 we will adopt Verizon's proposed phrases "or any segment thereof," and "other than a FTTH or FTTC Loop."

(b.) Section 3.1.2 – What, if any, are Verizon's obligations to provide unbundled access to overbuilt FTTH and FTTC loops? Is Verizon required to provide up to 24 such voice grade transmission paths when it retires a DS-1 copper loop?

According to the CLECs, when a DS-1 copper loop has been retired, Verizon is obligated to provide the CLEC with the same number of voice grade transmission paths that the CLEC would have been able to obtain before the loop was retired.

We find the CLECs' proposed language to be inconsistent with Rule 51.319(a)(3)(ii)(C), which states:

> An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(ii) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the home loop on an unbundled basis.

Verizon's language in Section 3.1.2 is adopted.

(c.) Section 3.1.2.1 – Should the Amendment impose new terms, conditions, notice and/or CLEC approval requirements on Verizon's ability to retire copper loops?

The CLECs' proposed language would require Verizon to provide 180-days notice of its intent to retire a copper loop and states that Verizon's modification of loop plant shall not "limit or restrict [a CLEC's] ability to access all of the loop features, functions and capabilities, including DSL capabilities."

Verizon points out that in the *TRO,* the FCC established a 90-day notice requirement prior to retirement of a copper loop. Verizon states that it will provide notice of its intention to retire copper facilities in a manner consistent with the FCC's rules.

We find that the CLECs' proposed language is at odds with the FCC's rejection of the suggestion that continued availability of a DSL-capable loop is a prerequisite to copper retirement. The FCC found that in overbuild situations—which is by definition the case where Verizon seeks to retire a copper loop following deployment of fiber facilities—the "fiber loops must be unbundled for narrowband services only."[10]

The CLECs' proposed language in Section 3.1.2.1 is rejected.

(d.) Sections 3.2, 4.7.24, 4.7.25, 4.7.27, 4.734 – (a) Should the Amendment distinguish between "mass market" customers and other types of customers for purposes of applying the FCC's FTTH and FTTC unbundling rules? (b) If so, then how should the Amendment define "mass market" for these purposes?

The dispute between the parties focuses on whether the FCC's unbundling relief for FTTH, FTTC, and hybrid loops is limited to the mass market, or if it

[10] *TRO* ¶ 273.

includes the enterprise market as well. Verizon points to 47 C.F.R. § 51.319(a)(3) which reads as follows:

> A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end-user's customer premises…

Verizon also states that the rule as it originally appeared in the *TRO* referred to "a residential unit." However, in its *TRO Errata*, the FCC replaced the words "a residential unit" with the words "an end user's customer premises."[11] The FCC also made a similar change to Section 51.319(a)(3)(i) in its *FTTC Order Errata.*[12] Verizon finds it significant that the FCC was careful to delete from the rules any qualification limiting the scope of the relief to a particular market segment, but chose instead the broad term "customer premises."

The CLECs state that it is likely that Verizon's true objective on this issue is to try to eliminate its obligation to unbundle most DS1 and DS3 loops, by applying the mass market hybrid loop unbundling exemption to such facilities when they are provisioned over fiber-fed loops. According to the CLECs, the *TRO* unambiguously rejected such a result:

> DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops…The unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers.[13]

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

[12] Errata, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-388, 2004 FCC LEXIS 6241, ¶ 11 (FCC Oct. 29, 2004) ("*FTTC Order Errata"*).

[13] *TRO* at ¶ 325, fn. 956.

The CLECs urge the Commission to look not only at the rules attached to the FCC's unbundling orders, but also at the instructions in the orders themselves. The FCC's intent, as expressed in its orders, itself has the force of law, and the FCC has clearly held that its UNE rules should not be read in isolation, but must be "read in conjunction with the rest of the Order."[14] According to the CLECs, the "rest of the order" makes it clear that the FCC did not intend to apply its FTTH and Hybrid Loop rules to DS1 and DS3 loops.

In its comments on the DD, Verizon states there is no merit to the CLECs' concern that implementation of the FCC's FTTH/FTTC rules would eliminate CLECs' rights to obtain high-capacity DS1 or DS3 loops as UNEs where the FCC has found impairment. According to Verizon, the key distinction is that FTTH/FTTC provides an integrated, packetized service over fiber loops, while DS1and DS3 loops provide a legacy, non-packetized (or time division multiplexing (TDM)) service. While a DS1 or DS3 loop based on TDM technology makes use of a dedicated circuit between the central office and the customer premises, packetized FTTH/FTTC service makes use of shared network capacity between the customer premises and the central office.

Verizon asserts that the DD's finding that the FCC's FTTH rules apply only to mass market customers, as opposed to *all* customers, including enterprise customers is incorrect. Verizon states that the language in the DD will impede the FCC's goal of encouraging the deployment of next-generation broadband facilities by eliminating unbundling obligations for such facilities.

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[14] *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 1116, 11177-78, ¶¶ 20-21 (2000) (referring to the "*Local Competition Order,*" supra).

It is our goal to promote broadband deployment in California, and we do not intend to take steps here that would have an adverse effect on such deployment. Also, we find that the FCC's rule applies to all customers, not just to mass market customers. Therefore, we will reject the CLECs' proposed language in Section 3.2 and adopt Verizon's proposed language in Sections 4.7.24, 4.7.25, and 4.7.27, and reject the CLECs' proposed language. Also, we delete the CLECs' proposed language in Section 4.7.34. There is no need to include a definition of "mass market customer," since we have determined that all customers are covered by the FTTH/FTTC rules.

However, in an effort to avoid all possible doubt about continued CLEC access to TDM-based DS1s and DS3s, we will include the following language in both Sections 3.1.1 "New Builds" and 3.1.2 "Overbuilds":

> This Section does not limit any obligation Verizon may have under this Amendment and Federal Unbundling Rules to provide [CLEC] with unbundled access to the existing time division multiplexing features, functions, and capabilities of a DS1 Loop or DS3 Loop.

7. Issue 7: Hybrid Loops:

(a.) Section 3.2.1 – For packet switched features, functions and capabilities of Hybrid Loops, should the Amendment read that "Verizon shall not be required to provide [such access] to any Hybrid Loops" or "CLECs shall not be entitled to obtain [such access] to its Hybrid Loops"?

In Section 3.2.1, Verizon proposes that the CLEC "shall not be entitled to obtain" packet switched features; the CLECs propose changing that phrase to read that "Verizon shall not be required to provide" such features. Verizon states that the CLECs misunderstand Verizon's language, which provides only that the CLECs are not entitled-by regulatory compulsion—to obtain packet-switched capabilities. To say that they are not entitled to obtain hybrid loops in

no way implies that they may never obtain such services under a voluntary commercial agreement with Verizon.

We concur with Verizon's conclusion that nothing precludes CLECs from entering into a voluntary commercial agreement with Verizon to obtain packet-switched capabilities. Verizon's language in Section 3.2.1 is adopted.

(b.) Sections 3.2.4, 3.2.4.1 – How should the Amendment reflect Verizon's obligation to fulfill a CLEC's request for access to a loop to a customer premises that Verizon serves with an IDLC Hybrid Loop? Under what conditions can Verizon impose non-recurring charges other than standard loop order charges?

The CLECs assert that the *TRO* makes clear that Verizon is not excused from its obligation to provide unbundled hybrid loops where it has deployed Integrated Digital Loop Carrier (IDLC) systems. The FCC recognized the difficulties of providing access to IDLC systems. Despite this finding, the FCC explicitly held that "Even still, we require incumbent LECs to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems."[15] This rule does not necessarily require Verizon to unbundle an IDLC loop, so long as it provides CLEC with some other unbundled loop serving the same customer premises.

The CLEC proposal does not mandate any particular form of access where IDLC loops are present; instead, it affords Verizon the discretion to choose which form of access to provide, subject only to the reasonable requirement that Verizon may not impose additional charges beyond the least-cost option for providing access. According to the CLECs, the purpose of the requirement is to prevent Verizon from satisfying its obligation by requiring that CLECs pay Verizon to construct the most expensive solution, even when less expensive solutions are available.

AT&T, operating as a CLEC, supports the CLECs' proposed language in Section 3.2.4 that would make Verizon's obligation perfectly clear.

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[15] *TRO* ¶ 297.

The CLECs' proposed language in Section 3.2.4 is adopted. Verizon should employ the least-cost method of providing a loop to the CLEC. While there may be cases where special construction is necessary, that is the most expensive option, and CLECs want to be certain that it is only employed where necessary. That is appropriate. The CLEC proposal does not mandate a particular form of access where IDLC loops are present; instead, it affords Verizon the discretion to choose which form of access to provide, subject to the reasonable requirement that Verizon may not impose additional charges beyond the least cost option for providing access.

Verizon's proposed language in Section 3.2.4.1 is rejected. It conflicts with the language adopted in Section 3.2.4. In their comments on the DD, the CLECs assert that a line and station transfer should be treated no differently from other routine network modifications, for which Verizon withdrew its pricing proposal. There is no approved price for a line and station transfer so there should be no charge unless Verizon justifies its costs to the Commission, and demonstrates that it is not recovering the costs in its recurring or nonrecurring loop rates.

(c.) Section 3.2.4.2 – Where neither a copper Loop nor a Loop served by UDLC is available, how should the Amendment reflect Verizon's obligation to provide a technically feasible method of access? Under what circumstances is CLEC responsible for new construction charges?

The CLECs' proposed language in Section 3.2.4.2 states that if the CLEC asks Verizon to construct a copper loop, the CLEC shall be responsible for the following charges "only if [CLEC] requests the construction of a copper Loop or UDLC facilities when Verizon has proposed to provide a different less costly method of technically feasible access…"

We reject the CLECs' proposed language. If the CLEC requests the construction of a loop, the CLEC should pay all appropriate charges, whether or

not Verizon has proposed to provide a different less costly method of access. If Verizon proposes a less costly method of technically feasible access, the CLEC has the right to select that option.

8. Issue 8: Section 3.2.5 – Should the Amendment specify that when a CLEC requests access to a Loop, Network Interface Device functionality shall be provided at no additional charge? Section 3.2.6 – Should the Amendment require Verizon to provide physical loop test access points to CLEC for testing, maintaining, and repairing copper loops and subloops? If so, should the Amendment specify the physical points?

Verizon asserts that in the *TRO*, the FCC did not change, but merely reaffirmed, its previous rules: "We conclude that the NID [Network Interface Device] should remain available as a UNE as a means to enable a competitive LEC to connect its loop to customer premises inside wiring."[16] According to Verizon, because its contracts already address the current NID requirements, which did not change with the TRO, there is no reason to address them in this proceeding.

The CLECs disagree saying that the Commission should not allow for any ambiguity with regard to Verizon's obligation to provide access to NIDs. Also, in the *TRO,* the FCC found that there are at least "three scenarios where competitive LECs are impaired without access to the NID functionality…"

Moreover, the CLECs state that the Amendment should include a provision prohibiting any additional charges for the NID functionality as the NID is part and parcel of the local loop, and Verizon recovers the cost of

[16] *TRO* ¶ 356.

providing the NID through the recurring and non-recurring charges assessed on CLECs for access to the loop.

We agree with the CLECs that this Amendment should clearly state the parties' obligations. The FCC reaffirmed the availability of the NID in its *TRO,* and explained why access to the NID was important to CLECs. We see the benefit of including language that specifies that there is no charge for the NID. This could prevent implementation disputes. The CLECs' language in Section 3.2.5 is adopted.

The parties dispute whether the Amendment should include physical access points for loop testing, maintaining and repairing. Verizon asserts that the Amendment should not address issues related to testing, maintaining, or repairing copper loops because the *TRO* did not change the rules with respect to these issues, and existing contracts already address these matters. Also, Verizon finds the CLECs' language to be incomplete and inadequate. Their language refers briefly to access via "cross-connection to [a CLEC's] collocation space" or at the "intermediate distribution frame," but these sorts of issues cannot be addressed without detailed operational provisions and rates. According to Verizon, the typical ICA already contains several pages of language dealing with such issues.

The CLECs disagree because there have been substantial changes in the FCC's loop unbundling rules as a result of the *TRO* and the *TRRO* and assert that their proposed language for Section 3.2.6 was taken from paragraph 254 of the *TRO*.

The CLECs proposed language in Section 3.2.6 is adopted. While Verizon finds the language to be incomplete and inexact, it exactly parallels Rule 51.319(a)(1)(iv)(A) which the FCC adopted in the *TRO*.

9. Issue 9: Sections 3.3 through 3.3.10 – What terms for CLEC access to subloops should be included in the Amendment?

According to the CLECs, the *TRO* requires Verizon to provide the CLECs with unbundled access to Verizon's copper subloops and Verizon's NIDs. The FCC also found that CLECs are impaired on a nationwide basis "without access to unbundled subloops used to access customers in multi-unit premises."[17]

Verizon objects to the CLECs' proposed language because it assumes that Verizon owns the inside wiring running from the MPOE to the customer premises in a multi-tenant building. Verizon asserts that it does not own such wiring in California so there is no need for the CLECs' irrelevant language.

Verizon also objects to the wording of the CLECs' proposed language. First, proposed Section 3.3 refers to "fiber distribution facilities," but fiber distribution facilities are generally not subject to unbundling. Second, the CLECs' proposed Section 3.3.1 deals solely with copper subloops, but without any accompanying rates or standard operational provisions (all of which should be addressed in existing ICAs and were not a creation of the *TRO* or the *TRRO.* Finally, the CLECs' proposed Section 3.3.8 would allow CLEC technicians to work on Verizon's equipment.

Verizon opposes the CLEC's Single Point of Interconnection (SPOI) terms, saying that site-specific conditions may vary significantly. Those variables must be considered as part of an engineering survey at each site to determine the work, equipment, and costs required to construct a SPOI at the particular site. If and when a CLEC requests a SPOI, Verizon states that the only workable approach is for the parties to negotiate the details specific to that request at that

[17] *TRO* ¶ 348.

time. In reading the language in Section 3.3.5, we find that it allows Verizon to recover the TELRIC costs of constructing a SPOI. Nothing in that language states that there will be a single price for constructing a SPOI. The rates can and will vary on a site-by-site basis. Nothing in the CLECs' proposed Section 3.3.5 precludes that.

Also, Verizon opposes the CLECs' attempt to preclude any possibility that Verizon might negotiate rates for construction of the SPOI. Verizon cites the FCC as follows:

> If the parties are unable to negotiate rates, terms, and conditions under which the incumbent LEC will provide this single point of interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under section 252 of the Act.[18]

Verizon asserts that if the Commission believes the Amendment should include terms to address access to inside wire subloop, the Commission should direct the parties to negotiate the terms and prices for access on a Bona Fide Request (BFR) basis if and when Verizon receives a request for such access and is deemed to own or control inside wire in a particular situation.

We see the value in including detailed contract language regarding access to subloops. As Rule 3.3 states, inside wire subloop is only one type of subloop, and Section 3.3 makes it clear that we are only dealing with "on premises wiring owned, controlled or leased by Verizon." To the extent that Verizon does not own, control or lease the inside wire, the Amendment language does not apply. Also, we see the benefit in having Verizon provide a CLEC with a written proposal that describes in detail

[18] 47 C.F.R. Section 51.319(b)(2)(ii).

commercially viable methods that allow a CLEC to access subloops, and establishes a process for the parties to negotiate terms that effectuate commercially viable methods for CLECs to access subloops. We will adopt Rules 3.3 – 3.3.10 with the following modifications:

1) Section 3.3 and 3.3.2: delete "and Applicable Law."

2) Sections 3.3, 3.3.2, 3.3.4, 4.7.28, 4.7.33, and 4.7.41 delete the word "leased" which the FCC does not include in its rules in Section 51.319(b).

3) Section 3.3: delete reference to fiber distribution facilities. Make clear that the term subloop does not include access to fiber feeder loop plant.

4) Section 3.3.1: The last sentence shall be changed as follows to track the language in Rule 51.319(b)(1): "Copper Subloops include two-wire and four-wire analog voice grade Subloops as well as two-wire and four-wire Subloops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the Subloops are in service or held as spares."

5) In its comments on the DD, Verizon points out that in Section 3.3.2 the CLECs have combined two different subsections of the FCC's rules, (technically feasible access for copper subloops) and (subloops for access to multiunit premises.) Since the tehnically feasible access for each type of subloop varies, Section 3.3.2 shall be revised to make clear the separate requirements for each type of subloop, based solely on the FCC's rules.

(6) Section 3.3.2: the end of the final sentence will be revised to read: "…Verizon shall provide [CLEC] with access to the full frequency/spectrum of copper/fiber Hybrid Loops, only to the extent that it is not in conflict with the terms of Section 3.2."

(7) Section 3.3.4: The CLECs' proposed language is modified to conform more closely to Rule 51.319(b)(2) as follows:

"regardless of the capacity level or type of loop that the [CLEC] seeks to provision for its customer."

8) Section 3.3.5 shall be modified as follows: We retain the first sentence proposed by the CLECs. After that add "The parties should negotiate the terms and prices for access on a bona fide request (BFR) basis. If the parties are unable to negotiate rates, terms aand conditions under which Verizon will provide this Single Point of Interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under Section 252 of the Act.

9) Delete Section 3.3.8 in its entirely. CLECs do not have the right to perform work on Verizon's network.

10. Issue 10: Loops and Transport:

(a.) Sections 3.4.1.1.2, 3.4.2.1.2, 3.5.1.1.2, 3.5.2.1.2 – How should the Amendment treat a CLEC's affiliate(s) for purposes of applying the FCC's caps on availability of unbundled DS1 and DS3 UNE Loops and Transport?

Verizon asserts that the language it proposes is necessary so that one company (including all its affiliates) will only be able to obtain the maximum amount of loops or transport facilities specified in the relevant FCC rule. Otherwise, a carrier with numerous affiliates could easily evade the FCC's caps: when one affiliate reached the 20 DS1-loop cap, the carrier could order another 10 loops through another affiliate. CLECs would also have an incentive to create new affiliates to avoid the caps.

The CLECs rebut Verizon, saying that FCC Rule 51.319(a)(4)(ii) reads as follows:

> [a] requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 loops to any single building in which DS1 loops are available as unbundled loops.

According to the CLECs, the FCC's rule does not include any requirements regarding the counting of affiliates. In fact, nowhere in the FCC's rules or the *TRRO* does it specify that the loops and transport caps apply to a CLEC "and its affiliates."

We concur with the CLECs that the FCC's rule does not address the issue of affiliates. If the FCC had been concerned about CLECs' gaming the system, it would have taken steps to address the issue. Verizon's proposed language in Sections 3.4.1.1.2, 3.4.2.1.2, 3.5.1.1.2 and 3.5.2.1.2 is rejected.

(b.) Section 3.5.1.1.2 – Does the FCC's cap of 10 UNE DS-1 dedicated transport circuits apply only on routes where UNE DS3 dedicated transport is unavailable?

Verizon asserts that the 10 DS1 circuit limitation applies on all transport routes. However, the CLECs state that the purpose of the FCC's limitation on DS1 transport is to prevent CLECs from evading the elimination of DS3 transport UNEs by ordering multiple DS1 circuits instead. Where a DS3 transport UNE is available, there would be no rule to evade, and any CLEC request for DS1 circuits instead of DS3s would be considered legitimate.

Both parties point to the applicable FCC Rule 51.319(e)(2)(ii)(B) which reads as follows:

> Cap on unbundled DS1 transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

The CLECs acknowledge that while the rule does not explicitly address the limitation on the applicability of the DS1 transport cap, the related text of the *TRRO* does so in a clear and unambiguous fashion. Paragraph 128 of the *TRRO* reads as follows:

> Limitations on DS1 Transport. On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits…When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.

On January 25, 2006, Verizon filed a motion for official notice of CBeyond Communications of Texas, L.P. v. The Public Utilities Commission of Texas a Western District of Texas federal court decision that issued on January 19, 2006. We concur with Verizon that the CBeyond decision holds that the 10-circuit DS1 transport cap set forth in the FCC's regulations in Section 51.319(e)(2)(ii)(B) applies exactly as stated in the rule—that is, on all routes.

The opinion holds that when the FCC makes apparently inconsistent statements in an order and a regulation, the regulation controls. Accordingly, the court found that the DS1 cap applies on all routes, regardless of whether DS3 transport is available. The CLECs' language in Section 3.5.1.1.2 is rejected, and Verizon's language is adopted.

(c.) Sections 3.4.1, 3.4.3.1, 3.5.1, 3.5.2, 3.5.3 – Should "Section 251(c)(3)" be included as a qualifier for DS1, DS3 and Dark Fiber Loops and Transport?

The issue here is the same as Issue 2. The CLECs insist that the "section 251(c)(3)" language would make it clear that only those UNEs are impacted by the TRO and *TRRO,* not UNEs provided pursuant to applicable law as defined in the underlying agreement.

As we stated under Issue 2, we do not have the authority to order additional unbundling under state law. The unbundling rules in effect are those

pursuant to section 251(c)(3). The CLECs' proposed language in Sections 3.4.1, 3.4.3.1, 3.5.1, 3.5.2, and 3.5.3 is rejected.

(d.) How should the Amendment address the transition away from DS1 loops and transport, DS3 loops and transport, and dark fiber loops and transport that Verizon is no longer required to unbundle? In particular,

(1) Sections 3.4.1.2.1, 3.4.2.2.1, 3.4.3.2.1, 3.5.1.2.1, 3.5.2.2.1, 3.5.3.2.1 – Should the embedded base be defined to include orders submitted, but not yet provisioned as of March 11, 2005?

According to Verizon, under the plain terms of the FCC's rules and orders, any high capacity facilities that were not in place as of March 11, 2005 are not subject to unbundling or the pricing provisions of the FCC's transitional regime.

The CLECs present language that would require Verizon to provide access to a CLEC's "embedded base of such facilities that existed *or were the subject of provisioning* orders as of March 11, 2005."

AT&T, in its capacity as a CLEC, states that AT&T California, in its capacity as an ILEC, has agreed to similar language in its TRO Attachment.

AT&T believes that the embedded base should include all CLEC orders placed before March 11, 2005 and accepted as valid orders, whether or not such orders were provisioned before that date. AT&T asserts that nothing in the FCC's regulations requires high-capacity facilities to be "in place" by March 11, 2005.

The actual language of Section 51.319(a)(4)(iii) refers to "DS1 loop UNEs that a competitive LEC leases from the incumbent LEC as of that date…" Accordingly, the CLECs state that if a CLEC submitted an order for a DS1 loop prior to March 11, 2005, but Verizon did not process the order, it is considered "leased" by the CLEC and should be encompassed in the embedded base subject

to the transition rates. The CLECs state that to do otherwise, would allow Verizon to determine which UNEs were and were not provisioned, leaving the CLECs' embedded bases at the mercy of Verizon. We agree. The CLECs' proposed language in Sections 3.4.1.2.1, 3.4.2.2.1, 3.4.3.2.1, 3.5.1.2.1, 3.5.2.2.1, and 3.5.3.2.1 is adopted, with one modification. In response to Verizon's comments on the DD, we delete the phrase "under the terms of this amendment…" to make clear that we do not support the availability of UNEs pursuant to some other source of law.

(2) Sections 3.4.1.2.2, 3.4.2.2.2, 3.4.3.2.2, 3.5.1.2.2, 3.5.2.2.2, 3.5.3.2.2 – Should the Commission approve the CLECs' proposed language addressing CLEC options for conversion from de-listed loops and transport?

The CLECs indicate that their language will reduce the potential for disputes. While Verizon relies on "business rules" that apply to service ordering and provisioning, the CLECs believe that the Amendment should include language that specifically lists the processes and alternative arrangements available to CLECs.

We concur with the CLECs that there is less room for dispute if the process is included in the Amendment. However, while we adopt the proposed language in Sections 3.4.1.2.2, 3.4.2.2.2, 3.4.3.2.2, 3.5.1.2.2, 3.5.2.2.2, and 3.5.3.2.2, we reject the last sentence of each section that reads as follows:

> Unless [CLEC] specifically requests or has contractually agreed otherwise, to the extent a customer served using a Declassified Network Element is migrated to analogous access service or a functionally equivalent alternative service arrangement prior to the expiration of the applicable transition period, Verizon shall charge the rate applicable to the Declassified Network Element for the access service or alternative service arrangement, in lieu of its

otherwise-applicable rate, until the expiration of the full twelve-month transition period.

CLECs are not entitled to transition pricing once their services have been transitioned. We also reject the references to "Applicable Law" in these sections.

(3) Sections 3.4.1.2.1, 3.4.2.2.1, 3.4.3.2.1, 3.5.1.2.1, 3.5.2.2.1, 3.5.3.2.1, 3.4.1.2.2, 3.4.2.2.2, 3.4.3.2.2, 3.5.1.2.2, 3.5.2.2.2, 3.5.3.2.2 – Should the TRRO's transition rates for de-listed loops and transport apply for the entire transition period if conversion to alternative arrangements occurs before the end of the period?

According to the CLECs, the *TRRO* clearly states that the CLECs are entitled to transition pricing on all elements until March 11, 2006. The CLECs' proposed language in Sections 3.4.1.2.1, 3.4.2.2.1, 3.4.3.2.1, 3.5.1.2.1, 3.5.2.2.1, 3.5.3.2.1, 3.4.1.2.2, 3.4.2.2.2, 3.4.3.2.2, 3.5.1.2.2, 3.5.2.2.2, and 3.5.3.2.2 is rejected. That language could be interpreted such that the CLECs are entitled to transition pricing for the entire transition period, *regardless of whether their services have been transitioned to other serving arrangements.* Verizon's proposed language in the above sections is adopted.

(4) Sections 3.4.1.2.3, 3.4.2.2.3, 3.4.3.2.3, 3.5.1.2.3, 3.5.2.2.3, 3.5.3.2.3 – Should the Commission approve the CLECs' provisions addressing replacement of de-listed loops and transport with self-provisioned facilities or facilities or services of third parties?

The CLECs assert that through the language they have presented, the CLECs are simply attempting to ensure that Verizon will cooperate with CLECs to achieve the transition to self-provisioned facilities or facilities of third parties.

Verizon, on the other hand, believes that to the extent that CLECs intend to replace de-listed high-capacity facilities with self-provisioned facilities or facilities obtained from third parties, Verizon has no obligations under Section 251 with regard to such replacement arrangements.

We disagree. Verizon does have an obligation to assist, or at least not impede, the CLECs in their attempt to transition to other facilities. The CLECs' language relative to this issue in Sections 3.4.1.2.3, 3.4.2.2.3, 3.4.3.2.3, 3.5.1.2.3, 3.5.2.2.3, and 3.5.3.2.3 is adopted. However, as we determine in Issue 13(II)(b), Verizon is not required to continue providing such facilities under rates applicable during the applicable transition period. That language in Sections 3.4.1.2.3, 3.4.2.2.3, 3.4.3.2.3, 3.5.1.2.3, 3.5.2.2.3, 3.5.3.2.3 is rejected.

(5) Sections 3.4.1.2.4, 3.4.2.2.4, 3.4.3.2.4, 3.5.1.2.4, 3.5.2.2.4, 3.5.3.2.4, 3.8 – Should the Amendment states that any discontinuance or conversions of de-listed items "shall take place in a seamless manner that does not affect the customer's perception of service quality"?

The CLECs assert that their proposed language is based on the FCC's conversion rule. While the FCC's rule does not specifically use the term "seamless," it does make clear that conversions should be performed without adversely affecting the end-user's service quality.

Verizon asserts there is no basis to turn the FCC's vague language into a contractual right. Verizon also points out that, in many circumstances, any lack of seamlessness is the fault of the CLEC rather than Verizon. We note that when the FCC expressed the hope that conversions would be "a seamless process that does not affect the customer's perception of service quality," it simultaneously acknowledged that "conversions may increase the risk of service disruptions to competitive LEC customers because they often require a competitive LEC to

groom interexchange traffic off [of] circuits and equipment that are already in use in order to comply with the eligibility criteria."[19]

The language proposed by the CLECs does not reflect the fact that service disruptions may occur in the conversion process. However in Issue 13(h), we adopted language that does reflect that fact:

> Verizon will complete CLEC transition orders with any disruption to the end user's service reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, Verizon shall accomplish such conversions in a manner to minimize any disruption detectable to the end user.

Therefore, the language the CLECs propose that requires conversions to be seamless is rejected in Sections 3.4.1.2.3, 3.4.1.2.4, 3.4.2.2.3, 3.4.2.2.4, 3.4.3.2.3, 3.4.3.2.4, 3.5.1.2.3, 3.5.1.2.4, 3.5.2.2.3, 3.5.2.2.4, 3.5.3.2.3, 3.5.3.2.4, 3.8, and 3.11.1.4..

(6) Sections 3.4.1.2.5, 3.4.2.2.5, 3.4.3.2.5, 3.5.1.2.5, 3.5.2.2.5, 3.5.3.2.5 – Should the Commission approve the CLECs' proposed provisions requiring Verizon to convert de-listed loops or transport facilities to "an analogous special access arrangement at month-to-month pricing," in the event a CLEC does not request disconnection of, or obtain replacement arrangements for, such de-listed facilities?

Verizon asserts that under the terms of the *TRRO*, the FCC made clear that it is the responsibility of the CLEC to negotiate alternative arrangements to replace any de-listed high-capacity facilities that are no longer subject to unbundling. According to Verizon, the CLECs' proposal is inconsistent with that

[19] *TRO* ¶ 586.

FCC requirement because it puts the burden on Verizon to effect a transition to alternative access arrangements in the event that the CLEC fails to do so. Verizon states that at the end of the transition period, it is free to take whatever steps are appropriate either to stop providing the facility or to charge an appropriate commercial or tariff rate. Verizon claims that whatever steps are taken, they are not subject to negotiation and arbitration in this proceeding but instead should be the subject to appropriate commercial discussions with affected CLECs.

The CLECs state that their proposed language would ensure that CLECs do not suffer any termination should they fail to submit an LSR or ASR by the transition period end-date. According to the CLECs, Verizon will recover month-to-month special access rates.

AT&T, in its capacity as a CLEC, supports the language presented by CLECs. AT&T believes this language accurately reflects the parties' rights and duties under the *TRO* and *TRRO*. Such language would allow Verizon, in the event that AT&T inadvertently fails to convert a circuit that Verizon is no longer required to provide as a UNE, to convert the UNE to an analogous special access circuit. AT&T points out that AT&T (in its capacity as an ILEC) has agreed to identical language in its own *TRO* Amendment. AT&T states that it has been inventorying its circuits leased from Verizon (well over two thousand) to make sure that all meet the qualifying standards. However, it is possible that some high-capacity loops and transport circuits may need to be converted. It is possible that in the process of such conversions, a circuit may be inadvertently overlooked and not converted. If such a mistake is made, Verizon seeks the authority "to take whatever steps are appropriate," including disconnection. AT&T believes that such an approach is not in the public interest.

Verizon states that one of the options open to it is to discontinue providing the facility. That would cause the CLEC's customer to lose its service, and we are not willing to have that happen. Verizon is not harmed by the CLECs' proposed language which would allow Verizon to charge its month-to-month special access rates to replace the service that has been de-listed. The CLECs' proposed language in Sections 3.4.1.2.5, 3.4.2.2.5, 3.4.3.2.5, 3.5.1.2.5, 3.5.2.2.5, and 3.5.3.2.5 is adopted.

11. Issue 11: Certification and Provisioning:

(a.) Section 3.6.1.1, 3.6.1.2, 3.6.1.3 – How should the Amendment reflect the TRRO's certification process for ordering high-capacity loops and transport? How should the Amendment address back-up data supporting Verizon's designation of non-impaired wire centers? How should the Amendment state Verizon's obligation to process a request for unbundled access to a TRRO Certification Element?

The CLECs assert that Verizon should maintain on its website an updated list of those wire centers it contends are non-impaired (i.e., are Tier 1 or Tier 2). AT&T, in its capacity as a CLEC, states that in its capacity as an ILEC, it has agreed to maintain such an updated list on its website. AT&T supports the CLEC language that would require posting the updated list on Verizon's website. Moreover, AT&T asserts that such requirement would not place an undue burden upon Verizon.

Information posted timely on the website is the best way for all CLECs to verify which wire centers are non-impaired from a commercial and legal perspective. Also, CLECs state that they prefer that back-up data be exchanged pursuant to a Commission-approved protective order, rather than a nondisclosure agreement, a practice that has been consistent in these proceedings, in order to ensure the integrity of the process. It is essential that

Verizon be compelled to provide back-up data so that the CLECs can fulfill their obligation under the law to make a diligent inquiry, as required by the Amendment. CLECs claim they cannot make a diligent inquiry if the data are not available and provided timely.

The CLECs insist that the Commission must review and verify Verizon's proposed list of wire centers before they are posted on its website. At a minimum, the Commission must provide a forum to verify Verizon's application of the criteria for Section 251 loop and dedicated transport unbundling relief, as directed by the *TRRO* and the FCC's unbundling rules.

The CLECs oppose the proposed language that would allow Verizon to mask the identity of the fiber-based collocators. If Verizon were allowed to mask the identity of fiber-based collocators, CLECs would not be able to determine whether affiliates are being double-counted.

According to Verizon, the CLECs' language would negate the agreed-upon language in Section 3.6.1.1 that allows Verizon to make its wire center list available either by notice to the CLEC or by publication on its website. Verizon states that its language retains the flexibility necessary to meet potentially changed circumstances under which a mandatory website publication requirement would not make sense.

Verizon also opposes the CLEC requirement for a Commission-approved protective order, saying that would merely delay the process unnecessarily. Moreover, Verizon disputes the CLEC language that makes the data disclosures mandatory, by providing that Verizon "shall" provide such data. Verizon has used "may" in Section 3.6.1.2 because the FCC's rules do not require Verizon to provide any back-up data at all.

Verizon objects to the requirement that it provide the back-up data no later than ten business days after a CLEC's written request, saying that is arbitrary

and unreasonable, given the voluminous back-up data and the number of CLECs that could request the data at the same time. Verizon also objects to the CLECs' language in Section 3.6.1.2 because it requires Verizon to furnish updated data about a wire center that previously met the no-impairment criteria. Thus, there is no occasion where it would be relevant to furnish updated data about a wire center that previously met the no-impairment criteria.

Verizon also opposes the CLECs' proposal that would require Verizon to produce:

> The names of the fiber-based collocators counted in each wire center, line counts identified by line type, the data of each count of lines relied upon by Verizon, all business rules and definitions used by Verizon, and any documents, orders, records or reports relied upon by Verizon for the assertions made.[20]

Verizon opposes this as an attempt to burden Verizon with pointless fishing expeditions. Also, by requiring identification of the particular CLECs collocating in each wire center, the CLECs would have Verizon reveal carrier-proprietary information to potential competitors of those carriers. Also, Verizon states that the requirement that Verizon produce line counts identified by line type is at odds with the nature of the ARMIS data the FCC instructed ILECs to use. Verizon asserts that ILECs have no obligation to go behind the ARMIS and UNE loop figures to try to verify "business lines."

Verizon has the information about each wire center, and the CLECs do not. Therefore, in order to make a "diligent inquiry," CLECs need to obtain information from Verizon. We believe that Verizon should be required to

[20] CLEC proposed language in Section 3.6.1.2.

maintain an updated wire center list on its website for easy access by CLECs. That should not be unduly burdensome for Verizon. The CLECs' proposed language relating to this issue in Section 3.6.1.1 is adopted.

With regard to the CLEC request that the data be provided subject to a Commission-approved protective order, this was done in the SBC [now AT&T] *TRO/TRRO* arbitration and it is appropriate that a protective order be adopted here as well. Parties should file the proposed protective order via a motion in this docket to be approved by ALJ Ruling. The CLECs' proposed language in Sections 3.6.1.1 and 3.6.1.2 is adopted.

We believe that the CLECs should be able to obtain information about a non-impaired wire center, but the requirement that the voluminous information be supplied to the CLECs in 10 days is not reasonable. We will double the amount of time to 20 days. Also, we concur with Verizon, that once a wire center satisfies the no-impairment criteria, it cannot move back to impaired status.

The FCC states:

> To facilitate application of a federal standard, we rely on objective criteria that are administrable and verifiable, but could be disruptive as applied to a dynamic market if modest changes in competitive conditions resulted in the reimposition of unbundling obligations. Therefore, once a wire center satisfies the standard for no DS1 loop unbundling, the incumbent LEC shall not be required in the future to unbundle DS1 loops in that wire center. Likewise, once a wire center satisfies the standard for no DS3 loop unbundling, the incumbent LEC shall not be required in the future to unbundle DS3 loops in that wire center.[21]

Since that is the case, there is no reason for CLECs to obtain data for those wire centers which have satisfied the no-impairment criteria. Also, we concur

[21] *TRRO* ¶ 167 n.466.

with Verizon's statement that the CLECs request for "line counts identified by line type" is at odds with the nature of the ARMIS data the FCC instructed ILECs to use. The FCC was quite clear on this:

> The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops.[22]

The CLECs are not entitled to line count information that goes beyond that listed by the FCC. We will modify Section 3.6.1.2 to reflect this:

> The backup data that Verizon provides to [a CLEC] under a Commission-approved Protective Order pursuant to Section 3.5.1.1 above shall include the number of (i) Business Lines and (ii) Fiber-Based Collocators in each Verizon serving wire center that has not previously met the no-impairment criteria. Back-up data shall include, but not be limited to, the definition of "wire center," used, the names of the fiber-based collocators counted in each wire center, line counts for ARMIS 43-08 business lines, business UNE-P, and UNE-loops, the date of each count of lines relied upon by Verizon, all business rules and definitions used by Verizon, and any documents, orders, records or reports relied upon by Verizon for the assertions made.

Also, we believe that CLECs should have access to the names of fiber-based collocators, subject to the protective agreement, in order to be able to check that against known fiber-based collocators at a particular wire center. The CLECs themselves do not seem concerned about the proprietary nature of that information.

[22] *TRRO* ¶ 105 (footnotes omitted).

Other than the change from 10 to 20 days for Verizon to supply the information to a requesting CLEC, the rest of the CLECs' proposed language in Section 3.6.1.2 is adopted, and Verizon's proposed language is rejected.

In Section 3.6.1.3, the CLECs dispute Verizon's reference to this subsection as "electronic ordering" when in fact the process is the self-certification process with respect to a particular wire center. Once a Wire Center List is posted on Verizon's website, and the CLECs have received the appropriate data from Verizon, a CLEC should be able to send a letter to Verizon stating that it is eligible to order circuits from that wire center. This is not the same self-certification process for Enhanced Extended Links (EELs) that is addressed in Section 3.11.2.1.5. Unlike the EEL self-certification, the wire center self-certification will be done once per wire center irrespective of the number of lines a CLEC serves via the self-certified wire center.

We adopt the CLECs' proposed language in Section 3.6.1.3 that the CLEC "may" use Verizon's electronic ordering system. Since this section does not refer to EEL certifications, we will retain the CLECs' proposed language that allows for a "blanket certification."

(b.) Sections 3.6.2.2, 3.6.2.2.1 – What are Verizon's obligations when disputing CLECs' certification? For example, should the Amendment establish a 30-day time period for Verizon to dispute a CLEC's certification? If Verizon prevails on such a dispute, how should the facility be re-priced?

The CLECs assert that Verizon's proposed language that would entitle Verizon to automatic retroactive pricing in situations where a CLEC orders an element from a wire center that is newly designated as non-impaired must be rejected. Verizon's proposed language would inhibit a CLEC from challenging a wire center designation when the burden to prove non-impairment is on Verizon. If retroactive pricing is automatic, as proposed by Verizon, then

Verizon would have little incentive to ensure accuracy in its wire designations. The CLECs urge the Commission to adopt the language proposed by the CLECs that requires parties to follow dispute resolution provisions to settle any disagreements.

AT&T, in its capacity as a CLEC, indicates that the parties have agreed that once a CLEC has self-certified a particular circuit, Verizon must provision first, then dispute the certification. This issue involves whether any time limitation should be placed upon Verizon's right to challenge a CLEC certification. According to AT&T, the *TRRO* does not place any specific time limitation upon the ILEC's right to challenge. In its capacity as an ILEC, AT&T has agreed to notify CLECs of such dispute within 30 days of a CLEC's self-certification. AT&T believes that 30 days is a reasonable period within which to notify a CLEC of a dispute.

AT&T asserts that in effect, Verizon seeks an unlimited time period within which to challenge a CLEC's certification of qualifying circuits. Such an open-ended opportunity to challenge is unreasonable, according to AT&T.

Verizon disagrees, saying Verizon should not be required to bear the risk of missing an arbitrary deadline, nor should it be arbitrarily prevented from recovering the correct charges to which Verizon is legally entitled.

The CLECs' proposed language in Section 3.6.2.2 is adopted. We concur with AT&T and the other CLECs, that 30 days is a reasonable period for Verizon to notify a CLEC of a dispute. Also, to the extent that Verizon is entitled to retroactive pricing, it is fair that it should be at the lowest rate the CLEC could have obtained if it had not ordered the facility as a UNE.

In Section 3.6.2.2.1 Verizon has proposed terms to deal with the case of non-impaired dark fiber transport, for which there is no analogous service under Verizon's access tariff. The CLECs state there is no reason why dark fiber cannot

be handled according to the process set forth by the CLECs in Section 3.6.2.2, which allows Verizon to reprice the facilities. Verizon's proposed language in Section 3.6.2.2.1 that would allow it "in its sole discretion" to determine the "commercial service" analogous to dark fiber transport is rejected. As the CLECs say, there is no reason why dark fiber cannot be handled in accordance with the process in Section 3.6.2.2.

(c.) Sections 3.6.2.3, 3.6.3.6 – Under what circumstances may Verizon reject a CLEC certification without first seeking dispute resolution?

Verizon indicates that its proposed language in Section 3.6.2.3 which allows it to refuse self-certification applies only to the initial list of wire centers, i.e., the list that has been publicly available for some nine months. As for future designations, Section 3.6.2.3 explicitly provides that subsequent revisions to the wire center list will be governed by Section 3.6.3, and that section does not allow Verizon to cease processing orders immediately after the list is updated.

The CLECs assert this language is contrary to the *TRRO,* which states, "[t]o the extent that an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in its interconnection agreement." In other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."[23]

Verizon's proposed language in Section 3.6.2.3 and 3.6.3.6 is rejected. As the CLECs say, Verizon's proposed language conflicts with the FCC's rules. The CLECs' addition of the word "affirmatively" in Section 3.6.2.3 is adopted.

[23] *TRRO* ¶ 234.

Verizon points out that a three-year deadline for a CLEC to self-certify is meaningless unless Verizon can, after the three-year period, reject self-certifications for the affected wire centers without Commission approval. We add the following to Section 3.6.2.3: "or (c) upon expiration of the three-year period described in Section 3.6.3.4."

(d.) Section 3.6.3.1 – If Verizon adds wire centers to its "no-impairment" list that do not appear on the list when the Amendment takes effect, what is the appropriate transition period for elements/facilities provided out of those wire centers?

In the *TRRO*, the FCC created 12- and 18-month transition periods for discontinued high-capacity elements. The CLECs propose that the same transition periods be used where Verizon adds wire centers to its "no-impairment" list after the Amendment takes effect. The CLECs point to the FCC's explanation in the *TRRO* that CLECs need sufficient time "to perform the tasks necessary to an orderly transition, including decisions concerning where to deploy, purchase or lease facilities." The CLECs say they will need to make the same types of adjustments should loop and transport UNEs be eliminated in the future.

Verizon states that the FCC did not prescribe any transition period for future de-listings. Verizon believes that the 90-days it is proposing is adequate since if only a few additional wire centers are added to the existing list, the requesting carrier will presumably have to make alternative arrangements for only a few customers, and a shorter transition period is more than sufficient.

We believe that the timeline proposed by Verizon is too tight to permit an orderly transition away from UNEs. At the same time, the 12/18 month periods appear excessive, in light of the fact that CLECs will not need to negotiate change-of-law provisions as part of the process. Still, there is no reason to

believe that the necessary tasks involved in transitioning from UNEs can be completed in significantly less time than during the initial transition period. Therefore, in Section 3.6.3.1 we will adopt a transition period of nine months for DS1/DS3 high capacity loops and DS1/DS3 dedicated transport. The transition period for dark fiber dedicated transport is 12 months.

Verizon points out that there is also disputed language in Section 3.6.3.1 regarding the availability of new UNEs during a future transition period. The CLECs' language would allow them to order new DS1/DS3's for existing customers, even up to a year after a given wire center is no longer deemed impaired. Verizon points out that the FCC's DS1 and DS3 loop rules state that

> [o]nce a wire center exceeds [the FCC's non-impairment] thresholds, no future [DS1/DS3] loop unbundling will be required in that wire center.

Verizon asserts that the rules do not make any exception for the addition of new loop UNEs to serve existing customers. We concur with Verizon that the *TRRO* does not allow CLECs to add new high-capacity loops or dedicated transport during the transition period; the CLECs' proposed language at the end of Section 3.6.3.1 that would allow CLECs to continue to order new DS1s/DS3s for existing customers is rejected. Since the terms "high capcity loops" and "dark fiber dedicated transport" are not defined in the Amendment, they should not be capitalized.

(e.) Section 3.6.3.2 – Should Verizon be required, on a quarterly basis, to post on its website information advising when it believes a wire center has reached 90% of the number of business lines needed for the wire center to be classified as a Tier 1 or a Tier 2 wire center, and to specify which wire centers it considers to have 2 or 3 fiber collocators?

Verizon opposes the CLECs' proposal that it post quarterly information on its website advising when it believes a wire center has reached 90% of the business lines needed for the wire center to be classified as a Tier 1 or Tier 2 wire center, and to specify which wire centers it considers to have two or three fiber collocators.

Further, Verizon states that wire center-specific information is not filed as part of ILEC ARMIS filings, and is not publicly disclosed. Also, Verizon says such reports are not necessary to comply with the *TRRO* and would require Verizon to perform additional physical inspections and monitoring on the CLECs' behalf for free.

The CLECs state the information is crucial since it allows CLECS to shape their business plans in a manner that minimizes the risk of sudden, unforeseen loss of UNE access in those wire centers.

We believe this information on the status of particular wire centers is needed by CLECs to plan for possible migrations. Verizon will have the information on the status of its wire centers much more readily available than the CLECs do, and certainly Verizon is going to track the information on an ongoing basis. It will level the playing field for the CLECs to receive this information from Verizon. The CLECs' proposed language in Section 3.6.3.2 is adopted, with one modification. In response to Verizon's comments on the DD, we will add the following sentence: "Verizon is not required to collect any additional information beyond that information it keeps in the ordinary course of business.

To the extent that Verizon compiles the information for its own use, that same information shall be made available to CLECs."

(f.) Section 3.6.3.3 – (i) Should the Amendment limit the application of termination liabilities or penalties when the CLEC disconnects tariffed transport or collocation facilities if a wire center is determined to be non-impaired? (ii) If so, how should such termination liabilities or penalties be calculated?

When a wire center is determined to be non-impaired for high-capacity loops, the CLECs seek the right to cancel tariffed special access or collocation arrangements that they have previously ordered in that wire center. They urge that, when a CLEC cancels such tariffed arrangements, it should be able to reduce or circumvent the early termination penalties that it previously agreed to accept in exchange for a long-term discount.

Verizon asserts that the Commission has no authority to modify the terms of federal tariffs. According to Verizon, the FCC has repeatedly rejected CLEC attempts to evade early-termination charges provided for in tariffs.

Verizon points out that the FCC has already addressed this issue in the analogous circumstance where a CLEC seeks to convert a special access arrangement to a UNE arrangement. There the FCC held that, "to the extent a competitive LEC enters into a long-term contract to receive discounted special access services, such competitive LEC cannot dissolve the long-term contract based on a future decision to convert the relevant circuits to UNE combinations based on changes in customer usage."[24]

[24] *TRO* ¶ 587.

While that *TRO* citation above is not strictly on point because it is dealing with the specific issue of the conversion of special access circuits to UNEs, the basis premise is the same. If a CLEC enters into along-term contract to receive discounted services, the CLEC may not dissolve the long-term contract based on new circumstances. The CLECs' proposed language in Section 3.6.3.3 is rejected.

(g.) Sections 3.6.3.4, 3.6.3.4.1 – Should the Amendment include the CLECs' provision stating that, with respect to seeking new UNEs from newly designated wire center(s), CLECs may provide a self-certification more than 60 days after Verizon's designation? If so, should the Amendment also state that Verizon is required to provision new UNEs during the dispute resolution process? Should the Commission approve the CLECs' proposal for 12- and 18-month transition periods, with no rate increases, for UNEs that become de-listed when wire centers are added to the list of non-impaired wire centers?

Verizon has proposed language in Section 3.6.3.1 providing that, when a wire center is reclassified, the relevant elements become "discontinued facilities" 90 days later. Verizon asserts that transitioning circuits to and from UNEs imposes costs on all parties, so it would make little sense to allow a CLEC to use self certification to effectively re-open the issue of the status of a wire center after all CLECs have already transitioned off UNEs in that wire center.

The CLECs assert there should be no arbitrary deadline on self-certifications. Nothing in the *TRRO* authorizes an arbitrary deadline. In ¶ 234 of the *TRRO,* the FCC made it clear that it is the CLEC's self-certification which would be the trigger for an ILEC to challenge that self-certification, and which, in turn would trigger dispute resolution before the state commission. Any cut-off of a CLEC's right to self-certification prior to a CLEC's determination to enter a

wire center amounts to a finding in the ILEC's favor even before any CLEC has issued a self-certification.

The CLECs assert that from a logistical perspective, such a proposal would invite unnecessary disputes between the parties and unnecessary litigation before the Commission. Further, although the classification of most of the wire centers that will affected by the *TRRO* will be established in the initial implementation of the order, future changes are possible if a wire center has a change in the number of business lines or fiber-based collocators.

Verizon asserts that allowing CLECs to self-certify for a wire center on the list at any future time would encourage bad-faith certifications and gaming tactics. If Verizon identifies a particular wire center as non-impaired and no CLEC disputes that designation, Verizon and the other CLECs will expend time and money to transition the UNEs in the wire center to alternative arrangements. Verizon asserts that if any other CLEC were entitled to submit a self-certification to challenge the designation, it would upset the entire process.

The second question is: if a CLEC is permitted to self-certify more than 60 days after the notice of a newly designated non-impaired wire center, is Verizon required to provision new UNEs during the dispute resolution process? Verizon opposes the CLECs' language that whenever they self-certify, they are automatically entitled to order UNEs, unless and until Verizon successfully disputes the certification.

Verizon responds that, in the absence of a true-up, the CLECs' language is foreclosed by the *TRRO* which expressly provides that "[d]edicated transport facilities," '[h]igh capacity loops," and UNE-P arrangements "no longer subject

to unbundling shall be subject to true-up to the applicable transition rate upon the amendment of the relevant interconnection agreements."[25]

The CLECs respond to Verizon's statement about a true-up, saying there is no established pricing for rate elements declassified in newly identified wire centers. As a result, it is uncertain to what pricing CLECs would be required to true-up.

The CLECs' proposed language in Sections 3.6.3.4 and 3.6.3.4.1 is adopted, with the exception of the transition periods in Section 3.6.3.4.1. CLECs should not be required to self-certify within 60 days after Verizon's designation of the wire center as non-impaired. However, we have established a three-year deadline for a CLEC to self-certify. Verizon needs certainty as to the designation of its wire centers so it is appropriate to set a deadline. The following phrase shall be added to the end of the first sentence in Section 3.6.3.4 "up to three years from the date of Verizon's designation." Also, Verizon should continue to provide new UNEs during the dispute resolution process. We determined in Issue 11(d) the appropriate transition period for future wire centers.

The references to Sections 4.1.3 through 4.1.4.1 in Section 3.6.2.3 should be replaced by a reference to Section 3.6.2. Those references are incorrect.

(h.) Section 3.6.3.5 – Should the Amendment include a provision that allows for the reversion of non-impaired wire centers to impaired wire centers? If so, what credits, if any, and procedures should apply in connection with the reversion?

In Section 3.6.3.5 the CLECs propose to establish a process in the event that a non-impaired wire center reverts back to an impaired wire center due to an

[25] *TRRO* ¶¶ 145 n. 408, 198 n. 524, 228 n. 630.

error in Verizon's classification. This would cause facilities that had been previously converted from UNEs to wholesale services to revert back to UNEs.

According to Verizon, the CLECs' proposal is based on the incorrect notion that any misclassification was entirely caused by Verizon. To the contrary, if the CLECs properly self-certify for a wire center, and if Verizon raises a dispute before the Commission, the Commission itself might approve Verizon's designation. Verizon states that if it were somehow later shown that the Commission's decision was in error, it would be unfair to impose stringent and retroactive liability on Verizon for that error. Verizon also objects to the requirement that the conversions back to UNEs be performed within ten days.

The CLECs assert that Verizon is the repository of all relevant information: the numbers of business lines and loops served out of the wire center, the number and identify of fiber-based collocators, etc. Based on diligent review of information provided by Verison, CLECs may challenge Verizon's determination if they detect errors, but clearly Verizon is in the best position to ensure that its wire center designations are accurate.

We agree with the CLECs that Verizon is the repository of all relevant information in determining non-impairment of a particular wire center. The language in Section 3.6.3.5 is clear that the terms apply only where a non-impaired wire center reverts back to an impaired wire center "due to an error in Verizon's classification." We concur with the CLECs, that in that case, they should be entitled to convert their services back to UNEs and be compensated for the difference in pricing. The CLECs' language in Section 3.6.3.5 is adopted, with one modification. Verizon will have 90 days to complete the conversions.

(i.) Section 3.6.3.7 – Should the Commission approve the CLECs' proposed Section 3.6.3.7, which states that nothing in Section 3.6.3 "shall in any

way limit any right [CLEC] may have to challenge Verizon's reversion of its Wire Center Lists"?

The CLECs urge that Verzion should be required to obtain either Commission or FCC approval of its wire center lists before being empowered to reject—without recourse to the Agreement's dispute resolution procedures—orders for UNEs that would otherwise not be available from a wire center on one of Verizon's lists. The CLECs assert that their ability to contest Verizon's placing of a wire center on its wire center list is meaningless, if while a CLEC is contesting a list, Verizon can go ahead and reject orders for UNEs out of one of the wire centers on the list.

Verizon's proposed language in Section 3.6.37 is adopted. Without that cross-reference, the CLECs could claim an unlimited right to challenge Verizon's wire center lists, even after Commission approval.

12. Issue 12: Charges:

(a.) Sections 3.4.1.2.4, 3.4.2.2.4, 3.4.3.2.4, 3.5.1.2.4, 3.5.2.2.4, 3.5.3.2.4, 3.8, 3.9.3 – How should the Amendment address non-recurring charges related to the transition away from de-listed UNEs?

The CLECs propose language regarding the conversion charges that Verizon may impose when various high-capacity elements are discontinued at some future point. Under those provisions, the CLECs agree to pay all non-recurring charges applicable to the transition of its embedded base of such declassified elements, but only provided the activities necessary to facilitate such transitions involve physical work and involve other than a record order transaction. The CLECs assert that if no physical work is involved, the transition shall be deemed a conversion for which no non-recurring charges are assessable.

The CLECs' state that their proposal conforms with the FCC's determination that nonrecurring charges should not apply to conversions of tariffed services to UNES, and vice versa. As the FCC explains:

> Because incumbent LECs are never required to perform a conversion in order to continue serving their customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions. [Cite omitted.] Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any such person or class of persons (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or disadvantage.[26]

The CLECs also add that modifying circuit i.d. tags or similar activities shall not be deemed physical work. The CLECs point out that AT&T has agreed not to charge CLECs for re-tagging converted circuits. The CLECs also complain that Verizon does not even say how much its "retag fee" would be. Verizon finds the CLECs' language objectionable, saying that a retag fee is a legitimate expense that compensates Verizon for the cost of physically retagging a circuit that a CLEC requests to convert form special access to UNEs.

Verizon also disputes that there are no costs associated with a conversion, saying it must process service orders, move the circuit from the special access billing account to an unbundling billing account, and update design and inventory records.

We concur with the FCC's finding in ¶ 587 of the *TRO* cited above that because ILECs are never required to perform conversions in order to continue serving their own customers, such charges are inconsistent with Section 202 of

[26] *TRO* ¶ 587.

the Act. In the following paragraph, the FCC also reiterates that the conversions between wholesale services and UNEs are "largely a billing function." Therefore, we conclude that no charges are warranted for conversions that do not involve physical work, and the CLECs' language on this issue in Sections 3.4.1.2.4, 3.4.2.2.4, 3.4.3.2.4, 3.5.1.2.4, 3.5.2.2.4, and 3.5.3.2.4 is adopted. In their comments on the DD, the CLECs assert that the provisions should be retroactive to March 1, 2005. According to the CLECs, few of the underlying ICAs have provisions for conversions because the need to make transitions did not arise until the *TRO* and *TRRO* became effective. As a result, there is no explicit contractual basis for any charges Verizon has imposed for pre-amendment transitions. We concur that the provisiosn of these sections should be retroactive to March 1, 2005.

With regard to conversions that involve physical work, we do not agree with Verizon that changing a circuit i.d. involves physical work but concur with Verizon that the phrase "or similar activities" is vague and open to dispute. We will adopt the reference to circuit i.d. tags, but remove the reference to "similar activities" in Sections 3.4.1.2.4, 3.4.2.2.4, 3.4.3.2.4, 3.5.1.2.4, 3.5.2.2.4, and 3.5.3.2.4.

In its comments on the DD, Verizon proposed language to make clear what is meant by physical work, by adding the phrase "and/or the installation of facilities or equipment." AT&T (formerly SBC), in its role as a CLEC in Verizon's service territory, opposes Verizon's language. According to AT&T, Verizon's language would give it the ability to charge for the installation of a facility or equipment (e.g., adding a smart jack or adding a plug or card to an existing repeater case.) Those would be considered routine network modifications. We concur with AT&T that such RNMs should only be charged for when Verizon can demonstrate that the costs are not being recovered elsewhere.

The CLECs have proposed language that would require Verizon to assess the rates applicable to fully mechanized service orders, regardless of whether Verizon's systems are capable of handling the service orders on such a basis. Verizon disagrees, stating that if a CLEC places an order manually, Verizon must be permitted to assess the applicable manual service order charge to recover the cost of the work required. We agree with Verizon. The CLECs should pay the appropriate non-recurring charge based on how they submit their service orders. The CLECs' proposed language on this issue in Section 3.8 is rejected. Verizon's proposed introductory language to Section 3.8 is rejected. Applicable transition charges are being adopted in this Amendment. Those provisions override any language covering transitions in the underlying ICAs.

Verizon objects to the language in Section 3.8 that provides that service orders that are submitted in writing on a project basis, shall be assessed only at the rates applicable to a fully-mechanized service order. However, the CLECs state that they have withdrawn the proposal that would allow them to receive full-mechanized pricing in the case of written service orders that are handled on a "project" basis, so that language will be removed from Section 3.8.

Verizon states that the CLECs have proposed a blanket prohibition on any and all charges for conversions and migrations. Moreover, the amendment does not define migration, and a migration (as opposed to a records-only conversion) could require installation of new facilities and physical work. On the contrary, the CLECs' language states: "To the extent that physical work is not involved in the transition, the transition shall be deemed a "conversion' for which no non-recurring charges are assessable." (Section 3.4.1.2.4.) It is clear that if a migration did involve the installation of new facilities and physical work, it would not be covered by this Section.

AT&T, in its capacity as a CLEC, states that CLECs should pay all non-recurring charges applicable to the transition away from de-listed UNEs, provided that physical work is involved in the transition. AT&T agrees that physical work does not include the re-use the facilities in the same configuration; i.e., physical work must involve more than a record order transaction. AT&T states that such a position is consistent with the FCC's observation that the imposition of "wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time" could "unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service.[27]

The CLECs assert that while Verizon appears to propose in Section 3.9.3 that no charges would apply when no physical work is required, Verizon has included such large loopholes that its proposal is practically meaningless. Under Verizon's proposal, every transition would be subject to tariffed nonrecurring charges because Verizon has included a provision that allows its tariffed provision to supersede the amendment. Another loophole stems from Verizon's inclusion of exceptions based on other agreements, such as provisions of pre-*TRO/TRRO* agreements.

The CLECs propose to assess nonrecurring charges only for the new serving arrangements, in order to minimize the assessment of duplicative charges. The CLECs assert that various costs typically associated with establishing new services will not actually be incurred by Verizon in carrying out such transitions.

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[27] *TRO* ¶ 587.

While Verizon disputes that the charges are duplicative, Verizon does not dispute the CLECs' allegation that there are some costs typically associated with establishing new services that will not be incurred by Verizon in carrying out transitions or conversions. Again, based on the fact that Verizon never has to perform these functions for its own customers, we will adopt the CLECs' proposed language that allows for a single non-recurring charge, that of the service being transitioned to. This will ensure that CLECs are not required to pay for functions that it is not necessary to perform for these transitions or conversions. The CLECs' language in Sections 3.4.1.2.4, 3.4.2.2.4, 3.4.3.2.4, 3.5.1.2.4, 3.5.2.2.4, 3.5.3.2.4, 3.8 and 3.9.3 relating to this issue is adopted.

The CLECs agree to modify their proposed language in Section 3.9.3 to eliminate Verizon's concern with any ambiguity in the language proposed by the CLECs. The revised language reads: Except as otherwise provided in this amendment, Verizon shall not charge [CLEC] any termination, re-connect or other non-recurring charges or fees associated with the conversion or transition of Declassified Network Elements to alternative arrangements." (Modified language is underlined.) The CLECs' modified language is adopted.

13. Issue 13: Mass Market Switching and Related Elements:

What obligations, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching, should be included in the Amendment?

(a.) Sections 3.7.1, 4.7.34 – Should this provision be limited to the provisions of Section 251(c)(3)? How should "Mass Market Switching" be defined for purposes of the Amendment?

The parties agree that Verizon is not required to provide mass market switching. In Section 3.7.1, the CLECs would add the phrase "pursuant to

Section 251(c)(3) of the Act. They would leave open the possibility that this Commission might mandate continued provision of mass market switching under state law. For the same reasons we expressed under Issue 2, the CLECs' proposed language is rejected. We do not agree with the CLECs that we have the authority to continue requiring network unbundling.

Verizon has proposed that the cutoff between mass market switching and enterprise switching is a single DS1, which is the equivalent to 24 DS0's. The CLECs point to the *TRO* where the FCC specifically found, "mass market customers consist of residential customers and very small business customers,"[28] and therefore propose a definition of four DS0s to describe mass market customers, on the assumption that very small business customers typically purchase only a few business lines, and perhaps DSL service. The CLECs state that it is important that the "mass market" be distinguished from the "business market" because of the counting rules used to determine that Verizon need not provide CLECs with high-capacity loops and transport in certain wire centers that, among other things, serve a certain number of "business lines."

Verizon claims the FCC has defined the "mass market" as including all services provided at lower than a DS1 capacity, and quotes from a footnote to the *TRRO* in support of its assertion. The CLECs point out that the footnote Verizon cites, however, begins with this assertion:

> The Triennial Review Order left unresolved the issue of the appropriate number of DS0 lines that distinguishes mass market customers from enterprise market customers for unbundled local circuit switching. *See* Triennial Review Order, 18 FCC Rcd at 17293, para. 497. We need not resolve that issue here because, in this

[28] *TRO* ¶ 127.

> Order, we eliminate unbundled access to local circuit switching for the mass market, as well.[29]

Clearly, the FCC has not made a determination as to the appropriate number of DS0 lines that distinguish mass market customers from enterprise market customers, and we must do so in this arbitration. We concur with the CLECs that a very small business customer is not going to purchase 24 DS0s. We adopt the CLEC language in Sections 3.7.1 and 4.7.34.

(b.) Section 3.7.2 – Should the Amendment address modifications to the TRRO transition rules by the California Commission?

This is addressed under Issue 13(c) below. We add the same language here to Section 3.7.2.

(c.) Section 3.7.2 – Should the Commission approve the CLECs' § 3.7.2 language stating that CLECs can order new Mass Market Switching arrangements for their embedded base until May 1, 2005?

According to Verizon, the language proposed by the CLECs is apparently meant to give retroactive pricing relief to all CLECs based on D.05-03-027,[30] which directed Verizon to "continue processing CLEC orders involving additional UNE-Ps for the embedded base of customers who already have UNE-Ps, until no later than May 1, 2005."[31] Verizon questions the validity of the

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[29] *TRRO* ¶ 226, n. 625.

[30] In their comments on the DD, CLECs refer to D.05-03-028. That decision applies only to SBC and was issued in our local competition docket. The comparable decision in this docket that applies to Verizon is D.05-03-027.

[31] D.05-03-027 at 3.

Commission's order and opposes giving retroactive pricing to additional CLECs at this time.

In D.05-03-027, the Commission granted a request to require Verizon to continue to process CLEC orders involving additional UNE-Ps for the embedded base of customers who already had UNE-P's until May 1, 2005. The stated purpose of that extension was to allow the parties time to negotiate amendments to their ICAs. The exact language reads as follows:

> Thus, the centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period. To date, there have been few negotiations between Verizon and the petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO. Therefore, to afford the parties additional time to negotiate the applicable ICA amendments necessary to transition and continue to serve the CLECs embedded customer base as contemplated by the TRRO, Verizon is directed to continue processing CLEC orders for the embedded base of customers, including additional UNE-Ps, until no later than May 1, 2005.

Given the stated purpose for the extension—namely, the negotiation of an Amendment to ICAs—it makes no sense to grant that relief retroactively. In their comments on the DD, the CLECs state that failure to acknowledge D.05-03-027 creates a gap in the rates, terms, and conditions governing the UNE-P arrangements that were added, moved or changed by CLECs in reliance on their rights under that decision. We make the following change to the beginning of the first sentence of the second paragraph of Section 3.7.2 to make clear that we are not expanding the terms of the decision to additional CLECs: "Those CLECs that are covered by the provisions of D.05-03-027, shall be able…"

(d.) Sections 3.7.2, 3.7.3.1 – Should the Amendment state under what circumstances Verizon is obligated to continue to service CLEC UNE-P Embedded Base Customers? How should the embedded base of end user customers be defined?

Verizon argues that the CLECs' proposed language would expand the definition of embedded base to include adding new lines and switching arrangements to serve existing customers. According to Verizon, this is contrary to the FCC's rules. The FCC determined in the *TRRO* that CLECs are prohibited from "add[ing] new UNE-P arrangements using unbundled access to local circuit switching."[32]

See Issue 13(c). We will add the same language here to the appropriate paragraph of Section 3.7.2.

(e.) Section 3.7.2 – Should the Commission approve the CLECs' proposed language regarding conversion of UNE-P to a UNE line splitting arrangement?

According to the CLECs, D.05-03-027 ruled that Verizon should continue accepting new UNE-P orders from existing customers until May 1, 2005, including orders for moves, additions and changes. According to the CLECs, the conversion from UNE-P to a UNE line splitting arrangement and vice versa for the same end-user set forth in Section 3.7.2 is exactly the type of "moves, additions and changes" for existing customers that were permitted by the Commission until May 1, 2005.

[32] *TRRO* ¶ 227.

Verizon terms the proposed CLEC language confusing and unnecessary. Moreover, Verizon believes the CLECs' objective may be to try to obtain or retain UNE-P arrangements to which it has no right.

See Issue 13(c). We will add the same language here to the appropriate paragraph of Section 3.7.2.

(f.) Section 3.7.2 – Should the Amendment provide that parties agree to use the TRRO transition period to accomplish an orderly transition?

The CLECs assert that CLECs and ILECs both have a mutual obligation to carry out transitions. The CLECs propose general language in Section 3.7.2 as follows:

> [CLEC] and Verizon agree to utilize this transition period as set forth by the FCC in Paragraph 227 of the TRRO to perform the tasks necessary to complete an orderly transition including the [CLEC's] submission of the necessary orders to convert their embedded base of Mass Market Switching customers to an alternative service.

Verizon asserts that the CLECs' language adds nothing but could be interpreted to conflict with other terms. We acknowledge that there are other sections in the Amendment that apply to the transition, but we see the value in adopting the general language CLECs' propose in Section 3.7.2 cited above. That language is adopted.

(g.) Section 3.7.2 – Should the Commission approve the CLECs' language in § 3.7.2 addressing the transition period for UNE loop switching and UNE-P?

The CLECs state that they have agreed to submit ASRs or LSRs electronically, whether for normal handling or for handling on a project basis. Consequently, Verizon's objection to the submission of written service orders is moot.

The CLECs point out that Verizon's assertion that the need to coordinate orders on a project basis is only relevant to batch hot cuts is untrue. For example, whenever large numbers of UNE-P lines, resale lines, or "Wholesale Advantage" lines are being migrated to UNE-L on a frame-due-time basis, coordination of the migration on a project basis is typically the most efficient means for doing so. Therefore, the CLECs assert it remains important to include the CLECs' proposed language providing for orders to be handled on a project basis.

We will adopt the CLECs' proposed language in Section 3.7.2 that large orders be coordinated on a project basis, but delete the reference to such conversion orders being made via letter and spreadsheet.

(h.) Section 3.7.2 – Should the Commission approve the CLECs' proposed language for § 3.7.2 with respect to minimizing customer disruptions and coordinating conversions?

According to Verizon, this issue is similar to Issues 10(d)(5) and 21(d). Verizon says the CLECs proposed language that requires Verizon to minimize disruptions to the end user's service is unnecessary. According to Verizon, the best way to ensure that CLECs' customers do not lose service is for CLECs to produce their transition plans so there is plenty of time to work out the operational details before the end of the transition period.

The CLECs point out that the FCC's conversion rules provide:

> An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.[33]

[33] 47 C.F.R. § 51.316(b).

We concur with the CLECs that it is appropriate to include language based on this FCC rule in the Amendment. The CLECs' language makes it clear that disruptions to an end user's service should be "reduced to a minimum or, where technically feasible, given current systems and processes, no disruption should occur." The CLECs' proposed language in the final paragraph of Section 3.7.2 is adopted, with one modification. In their comments on the DD, the CLECs ask that this section apply to all conversions, not just those involving mass market switching. We will add the following sentence at the end of Section 3.7.2: "This section will apply to all conversions, not just those involving mass market switching." See also Issue 10(d)(5).

(i.) Section 3.7.4 – What is the scope of Verizon's obligation to provide access to signaling, call-related databases and shared transport facilities to the extent that Mass Market Switching is required to be made available under § 3.7 of the Amendment? Should the Amendment reference 47 C.F.R. Part 51?

The CLECs dispute Verizon's proposal that it will provide access to signaling, call-related databases, and shared transport facilities "in accordance with Section 251(c)(3) **and 47. C.F.R. Part 51."** Verizon states that its language is consistent with the FCC's rules. The CLECs see Verizon's language as an attempt to avoid other types of obligations, such as unbundling obligations under the interconnection provisions of 47 U.S.C. § 251(c)(2), which the FCC has expressly reserved for CLECs.

Verizon's proposed language is adopted in Section 3.7.4. In the undisputed language in Section 3.7.4, the parties refer to FCC Rule 51.319(d)(4). The entire Section 51.319 is titled "Specific Unbundling Requirements." To the extent that CLECs are entitled to interconnect to Verizon's SS7 network pursuant

to Section 251(c)(2), that obligation is separate from the unbundling obligation in Section 51.319.

(j.) Sections 3.8, 3.8.2.3 – How should the Amendment address payment of transition charges, including both prospective and retrospective transition charges?

Section 3.8 is addressed in Issue 12, and Section 3.8.2.3 is addressed in Issue 13(k).

(k.) Section 3.8.2.3 – Should the Amendment specify the information Verizon must provide in bills for any transition or true-up charges?

The CLECs state that their proposed language will enable CLECs to understand the basis for any transition or true-up charges that Verizon bills so that the billed CLECs can verify the accuracy of the charges.

Verizon responds that since each CLEC has as much knowledge as Verizon of its embedded base and of the arrangements that it has converted or disconnected, there is no need to impose on Verizon the cost to provide special bills.

As with any bill, the entity paying the bill should be given the information necessary to enable them to ensure that the bill is correct. However, in its comments on the DD, Verizon states that its current billing system provides all the information the CLECs request. Verizon is opposed to making changes to its billing format and proposes to add language to that effect to the end of Section 3.8.2.3. In their reply comments on the DD, CLECs propose language that if Verizon's billing format does not provide the information required, Verizon shall provide such information separately. We adopt the additional language proposed by Verizon and the CLECs as follows:

> Nothing herein shall require Verizon to change its customary billing formats. In the event that Verizon's billing format does not enable it

to provide the information required by this section, Verizon shall provide such information separately from the billing in a manner that reasonably achieves the purposes of this section.

14. Issue 13 Part II: Discontinuance of TRRO Embedded Base at the End of the Transition Period

(a.) Sections 3.9.1, 3.9.1.1, 3.9.2 – What effective date and other restrictions are appropriate for CLEC transition orders to an alternative service?

Sections 3.9.1 and 3.9.2 address the orders that CLECs must submit in order to have their UNE services transitioned to alternative arrangements by the end of the *TRRO* transition period. The main dispute centers on Verizon's language that would require the CLECs to submit such orders no later than a date that allows Verizon adequate time to implement the conversion or migration. Verizon's proposed language also allows it to disconnect or migrate the service if the CLEC has not submitted a timely order. Verizon asserts that it has no obligation to keep providing de-listed UNEs beyond the end of the FCC's transition period so it can either discontinue or re-price the service to a rate for an analogous service.

The CLECs object to Verizon's proposed language saying it would make the CLEC responsible for trying to guess how much time it might take for Verizon to complete orders, but eliminates virtually all of Verizon's responsibility to timely process and complete service orders. The CLECs propose language which would allow them to submit orders for alternative services to become effective as of a date no later than the end of the applicable transition period. This would allow the parties to begin the process of coordinating migrations early enough to ensure that they occur on a non-disruptive basis but would enable the CLEC to continue to benefit from transition pricing during the entire transition period. Verizon sees this as an

attempt to preserve transition pricing throughout the transition period, even if the arrangements are migrated earlier.

The CLECs' proposed language would require Verizon to defer the effectiveness of any such orders to March 10, 2006; it is not feasible to think that Verizon would be able to process a large number of conversions at the 11th hour. CLECs cannot wait until nearly the end of the transition period, and then insist if the conversion is not completed by the requested date, Verizon will continue to charge the UNE rate until Verizon completes the transition. Verizon has no obligation to provide de-listed UNEs after March 11, 2006. Verizon's proposed language in Sections 3.9.1, 3.9.1.1 and 3.9.2 that CLEC orders be timely is adopted.

(b.) Section 3.9.1.1 – How should the Amendment address re-pricing of de-listed items in the event that Verizon cannot complete a CLEC's conversion or migration order by the end of the relevant TRRO transition period?

The CLECs state that where the CLEC has timely submitted a transition order, Verizon should bear the responsibility for any delay. Accordingly, the CLEC should be entitled to continue to receive the discontinued UNEs at the applicable transition pricing.

Verizon proposes that when it is unable to complete a conversion by the end of the applicable *TRRO* transition period, it "may re-price the subject Discontinued Facilities effective as of that date by application of the rate(s) that apply to the available replacement service requested by [CLEC]."

We concur with Verizon that the CLECs' language violates the FCC's rules which impose a definite end date to transition pricing. If CLECs submit their transition orders in a timely fashion, this should not be an issue. In any event, Verizon's proposed language in Section 3.9.1.1 is adopted.

(c.) Sections 3.9.2, 3.9.2.1 – What notice requirements, if any, must Verizon follow if a CLEC fails to order disconnection or obtain replacement services for its embedded base of de-listed facilities? How should the Amendment address re-pricing such facilities if Verizon is unable to complete the migration or conversion by March 11, 2006?

Section 3.9.2 addresses the situation where the CLEC fails to request either disconnection or a replacement service by the end of the *TRRO* transition period. In such a situation, the CLECs and Verizon have agreed that Verizon can disconnect the Discontinued Facility if Verizon has provided 30 days' written notice. The dispute centers on Verizon's ability to re-price; Verizon's language states that it may convert and replace the UNE on notifying the CLEC in writing. The CLECs ask for 30 days notice before the conversion and re-pricing.

Verizon finds the CLECs' proposal to be inappropriate. Verizon has already issued repeated notices notifying all CLECs that Verizon may re-price de-listed elements if the CLEC fails to obtain replacement arrangements by the end of the FCC's transition period. Verizon also asserts that in no event can Verizon be forced to provide de-listed UNEs beyond the end of the FCC-mandated transition period, as the CLECs' language suggests.

Verizon's proposed language in Sections 3.9.2 and 3.9.2.1 is adopted. Verizon is not required to provide UNEs beyond the end of the transition period. And, as Verizon states, it has already given notice to CLECs.

15. Issue 14: Form of Conversion Requests

(a.) Sections 3.4.1.2.2, 3.4.2.2.2, 3.4.3.2.2, 3.5.1.2.2, 3.5.2.2.2, 3.5.3.2.2, 3.7.2 – Should CLECs be permitted to submit conversion requests for de-listed services and facilities on a manual basis?

Verizon contends that after March 11, 2006, it has no further obligation to provide access to de-listed high-capacity loops and transport. Verizon asserts

that whatever obligations Verizon may have under its tariffs or commercial agreements negotiated with CLECs, they are not subject to negotiation and arbitration in this proceeding.

We do not agree with Verizon's contention that the ordering process for replacement arrangements has no place in this Amendment. It is entirely appropriate that this Amendment deal with the process of transitioning of de-listed elements to other serving arrangements, since it deals with the process for disconnection of a particular UNE and the initiation of an analogous serving arrangement. In order to avoid disruption in service to CLECs' customers, those two elements must be intertwined, and both dealt with in this Amendment.

The CLECs have acknowledged that they are entitled to fully-mechanized service order rates only if ASRs and LSRs are submitted electronically. That change should be made to the CLECs' proposed language in Sections 3.4.1.2.2, 3.4.2.2.2, 3.4.3.2.2, 3.5.1.2.2, 3.5.2.2.2, 3.5.3.2.2, and 3.7.2. With that change, the language is adopted.

16. Issue 15: Section 3.9.4 – Should the Amendment address terms to be applied if Verizon denies a CLEC request for access to conduit space?

The CLECs' proposed language in Section 3.9.4 provides that if Verizon denies a request for conduit space that a CLEC would otherwise use to deploy DS1 or DS3 loops or dedicated transport, or if Verizon has not granted a conduit request within 45 days, the CLEC may at its option lease a discontinued high-capacity element for up to three years at TELRIC pricing. The CLECs assert that if Verizon does not provide access to conduit for a route emanating from a non-impaired wire center, CLECs will have no options for providing the transport necessary to connect wire centers or loops necessary to connect to customers' premises.

Most ICAs have provisions relating to access to conduit; the CLECs should look to those provisions to ensure that they have access to ILEC conduit. If they are denied that right, they should use the dispute resolutions under the ICA. The CLECs' proposed language in Section 3.9.4 is rejected. As Verizon states, the FCC did not condition unbundling relief for high-capacity facilities upon access to conduit. We do not have the authority to over-ride the FCC's unbundling rules by setting up a punitive regime for failure to provide access to conduit.

17. Issue 16: Section 3.10 – What terms and conditions should the Amendment include to address Line Sharing?

Verizon objects to the CLECs' proposed language that purports to permit the CLECs to retain a UNE under state law even when the FCC has eliminated it.

For the reasons discussed in detail under Issue 2, Verizon's proposed language is adopted in Section 3.10. It would overstep our authority to order line sharing pursuant to state law.

18. Issue 17: Commingling & Combinations

(a.) Sections 3.11.1, 3.11.1.1, 3.11.1.3.2 – What is the scope of Verizon's obligations to provide commingling and combinations?

In the *TRO*, the FCC modified its rules "to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g., switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request."[34] According to Verizon, under the CLECs' approach, Verizon could be required to "commingle" two wholesale services

[34] *TRO* ¶ 579.

where neither is a UNE under Section 251(c)(3). Verizon asserts that this is contrary to the *TRO.*

The CLECs object to Verizon's proposal to leave the language regarding commingling brief and vague, which leaves almost entirely to Verizon's discretion what, exactly, are the details of its commingling obligations. The CLECs see this as a prescription for repeated disputes between the CLECs and Verizon. The CLECs assert that by adopting the CLECs' very detailed and specific contract language, the parties' rights and obligations will be clear and there will be little occasion for disputes.

The CLECs state their language essentially re-states Verizon's obligations with respect to combinations of UNEs. The CLECs assert that their language ensures that the contract will address all conceivable unbundling arrangements a CLEC might request.

We concur with the CLECs that greater specificity in the Amendment will minimize disputes later on. The CLECs' proposed language in Section 3.11.1 that would make conversion and commingling obligations effective retroactive to the *TRO*'s effective date is rejected. This is consistent with the outcome in Issue 21(a)(2). The CLECs' language in Section 3.11.1.1 is adopted with modification, and Verizon's Section 3.11.1.1 is rejected. The CLECs' references to "applicable law" in Section 3.11.1.1 shall be removed. Also, we reject the second sentence of the CLECs' first paragraph in Section 3.11.1.1. That sentence reads: "Verizon may not require [CLEC] to own or control any local exchange facilities as a condition of offering to [CLEC] any Network Element or combination." As Verizon states, it is impossible for a CLEC to provide local exchange service without controlling any local exchange facilities (such as an interconnection trunk). The CLECs' language appears to be drawn from a time when they could lease UNE-P service, without owning or controlling any parts of the network.

Verizon's Section 3.11.1.3.2 is also rejected. As stated earlier, Verizon does not have the unilateral right to cease providing a facility that becomes a discontinued facility. That will be dealt with through the underlying ICA's change-of-law provisions.

(b.) Section 3.11.1.1 – Should the Amendment provide that Verizon CA will make certain Commingled Arrangements available in California if Verizon makes them available in any of its other state territories, whether voluntarily or pursuant to a state commission order?

Verizon asserts that Verizon is a combination of former Bell Atlantic and GTE companies; these companies historically had different systems, network facilities, and offerings in place, and there is no guarantee that a commingling offering made in one Verizon state will be technically feasible or otherwise available in California.

The CLECs respond that there is no good reason to force CLECs to repeat the dispute resolution process in state after state. CLECs consider the Bona Fide Request (BFR) process as onerous and expensive. The CLECs state the Commission should accept the CLECs' proposed language for Section 3.11.1.1 since this will only bind Verizon to doing what Verizon "has been objectively determined to be able to do."

The CLECs' language in Section 3.11.1.1 is rejected. We do not intend to establish precedent, based on the decisions of other state commissions.

(c.) Sections 3.11.1.1, 3.11.1.3 – Should the Amendment list those commingling arrangements that Verizon must provide? If so, what Commingling Arrangements should Verizon be required to offer CLECs in this Amendment? What commingling restrictions, if any, should apply to de-listed facilities/elements?

Verizon objects to the CLECs' proposed list of commingled arrangements because many terms are never defined (e.g., Special Access DS 1 Interoffice Facility). Verizon states that it is irrelevant that the CLECs' list is essentially the same as the one that "SBC/AT&T offers to CLECs throughout its footprint." Verizon states that several of the CLECs' items are inaccurate or do not apply to Verizon's network. Also, while Verizon does not object to commingling UNE loops with special access multiplexers, the Amendment already permits this by reference to special access services in Section 3.11.1.1. Verizon asserts that the CLEC claim to connect Verizon's UNE transport to "special access loops of the same transmission capacity" is unnecessary since Verizon's language in Section 3.11.1.1 already broadly allows the commingling of these types of arrangements and more.

The CLECs assert that their proposed listing of commingled arrangements is the one that SBC/AT&T offers throughout its footprint. The CLECs believe that Verizon can show no special circumstances regarding its network in California that justify a different outcome from the AT&T arbitration of the same issues. The CLECs add that when it first offered the list of thirteen, AT&T described the various commingling arrangements as having been "fully tested from end to end." There is, thus, no doubt that it is technically feasible for Verizon to offer these commingled arrangements.

We agree that the Amendment should include a list of commingled arrangements, and the list the CLECs present will be adopted. While Verizon

states it is inaccurate and does not apply to Verizon's network, that argument does not withstand scrutiny. AT&T is composed of several legacy networks, yet the commingling arrangements proposed here have been adopted across its footprint. That leads us to conclude that these particular commingling arrangements are common among carriers, and Verizon should be able to implement them as well. And Verizon acknowledges that it does provide some of the same specific commingling arrangements pursuant to its proposed language in Section 3.11.1.1, which we are not adopting. The CLECs' proposed language in Section 3.11.1.1 is adopted, and Verizon's proposed language in Section 3.11.1.3 is rejected.

In its comments on the DD, Verizon points out that the list of commingling arrangements uses the # sign to indicate which arrangements are subject to the EEL eligibility criteria that the FCC has established. Item vi. on the list refers to a "Special Access Loop connected to channelized UNE DS1 Dedicated Transport, via a I/0 UNE mux." Verizon asserts that this item should have been accompanied by the # sign because the FCC has made clear that the EEL eligibility criteria apply even when one portion of the EEL is special access. We concur. Item vi should be followed by a # sign.

(d.) Section 3.11.1.1 – What ordering processes should apply to commingling arrangements? To future arrangements?

AT&T, acting in its capacity as a CLEC, believes that the *TRO* Amendment should contain provisions applying to the ordering of commingled arrangements. Apparently Verizon believes it is enough that "Verizon's language already provides that it will commingle UNE and access arrangements

to the extent required by the FCC's rules."[35] But AT&T asks, how does a CLEC order a commingled arrangement from Verizon? Verizon's proposed language is silent on that point.

AT&T further believes that when manual processing of commingling orders is required, it is appropriate to charge the CLECs only for a mechanized service order. AT&T supports the language regarding the ordering process in Section 3.11.1 proposed by the CLECs, saying that AT&T, in its capacity as an ILEC in California, has agreed to the language in its own *TRO* Amendment.

The CLECs say that Verizon's proposed language does not address the processes for developing or provisioning new types of commingling arrangements. Therefore, the CLECs propose that the BFR process set forth in the underlying ICA be used to develop the commingling capability.

Verizon states that its language provides that it will commingle UNE and access arrangements to the extent required by the FCC's rules. Verizon opposes the inclusion of a specific list of available arrangements. We have determined in Issue 11(c) above that it is appropriate to include a list of commingling arrangements in this Amendment. Therefore, it is appropriate to establish a process for CLECs to request additional arrangements; the BFR process in the underlying ICAs is the appropriate vehicle to use to make those requests. The CLECs' proposed language relating to this issue in Section 3.11.1.1 is adopted, with modification. We will add the phrase "or that Verizon has not yet provided in California, or that is…" That language makes clear that CLECs must use the BFR process for any commingling arrangement that has not been provided in California.

[35] Verizon Initial Brief at 108.

(e.) Section 3.11.1.1 – Should the Amendment require Verizon to connect loops leased or owned by CLEC to a third-party's collocation arrangement, or to connect an EEL leased by CLEC to a third-party's collocation or vice versa?

AT&T, acting as a CLEC, believes that it is appropriate in certain circumstances for an ILEC to connect CLEC loops or EELs with a third-party's collocation arrangement, or a CLEC's collocation arrangement with a third-party's loops or EELs.

AT&T asserts that clearly, both items to be commingled must have been obtained from Verizon. However, there is no requirement in the *TRO* or FCC regulations that the items to be commingled must have been ordered by the same CLEC. Therefore, AT&T supports the inclusion of the language proposed by the CLECs for a portion of Section 3.11.1.1. AT&T, in its capacity as an ILEC, has agreed to similar language in its own *TRO* Amendment.

According to Verizon, nothing in the FCC's rules creates an obligation on Verizon to connect UNEs that CLEC "A" has obtained from Verizon with facilities that CLEC "A" obtained from CLEC "B."

The CLECs assert that it is necessary to describe every possible commingling arrangement and scenario in order to ensure that Verizon complies with the *TRO.* Absent clear rules regarding Verizon's commingling obligations with respect to third parties, the CLECs will waste resources fending off Verizon's denials . The CLECs state the logic dictates that as UNEs become unavailable, CLECs must adjust their operations. The FCC provided for this adjustment by ordering commingling.

The CLECs point out that the *TRO* explicitly found that "a restriction on commingling would constitute an 'unjust and unreasonable practice' under § 201 of the Act, as well as an 'undue and unreasonable prejudice or advantage under

§ 202 of the Act.'"[36] As the *TRO* explained, a "commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks.[37]

We believe that Verizon's view is too narrow. The requirement that Verizon attach commingled arrangements to third parties' facilities will ensure that CLECs can maximize the use of their commingled arrangements. The CLECs' language on this issue in Section 3.11.1.1 is adopted.

In its comments on the DD, Verizon asserts that the paragraph before the one at issue here is too broad and might be interpreted to require Verizon to connect almost any kind of third party facility, regardless of the existence of a collocation arrangement. We concur that the paragraph that begins "Upon request and to the extent provided by Applicable Law…" in Section 3.11.1.1 is overly broad and should be stricken.

(f.) Section 3.11.1.1 – Should the Amendment address non-recurring charges for performing commingling? If so, how?

Verizon states that although it has withdrawn its proposed rates for performing commingling, Verizon's language gives it the opportunity to assess a non-recurring charge in the future to offset Verizon's costs of implementing and managing commingled arrangements. The charge would apply to each UNE circuit that is part of a commingled arrangement.

Verizon opposes the limitations CLEC propose to place on Verizon's ability to recover the costs of performing commingling.

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[36] *TRO* ¶ 581 (footnotes and citations omitted).

[37] *TRO* ¶ 581.

The CLECs state that consistent with the FCC's rules, the language proposed by the CLECs allows Verizon to charge the full TELRIC-based recurring and nonrecurring charges for all UNEs that are contained in a commingled arrangements and also the full tariffed rate for all tariffed services that are commingled with UNEs.

However, Verizon's proposed language would assess additional nonrecurring charges: a charge assessed on a per-UNE circuit basis to offset Verizon's supposed costs of implementing and managing commingled arrangements and further nonrecurring charges if Verizon is required to perform any physical work. At the same time, Verizon has withdrawn from this proceeding its proposed nonrecurring charges, which places CLECs in a position where their rights to commingling are subject to significant uncertainty as to pricing.

AT&T, operating as a CLEC in Verizon's territory, supports the CLEC language. According to AT&T, commingling charges generally involve the same issues as non-recurring charges related to the transition away from de-listed UNEs. In both cases, "once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time."[38]

In response, Verizon claims that the CLECs' proposed language would deny Verizon the right to recover the legitimate cost of providing commingled arrangements.

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[38] *TRO* ¶ 587.

> For example, Verizon must receive and validate CLEC's self-certifications for every commingled circuit requested. This requires changes to ASR processing that will increase the amount of time customer service representatives must spend processing orders manually.[39]

AT&T disagrees, saying that the costs for the type of work Verizon describes above would be recovered through the record order charge contained in the CLEC-proposed language.

Verizon also claims that the CLEC language would deny Verizon the right to recover costs associated with "changes to UNE products in order to allow commingling." According to AT&T, such costs, if appropriate, would be recovered through UNE rates, not commingling charges.

The CLECs' proposed language in Section 3.11.1 is adopted. That language allows Verizon to charge where physical work is required to create the commingled arrangement. Where there is no physical work and a record order change is necessary to create the commingled arrangement, only such record order charge shall apply. Other than that, Verizon is only entitled to the recurring and non-recurring charges applicable to each portion of a commingled facility or service. That language is fair to Verizon and allows CLECs certainty in the charges they will pay for commingling.

[39] Verizon Initial Brief at 111.

(g.) Section 3.11.1.1 – Should the Commission approve the CLECs' language imposing notice, grandfathering, and other requirements upon Verizon in the event that Verizon "changes its Access tariffs, or adds new Access tariff(s), that would restrict or impact the availability or provisioning of Commingled Arrangements"?

The language proposed by the CLECs requires 60 days' notice before eliminating the availability of a product in Verizon's access tariff. Also, the CLECs ask the Commission to "grandfather" commingled arrangements if the access service that is part of the commingled arrangement is withdrawn. The CLECs also include language that Verizon shall cooperate with CLECs to see that they are not impeded from implementing new commingling arrangements.

According to Verizon, there are many valid reasons why Verizon would withdraw an access service, including insufficient demand, out-dated technology, etc. Verizon asserts that such questions should be resolved in future fact-specific disputes, not in an industry-wide amendment.

Verizon asserts that to the extent that CLECs are requesting that they be given greater notice than the other customers under any given Verizon tariff, that request violates the filed tariff doctrine, which requires nondiscriminatory treatment of all entities taking service under the tariff.

Verizon asserts that the CLECs' proposal violates the filed-rate doctrine, which bars one customer from receiving services under a tariff that are different than all other similarly-situated customers. Not all carriers who purchase Verizon's tariffed services will be treated equally. Instead, those carriers who choose to commingle their tariffed services with UNEs will receive favorable terms, both as to notice and grandfathering.

However, we believe that not all discrimination among customers is illegal, only that which is "undue."[40] We find that a CLEC purchasing an access service for commingling with a UNE is different from other customers, since the CLEC is relying on the commingled arrangement of an access service and a UNE to provide service to its customer. Without that access portion of the arrangement, the CLEC cannot provide service to its customer.

We find that the CLECs' request to have 60 days notice of a proposed change in the access tariff is reasonable, since the CLECs will rely on the commingled arrangement to provide service to their customers and will need time to plan how to transition to another service, if necessary. This notice has nothing to do with the notice required by this Commission and the FCC for implementing tariff changes. It simply gives the affected CLEC additional time to plan, in advance of formal filings in this Commission or at the FCC.

We have ordered ILECs to grandfather services in the past, and we will do so in this instance as well. Grandfathering a particular access service will enable the CLEC to continue to serve its customer. We agree with the CLECs that their

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[40] *See e.g.,* D.98-01-022, *mimeo*. at 5, in which the Commission permitted SBC's DALIS tariff rates to be used on an interim basis, however, subject to true-up, notwithstanding the tariff's differences from the rates that SBC was charging CLECs for access to the same data under interconnection agreements. This interim arrangement was found not to constitute undue discrimination because rates in the interconnection agreements were "part of an integral package of terms and conditions specifically negotiated by the parties," and it would not be appropriate to arbitrarily single out one term of such interconnection agreements and apply that term to other competitors that were not bound by the comprehensive terms of any one interconnection contract." Discriminatory treatment is considered undue only if it provides an advantage to some customers and a disadvantage to others. To establish any such effect, comparison must be made between comparable situations. *Reuben H. Donnelley Corp. v Pacific Bell,* D.91-01-016, (a99a, 39 Cal, P.U.C.2d 209, 242.

proposed language provides Verizon with the incentive to work with affected CLECs to provide an alternative service of similar functionality and cost. However, we point out that the grandfathering we are ordering applies only to our California tariff since we do not have the authority to require grandfathering of a federal tariff.

In its comments on the DD, Verizon points out that the DD does not explain how long Verizon will be required to continue offering an access service that has been grandfathered. We have placed a one year limitation on the grandfathering requirement. The CLECs should be able to transition to another service within that amount of time.

Following is the adopted language for this portion of Section 3.11.1.1:

> In the event that Verizon changes its Access tariffs, or adds new Access tariff(s), that would restrict or impact the availability or provisioning of Commingled arrangements under this Amendment or the Agreement, Verizon will provide 60 days notice to [CLEC] if the tariff change eliminates the availability of a product pursuant to the notification process associated with such access tariffs as provided for under Section 214 or applicable state law prior to such changes or additions. Additionally, for additions or changes that do more than impact rates, Verizon will grandfather in place for one year Commingled arrangements ordered out of its state Access tariff that have been ordered prior to the access tariffs effective date. Verizon shall cooperate fully with [CLEC] to ensure that operational policies and procedures implemented that affect Commingled arrangements shall be handled in such a manner as to not operationally or practically impair or impede [CLEC's] ability to implement new Commingled arrangements.

(h.) Sections 3.11.1.1, 3.11.1.2 – How should commingled arrangements be priced? How should the FCC's restrictions on "ratcheting" be worded?

The language presented by Verizon relating to this issue in Section 3.11.1.1 reads as follows:

> 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…

The CLECs object to the reference to a UNE tariff, as discussed in more detail under Issue 1. The CLECs assert that there is no UNE Tariff at present, and Verizon should not be permitted to unilaterally supersede the provisions of this amendment or the underlying ICA by filing such a tariff. We agree. The agreement between the parties should be housed between the pages of the ICA and not refer to a currently nonexistent tariff, which Verizon could implement in the future. Verizon's proposed language in Section 3.11.1.1 addresses the issue of commingling in much less detail than the language proposed by the CLECs. As stated earlier, we believe that the more detailed the obligations in the ICA, the fewer implementation disputes we will have. Verizon's language in Section 3.11.1.1 is rejected.

Both parties agree that "ratcheting' is not required, but they disagree on how that should be reflected in the Amendment. Ratcheting is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate.

AT&T and the other CLECs point out that Verizon proposes a single sentence to cover this issue: "Ratcheting, as that term is defined by the FCC, shall not be required." AT&T believes Verizon's language is insufficient because it

does not clearly state that the ILEC (in pricing a commingled arrangement) shall charge basic UNE rates for the UNE portion of the arrangement and special access rate for the special access portion.

We agree with AT&T. To avoid potential pricing disputes in the future, Verizon's *TRO* Amendment should contain language specifically explaining the pricing mechanism for commingled arrangements. AT&T states that AT&T (in its capacity as an ILEC) has agreed to identical language in its own *TRO* Amendment. The CLECs' proposed definition of "ratcheting" in Section 3.11.1.2 shall be adopted.

19. Issue 18: Section 3.11.1.4 – Should the Commission approve the CLECs' proposed language for conversion of wholesale services to UNEs and vice versa?

Verizon asserts there is no need for CLECs' proposed Section 3.11.1.4 because other proposed language in the Amendment (such as in Section 3.11.2, already addresses the various requirements for conversions.

AT&T, in its capacity as a CLEC, states that Verizon has proposed little language applicable to conversions. Converting special access circuits to UNEs, and the reverse, however, is an important subject for AT&T's CLEC division, because of Verizon's frequent practice of declining UNE loop orders on the grounds of "no facilities," and then fulfilling a special access order for the same end user customer, then allowing AT&T to convert the special access circuit to a loop. Thus, AT&T believes that Verizon's *TRO* Amendment should contain specific provisions involving conversions.

AT&T asserts that the CLECs' proposed language would require Verizon to accomplish conversions with a minimum of disruption to end users. Because AT&T (in its capacity as an ILEC) believes that this is an important public policy,

AT&T has agreed to identical language in its own *TRO* Attachment. AT&T supports the CLECs' proposed language in Section 3.11.1.4.

We concur with AT&T and the other CLECs that we need specific contract provisions to address conversions. The CLECs' proposed language in Section 3.11.1.4 is adopted, with modification. We will strike the language in Section 3.11.1.4 that requires conversions to be billed by the next billing cycle. This conflicts with the adopted language in Issue 21(a)(3) that rules that the billing change should occur once the work has been completed.

In their reply comments on the DD, the CLECs agree with Verizon that they should make conversion requests electronically, but only if Verizon has the capability to accept electronic service orders. The CLECs propose that Section 3.11.1.4 be revised to provide that CLECs "shall make requests electronically unless Verizon is not capable of processing a request electronically, in which case, the request may be submitted in writing." That language is adopted.

20. Issue 19: Performance Measures:

(a.) Sections 3.2.4.3, 3.11.1.2, Former 3.11.2.6, 3.12.2, 3.14.3 – If an effective order of the Commission or the FCC does not expressly require standard provisioning intervals and performance measures and remedies in connection with Verizon's provision of the following items, may Verizon exclude its performance from standard provisioning intervals and performance measures and remedies in connection with its provision of:

(a) unbundled loops in response to CLEC requests for access to IDLC-served hybrid loops;

(b) Commingled arrangements;

(c) Conversion of access circuits to UNEs;

(d) Loops or Transport (including Dark Fiber Transport and Loops) for which Routine Network Modifications are performed;

(e) Hot cuts.

According to Verizon, neither the *TRO* nor the *TRRO* imposed any requirements (or even addressed) performance metrics, so, for that reason alone, the Commission should not consider this issue. A *TRO* arbitration is not the appropriate forum to address complex performance metrics issues.

In any event, Verizon says the CLECs' arguments that the *TRO*-related items listed above should be subject to existing performance measures and intervals makes no sense, because these are new activities the *TRO* required Verizon to perform. Also, it would be inappropriate to try to apply any pre-*TRO* measures that were not developed with these new activities in mind.

The CLECs say that Verizon has offered no evidence to demonstrate that it should be relieved of its obligations to meet any performance metrics for orders for conversions or commingling. The CLECs also state that Verizon has not identified any grounds on which the Commission should relieve Verizon of its obligation to comply with otherwise applicable service intervals or performance measurements when Veizon must undertake RNMs to provision a UNE order.

Verizon rebuts this by giving examples of processes it must undertake. For example, the CLECs would apparently apply loop provisioning metrics to loops provided in response to requests for access to IDLC-served loops. New loop construction may be necessary in instances where there are no spare copper loops or UDLC systems available. Verizon asserts that it is unreasonable to expect Verizon to complete new construction in the same time it would take to furnish unbundled access to an already existing loop. Finally, Verizon asserts that contrary to the CLECs' claim, the FCC did not suggest that performance

measures already applied to all UNEs requiring routine network modifications. It simply recognized that the states could address the impact of routine network modifications within their usual performance review processes.[41]

[41] *TRO* ¶ 639.

We concur with Verizon that existing performance metrics may not address the new activities that Verizon will perform. We have a separate docket to address performance measures,[42] and will address the need for revised performance measures in that docket, or a successor docket. Verizon's proposed language in Sections 3.11.1.2, and 3.12.2 is adopted. The CLECs' language relating to performance measures in Sections Former 3.11.2.6 and 3.12.2 is rejected. Section 3.14.3, which deals with performance measurements for batch hot cuts is not being addressed in this decision.

In response to the CLECs' comments on the DD, we revise Verizon's proposed language in Section 3.2.4.3 which would allow Verizon to exclude its performance in connection with providing the relevant elements addressed in the amendment. The following language is adopted in Section 3.2.4.3:

> Verizon will be subject to any performance measure identified in R.97-10-016, I.97-10-017, or any other effective order of the Commission or the FCC that expressly requires standard provisioning intervals and performance measures and remedies for Verizon's provisioning of unbundled Loops pursuant to this Section 3.2.4.

[42] *See* Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems (R.97-10-016); Order Instituting Investigation on the Commission's Own Motion into Monitoring Performance of Operations Support Systems (I.97-10-017).

21. Issue 20: Interconnection, Signaling

(a.) Sections 3.5, 3.5.4, 3.5.4.1, 3.13, 3.13.1 – What obligations, if any, with respect to interconnection facilities under section 251(c)(2) should be included in the Amendment to the parties' interconnection agreements?

An entrance facility is a form of dedicated transport that provides a transmission path between the networks of Verizon and a CLEC. The parties agree that both the *TRO* and the *TRRO* held that entrance facilities need not be unbundled, and are no longer a UNE pursuant to Section 251(c)(3). The dispute is whether the CLECs are entitled to continue to receive entrance facilities for purposes of interconnection under Section 251(c)(2).

Verizon asserts that Section 251(c)(2), which governs interconnection, does not require the provision of any facilities, but only requires that the incumbent permit a CLEC to interconnect the CLEC's own facilities to the ILEC's network.

The CLECs do not agree, stating that the CLECs have obtained entrance facilities from Verizon both to backhaul traffic and to interconnect with Verizon's network for the transmission and routing of telephone exchange service and exchange access service. CLECs state that they were entitled to access for the first purpose as a UNE under Section 251(c)(3), and for the second purpose under Section 251(c)(2). According to the CLECs, the FCC held unequivocally that though it declassified entrance facilities as a UNE under Section 251(c)(3), nothing in that decision affected the requirement that ILECs provide such facilities at TELRIC prices when used for interconnection pursuant to Section 251(c)(2).[43]

[43] The CLECs cite *TRO* ¶ 366 and *TRRO* ¶ 140.

Verizon, on the other hand, states that Section 251(c)(2) does not require the provision of any facilities, but only requires that the incumbent permit a CLEC to interconnect the CLEC's own facilities to the incumbent's network.

We find that the *TRO* and the *TRRO* do not support Verizon's contention that interconnection responsibilities do not include facilities.

> In reaching this determination[44] we note that, to the extent that requesting carriers need facilities in order to "interconnect[] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation.[45]

In addition, *TRRO* ¶ 140 reads as follows:

> [o]ur finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.

Clearly, the FCC established that interconnection would include the facilities used to effect that interconnection. The FCC is also clear that interconnection, like UNEs, should be priced at TELRIC. The CLECs' proposed language in Sections 3.5 and 3.5.4 is adopted. Section 3.5.4.1 is adopted with modification. According to Verizon, if an underlying agreement has a provision applying access rates to Section 251(c)(2)

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[44] The determination discussed in this paragraph is the FCC's determination that the dedicated transport UNE includes only those transmission facilities within the ILEC's network.

[45] *TRO* ¶ 366.

interconnection facilities, the CLECs' language would override that provision. It is not our intent to change the terms of underlying ICAs. Section 3.5.4.1 shall be prefaced by the phrase, "To the extent that it is not in conflict with the terms in the underlying agreement…" Verizon's proposed phrase "for interconnection" in Section 3.5.4 is adopted. This language makes it clear that CLECs are only entitled to obtain entrance facilities for interconnection purposes.

The CLECs also propose language addressing Verizon's obligation to provide access to signaling. According to the CLECs, notwithstanding the fact that the FCC eliminated the ILECs' duty to provide access to signaling under Section 251(c)(3), Verizon has a continuing independent obligation to provide access to its signaling network under Sections 251(a) and 251(c)(2) "for purposes of interconnection and the exchange of traffic."

Verizon asserts that under *TRO* ¶ 548, Verizon is obligated only to allow the CLECs' signaling networks to interconnect with the Verizon signaling network, not to unbundle Verizon's own signaling network for the CLECs to use.

The FCC states that ILECs have to provide interconnection between their signaling networks and the signaling networks of alternative providers. We agree with Verizon that the CLECs' reference to ¶ 140 of the TRRO is inappropriate, since that section says nothing about signaling. Also, we find that the CLECs' proposed language in Section 3.13.1 which includes the phrase CLEC's "right to obtain SS7 signaling" could be construed to allow for unbundled access to Verizon's SS7 network. The requirement under *TRO* ¶ 548 is narrower in scope, and we will make the following changes to Section 3.13.1 to reflect that:

> In accordance with Paragraph 548 of the TRO, nothing in this Amendment, including, without limitation, Section 3.7.4, nor the FCC's finding of non-impairment with respect to SS7 signaling alters [CLEC's] right to interconnect with Verizon's SS7 signaling networks, pursuant to Section 251(c)(2) of the Act for use in connection with the exchange of traffic.

CLEC Section 3.13, which is a heading for the SS7 Section, is adopted.

22. Issue 21: EELs

Sections 3.11.2, 3.11.2.1 – What obligations with respect to the conversion of wholesale services (e.g., special access circuits) to UNEs or UNE combinations (e.g., EELs) should be included in the Amendment to the parties' interconnection agreements? In particular:

Enhanced Extended Loops (EELs) are high capacity loop and transport combinations. Verizon's proposed language in Section 3.11.2.1 provides that CLECs will comply with the eligibility criteria as long as they continue to receive the commingled facility from Verizon. The CLECs add the word "converted." Verizon finds the addition unnecessary and confusing. Either the element has been converted and is treated as a UNE or it has not been converted.

Second, Verizon's language provides that the "foregoing shall apply whether the High Capacity EEL circuits in question are being provisioned to establish a new circuit or to convert an existing wholesale service." The CLECs delete this language, and instead propose the following: "Access to unbundled network elements and combinations of unbundled network elements shall be provided by Verizon." Verizon states that its language makes clear that EEL arrangements are subject to the eligibility criteria, while the CLECs' language improperly implies that Verizon has an unqualified obligation to provide such arrangements.

The CLECs state that a combined facility or a commingled facility is different than a converted UNE. Eliminating this reference makes no sense whereas including it more adequately describes the issue. Here the issue is the obligation of the parties when converting a special access circuit to a UNE or UNE combination. We concur with the CLECs' reasoning. The CLECs' proposed language is adopted in Sections 3.11.2 and 3.11.2.1.5. However, we make two modifications to Section 3.11.2. First, we eliminate the CLECs' sentence relating to commingling restrictions applied prior to the *TRO*. As Verizon states in its comments on the DD, there is no need to put pre-*TRO* restrictions into this amendment which is intended to implement change-of-law provisions arising from the *TRO*. Second, we eliminate the dependent clause that begins the sentence that reads, "Unless modified by FCC action including but not limited to a waiver issued by the FCC…" As Verizon points out, this is inconsistent with our determination that language that would prohibit any automatic future changes should be stricken because the change-of-law provisions in the underlying ICA govern.

Verizon proposed language in Section 3.11.2.2 is adopted. That language allows Verizon to reprice circuits that become "noncompliant" if the CLEC has not submitted an LSR or ASR to seek disconnection or an alternative arrangement.

(a.) Sections 3.11.2.1.5, Former 3.11.2.3 – What information should a CLEC be required to provide to Verizon (and in what form) as certification to satisfy the FCC's service eligibility criteria to convert existing circuits/services to EELs or order new EELs?

According to the CLECs, none of the onerous and overly-broad set of data Verizon insists CLECs provide is information that the FCC required in the *TRO*. The FCC did not impose detailed reporting requirements for CLECs to protect

ILECs from carriers gaming the rules. Instead, the FCC required CLECs to submit self-certifications providing assurance that the service eligibility requirements were met.[46] In the *TRO* ¶¶ 623 and 624, the FCC said:

[46] *TRO* ¶ 623.

> We conclude that requesting carrier self-certification to satisfying the qualifying service eligibility criteria for high-capacity EELs is the appropriate mechanism to obtain promptly the requested circuit, and consistent with our findings of impairment. A critical component of nondiscriminatory access is preventing the imposition of any undue gating mechanisms that could delay the initiation of the ordering or conversion process. Unlike the situation before the Commission when it issued the *Supplemental Order Clarification,* which only addressed EEL conversions, new orders for circuits are subject to the eligibility criteria. Due to the logistical issues inherent to provisioning new circuits, the ability of requesting carriers to begin ordering without delay is essential.
>
> We do not specify the form for such a self-certification, but we readopt the Commission's finding in the *Supplemental Order Clarification* that a letter sent to the incumbent LEC by a requesting carrier is a practical method.

Verizon's language states that a CLEC's certification required to convert existing services to EELs should include certain specific information for each circuit. According to Verizon, its language precisely tracks the FCC's eligibility criteria for EELs. The FCC's rules require CLECs to maintain appropriate documentation, so Verizon concludes that it should be no burden upon that CLEC simply to send a letter describing how it meets the EEL criteria.

Verizon points out that the FCC requires circuit-specific certification. The FCC said, "We apply the service eligibility requirements on a circuit-by-circuit basis, so each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria."[47]

Verizon also disputes the CLECs' language which would allow CLECs to submit certifications in writing as inconsistent with Verizon's electronic

[47] *TRO* ¶ 599.

ordering system. As of May 2004, Verizon expanded its electronic ordering system to accept CLEC orders to convert existing wholesale facilities to EELs. The ASR is the sole method by which a CLEC may submit an order to Verizon for an EEL.

We believe that Verizon's attempt to require the CLEC to prove that it has satisfied the criteria listed in FCC Rule § 51.318(b)(2) would be onerous for the CLEC and contrary to the FCC's intent, which is to see that the ordering and conversion process is timely, as described in *TRO* Paragraph 623 above. As the CLECs state, none of the information sought is necessary for Verizon to fill the order. Therefore, Verizon's proposed language in Section 3.11.2.1.5 that would require the CLEC to provide specific information to demonstrate its compliance with § 51.318 is rejected. However, we concur with Verizon, that the FCC's rules require that such certifications are to be done on a circuit-by-circuit basis, and we will adopt Verizon's language in Section 3.11.2.1.5 to that effect.

Verizon would require that any request for EELs come through their electronic ordering system. However, the FCC itself indicated that a letter would suffice. To the extent possible, we encourage CLECs to use Verizon's electronic ordering system, but we will not require its use. The CLECs' language relating to this issue in Section 3.11.2.1.5 is adopted, as is Former Section 3.11.2.3.

In its comments on the DD, Verizon claims that a letter process of self-certification could lead to EELs being rejected for failutre to certify via circuit where Verizon must reconcile the electronic order process with the CLEC letter. For this reason, the CLECs request that the Commission require Verizon to process the request immediately upon receipt from the CLEC, rather than pre-qualify the orders. The CLEC EEL self-certification process letter could be verified at any time prior to the CLEC offering service to the customer without

harm to Verizon. We will add the following language to Section 3.11.2.1.5 based on the CLECs' proposal: "Verizon shall process the request immediately upon receipt from the CLEC rather than pre-qualify the orders. In no event should Verizon hold orders solely to verify self certification."

(1) Sections Former 3.11.2.2, 3.11.3 (Former Section 3.11.2.2) – What type of charges, if any, and what conditions, if any, can Verizon impose for Conversions from wholesale services to UNEs?

Verizon asserts that it is entitled to recover the costs of conversions and to be compensated for the costs of retagging a circuit. Verizon indicates that while it has withdrawn its proposed new charges for conversions, the FCC has not prohibited conversion charges, and the *TRO* Amendment should not do so either. Verizon has a right to ask the Commission to set such charges later.

According to the CLECs, FCC rules expressly prohibit non-recurring charges on a circuit-by-circuit basis when wholesale services are being converted to EELs. The CLECs point to *TRO* ¶ 587 in support of its position.

> We recognize, however, that once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations on a wholesale service. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms and conditions.

We concur with the FCC's finding in ¶ 587 of the *TRO* cited above that because ILECs are never required to perform conversions in order to continue serving their own customers, such charges are inconsistent with Section 202 of

the Act. In the following paragraph, the FCC also reiterates that the conversions between wholesale services and UNEs are "largely a billing function." We determined in Issue 12, that it is not appropriate to assess a retag fee. Therefore, we conclude that no charges are warranted for conversions that do not involve any sort of physical work or for retagging a circuit.

(2) Section 3.11.4.3 (Former 3.11.2.6) – For conversion requests submitted by a CLEC prior to the effective date of the amendment, should CLECs be entitled to EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?

The CLECs argue that the *TRO*'s new commingling and conversion obligations should take effect retroactively to the October 2, 2003 effective date of the *TRO*, rather than upon the effective date of the Amendment, as other provisions will.

Verizon points out that the FCC in the *TRO* declined to override existing contracts to order automatic implementation of its rules as of a date certain (as it did with the *TRRO* transition plan). Instead, it required carriers to use Section 252 to amend their agreements, where necessary, to implement the *TRO* rulings.

Verizon asserts it would be inequitable to allow the CLECs to implement rates favorable to them back to October 2, 2003, but not to give Verizon the benefit of the higher, non-TELRIC rates that the *TRO* eliminated as of October 2, 2003. Also, Verizon asserts that the CLECs' retroactive billing proposal would impose a substantial, unanticipated, and unjustified liability on Verizon.

The CLECs' proposed language in Section 3.11.4.3 (Former 3.11.2.6) is rejected. As Verizon points out, there are inequities in allowing the CLECs to

implement rates favorable to them retroactively, but not to give Verizon the benefit of higher non-TELRIC rates on a retroactive basis.

(3) Sections 3.11.4.3 (Former 3.11.2.6), 3.11.4.4 (Former 3.11.2.7) – When should a Conversion be deemed completed for purposes of billing?

The CLECs propose that a conversion will be deemed completed when the CLEC submits its conversion request, regardless of when the conversion is actually completed. This would allow the CLEC to obtain more favorable pricing for the converted arrangement beginning on the first day of the month following the request date. Verizon states that there is no reason to depart from the customary rule that a service is billed when the work to provide it has been completed.

We concur with Verizon that the billing change should occur once the work to provide the new service has been completed. The CLECs' proposed language in Sections 3.11.4.3 (Former 3.11.2.6), 3.11.4.4 (Former 3.11.2.7 is rejected.

(b.) Section 3.11.4.1 (Former 3.11.2.4) – When Verizon performs a conversion for the CLEC, should the Amendment prohibit Verizon from disconnecting or altering any facilities, and should the amendment allow CLECs to order any alteration as part of the conversion (as opposed to before or after the conversion)?

The CLECs assert that Verizon may not, under FCC rules, physically disconnect, separate or physically alter existing facilities when a CLEC requests the conversion of existing access circuits to an EEL. There is no reason for Verizon to have the flexibility to unilaterally alter facilities, which could jeopardize service quality.

Although Verizon would not expect a standard conversion to require any physical alteration of the facilities used for wholesale services that may be converted to UNEs, a uniform prohibition on all alterations might preclude those that could be necessary to convert wholesale services to UNEs in particular instances.

The CLECs' proposed language in Section 3.11.4.1 (Former 3.11.2.4) is adopted. The CLECs' language includes the caveat that service shall not be disconnected "except at the request of [CLEC]." In its comments on the DD, Verizon recommends that the language be changed to "without the CLEC's consent" rather than "at the CLEC's request" since Verizon would know if a physical alteration was necessary and the CLEC would not. We concur with Verizon's reasoning. Its proposed language is incorporated into Section 3.11.4.1 (Former 3.11.2.4).

(c.) Section 3.11.2.2 (Former 3.11.2.9) -- How should the Amendment address audits of CLEC compliance with the FCC's service eligibility criteria?

The CLECs state that they support the limited audit rights set forth in the *TRO*, but urge the Commission not to allow Verizon to impose its own more onerous audit requirements on the CLECs. The CLECs urge the Commission to allow one audit in a 12 month period, rather than on a calendar year basis.

Verizon points out that the FCC used a calendar year audit standard in its previous "safe harbor" audit rules, so it is reasonable that the FCC would use the same time period in the *TRO.* Verizon states the FCC explicitly found that its reimbursement requirement would eliminate the potential for unbounded audits, and that limiting audits to once per year appropriately protected the CLECs' interests in avoiding disruption.

Verizon disputes the CLECs' language providing that Verizon can initiate audits only "pursuant to the terms and conditions of this section." Verizon has a right to an EELs audit, and that right is not conditioned upon any requirement for Verizon to show cause for the audit.

Verizon states that it does not object to giving the CLEC 30 days' written notice of an audit, but it does not make sense to refer to a "scheduled" audit.

Verizon opposes the CLEC proposal for Verizon to instruct its auditor to provide a CLEC with a copy of the audit report at the same time that the auditor provides the report to Verizon. Under the FCC's rules and the Amendment provisions, Verizon must pay for the auditor until such time as the cost may shift to the CLEC. Until such time as Verizon takes action against the CLEC based on the audit report, the CLEC would not be entitled to receive the report at all.

Verizon opposes the CLECs' proposal that if parties disagree with the findings of the auditor's report, the parties shall resolve such dispute in accordance with the dispute resolution process set forth in the ICA. However, Verizon points out that when the FCC established that EEL arrangements can be audited by independent auditors, it never said that such audits are subject to the general dispute resolution process. Rather, Verizon asserts that the independent auditor's conclusions should be effective when issued.

Verizon opposes the CLECs' proposal that a CLEC's liability for any true-up be subject to the backbilling limitation in the Amended Agreement. As a practical matter, audits take time, and might be performed for circuits that have been in existence for any length of time.

Verizon also disputes the CLECs' proposed language that would deny Verizon any remedy for a CLEC's noncompliant EEL circuits unless the CLEC failed to comply with the service eligibility criteria "in all material respects with respect to the totality of the circuits audited." Verizon asserts this language is

unlawful since the FCC expressly stated that "the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor" if the auditor finds noncompliance, without any mention of deductions.

Verizon provides that, in the appropriate situation, Verizon will reimburse the CLEC for its "out of pocket" audit costs within 60 days after the CLEC's submission of the costs to the auditor. CLECs would delete the phrases "out of pocket" and would require reimbursement with 30 days. Verizon asserts that the CLECs have no claim to be reimbursed for anything but actual out-of-pocket costs that they incur in an audit. The CLECs deleted that phrase because the law requires "costs" not "out of pocket costs." The word "costs" is a much broader term and anticipate more than simply "out of pocket" costs.

The CLECs dispute Verizon's proposal that a CLEC keep books and records for at least 18 months after the service arrangement in question is terminated. This is consistent with the nature and purpose of the audit requirement. As the FCC said, "Although we do not establish detailed recordkeeping requirements in this Order, we do expect that requesting carriers will maintain the appropriate documentation to support their certifications."[48]

Following is our adopted version of Section 3.11.2.2, in which we have blended elements from Verizon and the CLECs' proposals:

> On an annual basis (i.e., once per 12-month period, Verizon may obtain and pay for an independent auditor to audit [CLEC's] compliance in all material respects with the service eligibility criteria applicable to High Capacity 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

[48] *TRO* ¶ 629.

> in accordance with the independent auditor's judgment. Verizon shall give [CLEC] thirty (30) days' written notice of an audit. To the extent the independent auditor's report concludes that [CLEC] failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, Verizon shall provide a copy of the auditor's report to [CLEC.] If the parties disagree as to the findings or conclusions of the auditor's report, the parties shall resolve such disputes in accordance with the Dispute Resolution process set forth in the General Terms and Conditions of the Agreement. Then, without limiting Verizon's rights under Section 3.11.2.2 above) [CLEC] must convert all noncompliant circuits to the appropriate service, true up any difference in payments, make the correct payments on a going-forward basis, and reimburse Verizon for the cost of the independent auditor without thirty (30) days after receiving a statement of such costs from Verizon. Should the independent auditor confirm [CLEC's] compliance with the service eligibility criteria as to each DS1 or DS1 equivalent circuit, then [CLEC] shall provide the independent auditor for its verification a statement of [CLEC's] costs of complying with any requests of the independent auditor, and Verizon shall, within thirty (30) days of the date on which [CLEC] submits such costs to the auditor, reimburse [CLEC] for its costs verified by the auditor. [CLEC] 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.

(d.) Section 3.11.2.7 (Former 3.11.2.8) -- Should the Amendment provide that all ASR conversions will result in a change in the circuit ID?

The CLECs state there is no practical justification for changing the circuit identification from "access" to "UNE" or "UNE" to "access". According to the CLECs, Verizon is merely implementing additional steps in order to justify an additional "tag" charge. The CLECs point out that the FCC rules expressly

prohibit non-recurring charges on a circuit-by-circuit basis when wholesale services are being converted to EELs.[49]

We already determined in Issue 12 above that Verizon is not entitled to a re-tag charge. However, Verizon is entitled to change circuit i.d's if it wishes. The following language is adopted for Section 3.11.2.7 (Former 3.11.2.8):

> All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. No retag fee will be applied if such change in circuit ID requires that the affected circuit(s) be retagged.

23. Issue 22: Routine Network Modifications

In its brief, Verizon indicates that it continues to believe that no hearing is necessary to determine routine network modification (RNM) terms in the Amendment. After reviewing the briefs, we find that we concur that there is no need to conduct hearings to resolve the issues presented to us for arbitration.

(a.) Sections 3.12.1, 3.12.1.1 – How should the Amendment reflect Verizon's obligation to perform routine network modifications necessary to permit access to loops, dedicated transport, or dark fiber transport facilities?

Verizon disputes the CLECs' definition of RNM as "an activity that Verizon regularly undertakes for *any* of its customers." Verizon states this is an attempt to expand the FCC's definition and points out that the FCC uses the phrase "activities that incumbent LECs regularly undertake for their own

[49] 47 C.F.R. § 51.316(c) provides that "an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.

customers."[50] Similarly, Verizon objects to the statement that Verizon is required to make "all" RNMs that a CLEC might deem necessary to access a UNE. Verizon states that this is inconsistent with the FCC's recognition that many activities (such as placing new manhole, trenching new cable, etc.) are not included in RNMs.

AT&T, in its capacity as a CLEC believes that the Amendment should contain a definition of RNM. AT&T states that it would be satisfied with the inclusion in the *TRO* Amendment of the FCC's definition quoted by Verizon. The proposed language, as modified, would read: "A routine network modification is an activity that Verizon regularly undertakes for its own customers." The CLECs state they did not intend to modify the language in the FCC's definition and agree to the same language cited above by AT&T.

The CLECs oppose Verizon's language to limit the availability of RNMs to those in FCC Rule 51.319(a)(8) and (e)(5), saying that because the FCC's rules set forth illustrative lists of routine network modifications, Verizon's language could be construed as limiting its obligations only to the listed items. The *TRO* is clear that the lists are not intended to be exclusive.

We will adopt the modified definition cited above in Section 3.12.1. However, we will delete the reference to the FCC's rule so there is no doubt that the list of RNMs is not all-inclusive.

We adopt Verizon's proposed language in Section 3.12.1.1. We concur that the CLECs' unlimited obligation to provide RNMs is inconsistent with the FCC's recognition that many activities (such as placing new manholes, trenching new

[50] *TRO* ¶ 632.

cable, etc.) are not sufficiently routine to be required. However, in response to Verizon's comments on the DD, we clarify that the availability of dark fiber loops only extends through the *TRRO* transition period. We adopt the following phrase in Section 3.12.1.1: "Dark Fiber Loops for [CLEC's] embedded base of such loops, if any, during the *TRRO* transition period ending on September 11, 2006."

(b.) Section 3.12.1.1 – What Routine Network Modifications should Verizon be required to undertake for UNE local loops, UNE dedicated transport, and dark fiber?

Verizon disputes a number of the items that the CLECs propose to include as RNMs. First, CLECs propose that RNM language apply to dark fiber loops, but the time during which CLECs may obtain new dark fiber loops as UNEs has passed. Because the obligation to perform routine network modification is expressly linked to the obligation to provide UNEs, there is no reason to include dark fiber loops within the scope of the RNM provision.

As the CLECs point out, there is nothing in the FCC's rules that allows Verizon to stop making modifications to dark fiber loops during the relevant transition period. The CLECs' reference to dark fiber loops in Section 3.12.1.1 is adopted.

Second, while both Verizon and CLECs agree that rearranging or splicing of in-place cable can qualify as a RNM, the CLECs would require Verizon to create new splice points in existing cable, while Verizon has proposed to limit its obligation to splicing at existing splice points. Verizon asserts that it does not routinely create new splice points in order to provision orders for its retail customers. The FCC refers to "splicing into existing cable,"[51] and does not limit that to existing splice points so Verizon's proposed language on this issue in Section 3.12.1.1 is rejected.

Third, Verizon objects to the CLECs' inclusion of "replacing defective cable" and "placing cable stubs" as RNMs. According to Verizon, the FCC is clear that ILECs have no obligation to "place new cables for a requesting

[51] *TRO* ¶ 637.

carrier."[52] In ¶ 632 the FCC states that RNMs "do not include the construction of new wires (i.e., installation of new aerial or buried cable) for a requesting carrier." We believe that the FCC's exclusions would not encompass replacing defective cable, or installing a short stub to connect two existing cable circuits which Verizon would do for its own customers, and we adopt that language in Section 3.12.1.1. These activities are hardly equivalent to installing altogether new transmission facilities.

Fourth, the CLECs propose to require Verizon, in performing RNMs, to "secur[e] permits necessary to the performance of such activities." But Verizon states that the FCC made it clear that activities such as securing permits that encompass extensive delays are not required. [53] The CLECs explain that very simple activities, such as opening an existing manhole cover may require a permit. According to the CLECs, those permits are "ministerial" and do not result in extensive delays. The CLECs assert that obtaining such permits is an activity that Verizon routinely undertakes on behalf of its customers. We make the following modification to Section 3.12.1.1: "…and securing 'ministerial' permits that are required when necessary to perform routine network modifications, so long as doing so will not encompass extensive delay."

Fifth, the CLECs propose to list line conditioning as one of the RMNs but, according to Verizon, the FCC's rules expressly distinguish between line conditioning and RNMs. And while there is no dispute that Verizon must perform line conditioning, that obligation pre-dated the *TRO* and already exists in CLECs' current ICAs. While line conditioning requirements pre-date RNM

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[52] *TRO* ¶ 636.

[53] *TRO* ¶ 637.

requirements and are addressed in a separate area of the FCC's rules, the FCC acknowledges that line conditioning *is* an RNM: "…line conditioning is properly seen as a routine network modification that incumbent LECs regularly perform in order to provide xDSL services to their own customers."[54] Line conditioning is clearly a RNM, and should be included in the illustrative list proposed by the CLECs. The CLECs' proposed language in Section 3.12.1.1 is adopted.

Sixth, the CLECs object to Verizon's language that states that adding time division multiplexing (TDM) capabilities to packet-based equipment that lacks it is not a RNM. Verizon states that the FCC has clarified that incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability."[55] We concur that adding TDM capabilities is not an RNM, but we believe, in the interests of clarity, it is worthwhile to include Verizon's proposed language to that effect in Section 3.12.1.l. Except as modified above, we adopt the remainder of the CLECs' illustrative list of RNMs.

[54] *TRO* ¶ 643.

[55] *FTTC Order* ¶ 20.

(c.) Section 3.12.1.2 – For each such required routine Network Modification, do the current Commission-approved nonrecurring and monthly recurring rates for the UNE local loop, UNE dedicated transport, or dark fiber recover the TELRIC cost of the Routine Network Modification? If not, should Verizon be allowed to impose any additional nonrecurring and/or monthly recurring charges, and if so, under what conditions and in what amounts?

Verizon indicates that there is no need to address this issue because Verizon has withdrawn the new RNM rates it originally proposed as part of its Amendment so the issue is moot. The CLECs object to Verizon's assertion that it has reserved the right to impose RNM charges on a retroactive basis. Thus, Verizon's retraction of its proposed charges does not make the issue go away. Instead, it will only result in on-going uncertainty and risk for CLECs and put a chill on their seeking the RNM to which they are entitled.

The CLECs would have us conclude that Verizon is recovering its relevant costs for RNMs via existing non-recurring and monthly recurring charges. We find that we do not have the record in front of us to make that determination. Instead, since Verizon has withdrawn its pricing proposal, as Verizon says, we cannot resolve this issue until Verizon proposes new RNM rates for the Commission's consideration. Still, we recognize that the CLECs need certainty in the prices they will pay for RNMs, as they do with other items purchased under the ICA. Therefore, we acknowledge Verizon's right to return to the Commission to address the prices of RNMs, as well as the issue of whether they are recovering those costs in existing UNE rates. However, we are not willing to make those charges retroactive. It was Verizon's choice to withdraw its proposed rates from our consideration, and the CLECs deserve certainty in pricing before they decide to order an RNM.

As the CLECs point out, the FCC stated in the *TRO* that ILECs, typically, will not be able to justify imposing additional charges for routine network modifications:

> [T]he costs associated with these modifications often are reflected in the recurring rates that competitive LECs pay for loops. Specifically, equipment costs associated with modifications may be reflected in the carrier's investment in the network element, and labor costs associated with modifications may be recovered as part of the expense associated with that investment (e.g., through application of annual charge factors (ACFs)). The Commission's rules make clear that there may not be any double recovery of these costs (i.e., if costs are recovered through recurring charges, the LEC may not also recover these costs through an NRC).[56]

The following language is adopted in Section 3.12.12:

> If Verizon believes that the relevant costs of routine network modification are not recovered via existing non-recurring and monthly recurring charges, Verizon may file an application with the Commission that requests approval to impose nonrecurring and/or monthly recurring charges associated with routine network modifications. In such proceeding, Verizon shall bear the burden of proving, (1) that Verizon is not recovering its relevant costs via existing non-recurring and monthly recurring charges, and (2) the type(s) and amount(s) of such costs not currently being recovered. During the interim period and until the Commission makes its decision on Verizon's application, Verizon will continue to undertake routine network modifications without delay or additional charge. If the Commission issues a final decision that determines that Verizon should be allowed to impose additional non-recurring or monthly recurring charges for specified routine network modifications and sets the level of such charges, Verizon may impose such charges on a prospective basis only.

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[56] *TRO* ¶ 640.

(d.) Section 3.12.1.3 – Should the Commission approve the CLECs' proposal to give the CLEC a credit when Verizon doesn't provision a CLEC's DS1 UNE loop order within 14 days due to the need to perform routine network modifications?

Verizon finds the CLECs' proposed 14-day period for provisioning of RNMs to be entirely arbitrary. While many RNMs can be completed within that period, others will take longer. Second, because the CLEC does not start paying for the DS1 loop until it is provisioned, there is no reason to require Verizon to provide CLECs with a bill credit before provisioning is complete.

The CLECs state that their proposed language is aimed at preventing Verizon from gaming the provisioning process by unduly delaying work needed to provide access to UNEs requiring RNMs. The CLECs view this language as necessary because of specific experience with Verizon's taking far longer to complete modifications relating to UNEs than for facilities furnished under tariff. We are not willing to set a penalty, when, as Verizon says, various RNMs take varying amounts of time to provision. However, we have revised the language of Section 3.12.1.3 to reflect the fact that RNMs for UNEs should be performed at parity with those for facilities provisioned under tariff. The following language is adopted for Section 3.12.1.3:

> Verizon shall provision a [CLEC's] DS-1 UNE loop order at parity with facilities provisioned for its own customers under tariff.

(e.) Sections 3.12.1.4, 3.12.15—Should the Commission approve these provisions imposing certain requirements upon Verizon when it rejects a DS1 UNE loop order with a jeopardy code indicating that facilities are unavailable and/or cable placement is required? What modifications, if any, to Verizon's current preordering, ordering, and provisioning systems and practices, including standard provisioning intervals, are required with respect to Routine Network

Modifications if the commission adopts the CLECs' proposed language?

Verizon asserts that the CLECs have proposed to require Verizon to make extensive and expensive changes to its operations support systems (OSS) to address those limited situations where Verizon determines that it cannot provision a DS1 UNE loop even if it performed all applicable RNMs. Verizon also opposes the CLECs' language in which they propose to give themselves the right to withhold one-half of the tariffed special access monthly recurring charges, while they dispute Verizon's rejection of their UNE DS1 loop order. According to Verizon, any right CLEC have to withhold payment for services purchased under a tariff must come from the tariff itself, not a separate agreement.

The CLECs propose language that requires Verizon to provide specific support for assertions that facilities are "not available" and to assist in "work-arounds" to enable CLECs to obtain access to UNEs in such cases.

We believe that it is appropriate for the CLECs to be given additional information about the reason that facilities are not available. Therefore items (1) and (2) under Section 3.12.1.4 are adopted. We reject Sections (3) and (4) which would require changes to Verizon's OSS. It is not appropriate to order changes to Verizon's OSS systems in this arbitration. We concur with Verizon that OSS changes should be addressed through standard change management processes.

The CLECs' proposed language in Section 3.12.1.5 is rejected. The CLECs are not entitled to withhold one-half of the tariffed special access charges while they dispute Verizon's rejection of their UNE DS1 loop order.

24. Issue 24: Should the following definitions be included in the Amendment? If so, what are the appropriate definitions for each:

(a.) Section 4.7.2 – Business Line

The issue presented in this section addresses the calculation of the number of business lines in order to determine whether a CLEC is impaired with respect to access to UNE loops and transport within a particular wire center. CLECs would limit the definition of business lines to switched lines purchased by business customers pursuant to the FCC's definition.

Verizon objects to the CLECs interjection of the phrase "used by CLECs to provide switched service to businesses," saying such a proposed definition is directly contrary to the FCC's rules. Both paragraph 105 of the *TRRO* and the implementing rule require that all stand-alone loops be included in the business line counts.

The FCC's rule 51.5 mirrors the language in ¶ 105 which states in part: "The BOC wire center data we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops." Since the FCC uses the phrase "UNE loops" in both the discussion and in its rule, we must assume that that is exactly what the FCC meant.

According to Verizon, they do not necessarily have the information necessary to determine how a CLEC is using its loop, nor does it compile such data. The CLECs rebut that statement, saying that pursuant to the Bell Atlantic/GTE and SBC/Ameritech merger conditions, Verizon and SBC were both required to provide a discount on UNE loops that serve residential

customers.[57] In spite of this, we must discern the FCC's intent in establishing its rule. As we state above, the FCC is clear that *all* loops should be included in the count, and we do not intend to depart from the FCC's impairment criteria. The CLECs' proposed language in Section 4.7.2 is rejected.

(b.) Section 4.7.3 – Building

In the *TRRO,* the FCC limited a CLEC's right to purchase unbundled DS1 and DS3 loops to a maximum of 10 DS1 loops and one DS3 loop in any single "building." Unfortunately, the FCC did not provide a definition of a "building."

The CLECs propose a definition that includes the phrase "a structure under one roof with a single minimum point of entry (MPOE)." Verizon objects to that language because a "building" is not defined by the number of MPOEs that happen to exist. While Verizon does not see the need for a definition of "building" in the Amendment, we do not agree. Having a definition in place will serve to minimize disputes. We adopt the CLECs' proposed language in Section 4.7.3, with the exception of the reference to a single MPOE.

(c.) Section 4.7.5 – Combination

Verizon opposes the CLECs' proposed language saying that the FCC did not define combination, and it is not necessary to include a definition in the

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[57] *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorization and Application to Transfer Control of a submarine Cable Landing License,* DD Docket 98-184. Memorandum Opinion and Order, 15 FCC Rcd 14032, FCC 00-221, ¶ 307, 309, Appendix D ¶ 35 (2000); *Application of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules,* CC Docket 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, FCC 99-279, ¶¶ 391, 393, Appendix C ¶ 45-46, ¶ 51 (1999).

Amendment. Also, the definition unlawfully implies that Verizon remains obligated to provide UNE-P.

The CLECs disagree saying that the CLECs' proposed definition of "commingling," which is practically a word for word recitation of the FCC's definition in Section 51.5, uses the term, "combination of UNEs." Therefore CLECs see a need to define the term combination.

We see the value of including a definition, but we agree with Verizon that the CLECs' language giving as an example of a combination, "the loop and switching combinations" could be seen as a requirement that Verizon is obligated to provide UNE-P. We adopt the CLECs' definition in Section 4.7.5, but delete the phrase "the loop and switching combinations."

(d.) Section 4.7.6 – Commingling

Verizon objects to the CLECs' proposed definition, saying the FCC's definition of commingling in 47 C.F.R. § 51.5 consistently uses the term *unbundled* network elements, while the CLECs' definition eliminates the word "unbundled" entirely. This would inappropriately broaden Verizon's commingling obligations. The CLECs respond that they are not opposed to accept the insertion of the modifier "unbundled" in the definition.

The CLECs oppose Verizon's simple reference to Rule § 51.5, because if the federal rule changes, Verizon would be free to argue that the ICA's change-of-law provisions could be exercised.

We prefer to have the actual definition in the Amendment, rather than referring to a FCC rule that could change. However, we will add the word "unbundled" to each portion of Section 4.7.6 where the phrase "network element" appears. With that change, the CLECs' proposed language in Section 4.7.6 is adopted.

(e.) Section 4.7.7 – Cross Connection

According to Verizon neither the *TRO* nor the *TRRO* affected the definition of "cross connection." Nor did these orders change the substantive obligations applicable to such connections. Verizon also objects to the reference to "optical cable" which could improperly limit the TRO's holding that optical loops are not subject to unbundling.

The CLECs respond that the cross connect is a UNE as defined by the *TRO*[58] used to connect loop facilities to inside wiring as is referenced in the Amendment. We will adopt the CLECs' proposed language in Section 4.7.7, but eliminate the phrase "optical cable."

(f.) Section 4.7.8 – Dark Fiber Loop

Verizon objects to the language the CLECs added to Verizon's definition of "dark fiber loop," saying that it does not reflect the FCC's rules. Moreover, it is not truly "dark fiber" if electronics equipment is "interspliced."

The CLECs rebut Verizon's assertion, saying the FCC defines dark fiber as optical fiber through which no light is transmitted and no signal is carried. It is unactivated deployed fiber that is left dark, i.e., with no necessary equipment, i.e., "opto-electronics"

The CLECs' definition is adopted in Section 4.7.8. Clearly, the FCC intended to include all unlit fiber.

(g.) Section 4.7.9 – Dark Fiber Transport

Verizon asserts that the CLECs' definition of dark fiber transport omits the crucial qualification that such transport must otherwise meet the definition of dedicated transport, which is limited to facilities between Verizon wire centers.

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[58] *TRO* ¶ 13 n. 20.

We concur with the CLECs that the FCC intended that dark fiber include all unlit fiber. The CLECs' proposed language in Section 4.7.9 is adopted.

(h.) Section 4.7.10 – Dedicated Transport

The CLECs assert that their language is necessary to clarify Verizon's continuing obligation under § 251(c)(2) to offer interconnection facilities even though Verizon has been relieved of offering § 251(c)(3) entrance facilities.

The CLECs object to Verizon's language specifying that dedicated transport includes only those transmission facilities that are "within a LATA." But Verizon states it is not obligated to provide interLATA transport as a UNE. We concur with Verizon; Verizon's proposed language that specifies that transmission facilities are within a LATA in Section 4.7.10 is adopted.

The CLECs dispute the inclusion of Verizon's "switching equipment line-side functionality that terminates loops and are 'reverse collocated' in non-Verizon collocation hotels." Instead, the CLECs propose a much broader definition of reverse collocation, which Verizon asserts is inconsistent with the *TRO* and the *TRRO*.

We find that Verizon's definition more closely mirrors the FCC's language in footnote 251 of the *TRRO,* which states in part: "This definition also includes any incumbent LEC switches with line-side functionality that terminate loops that are 'reverse collocated' in non-incumbent LEC collocation hotels." We will adopt Verizon's proposed language on this issue in Section 4.7.10.

Verizon states that its definition matches the FCC's rule, and the CLECs' does not. Rule 51.319 defines "Dedicated Transport" as including the transport "between wire centers or switches owned by incumbent LECs…and switches owned by requesting telecommunications carriers" – not the "switches and wire centers" owned by other carriers. We agree with Verizon that the CLECs'

language broadens the obligation established by the FCC. Verizon's proposed language relating to this issue in Section 4.7.10 is adopted.

Verizon disputes the CLECs' language that says a CLEC "may request that Dedicated Transport UNEs be reclassified as an interconnection facility pursuant to Section 251(c)(2) of the Act." As we determined in Issue 20, CLECs have the right to dedicated transport facilities pursuant to Section 252(c)(2). The CLECs' proposed language on this issue is adopted, with modification. In its comments on the DD, Verizon points out that the CLECs' language fails to limit the reclassification requirement only to those "dedicated transport UNEs the CLEC may be using for interconnection and that are currently configured in a similar fashion as interconnection facilities." Verizon's proposed language will be added to Sections 4.7.10 and 4.7.19.

In its comments on the DD, Verizon objects to the CLEC language that does not allow Verizon to impose any charges on CLECs, even if physical work is required. According to Verizon, a typical interconnection arrangement would not be configured in the same way as the typical dedicated transport UNE and reclassifying a dedicated transport UNE would almost inevitably require physical arrangements. Sections 4.7.10 and 4.7.19 shall be modified to state that, to the extent that a reclassification involves physical work, Verizon shall be compensated for that physical work.

(i.) Section 4.7.12 – Distribution Sub-Loop Facility

Verizon's proposed language is adopted. It reflects the fact that unbundling of the distribution sub-loop facility is limited to copper pursuant to the FCC's rules in Section 51.319(b)(1). We will reject the CLECs' proposed language in its definition of "Loop Distribution" in Section 4.7.33, which does not include the word "copper." Also, the CLECs' language in Section 4.7.33 goes beyond a definition, when it gets into technical feasibility issues.

(j.) Section 4.7.13 – DS0

Verizon asserts that the definition of DS0 did not change with either the *TRO* or the *TRRO.* Therefore there is no need for it here. In their Reply Comments, the CLECs correct inconsistencies in the CLEC definition. The first sentence should be edited to read: "….up to and including 64 kilobits per second." The change proposed by the CLECs eliminates the internal inconsistencies in their definition in Section 4.7.13, and we will adopt it.

(k.) Section 4.7.18 – Enhanced Extended Link (EEL) Combination

Verizon opposes the CLECs' proposed definition of EELs saying it is unnecessary given that the CLECs have already agreed to the carefully delineated term "High Capacity EEL" in Section 3.11.2.1 of the Amendment. Further, Verizon says the definition could lead to unlawful results since the CLECs' definition improperly includes only UNE EELs and not commingled EELs. Then, in Sections 3.11.2 and 3.11.2.1, the CLECs repeated use the term "EEL," which might effectively exempt from the EEL certification requirements any high-capacity EELs that are not comprised solely of UNEs. Verizon points out that under the FCC's rules, all high-capacity EELs are subject to the certification requirements.

For the reasons described by Verizon, we reject the CLECs' proposed definition in Section 4.7.18. While we see the value in including a definition for EELs, the CLECs' definition is problematic.

(l.) Section 4.7.19 – Entrance Facility

Although the parties agree the Amendment should include a definition of entrance facilities, Verizon's proposed definition is restricted to its former obligation to provide entrance facilities as a UNE. The CLECs' proposed

language recognizes Verizon's continuing interconnection obligations under § 251(c)(2).

We concur with Verizon that there is no reason to refer to a facility "used for reciprocal compensation purposes." However, under Issue 20, we determined that CLECs are entitled to receive entrance facilities under the interconnection obligations of 251(c)(2). The CLECs' proposed definition is adopted in Section 4.7.19, except the phrase "or reciprocal compensation purposes" is rejected.

(m.) Section 4.7.22 – Fiber-Based Collocator

Verizon opposes the language CLECs propose to add that states that "fiber-based collocator" shall not apply to any affiliate of Verizon, or an entity that is subject to a binding agreement that, if consummated, would result in its becoming an affiliate of Verizon. The CLECs also state specifically that the Verizon/MCI merger conditions imposed by the FCC state that MCI should not be identified as a fiber-based collocator for purposes of asserting no impairment pursuant to the UNE triggers in the TRRO.

Verizon states that when a carrier becomes an affiliate of Verizon's the relevant fact is that the carrier first became a fiber-based collocator as a non-affiliated CLEC. Verizon states that it has already agreed to go beyond the requirements of the *TRRO* and recalculate the wire centers that satisfy the FCC's no-impairment criteria excluding MCI. Verizon asserts that because this is a voluntary merger commitment and not a requirement of Sections 251/252, it is not appropriate to include the CLECs' proposed modification in the Amendment.

We disagree with Verizon's conclusion. Including the statement in the Amendment could result in fewer disputes among the parties. The CLECs' proposed language in Section 4.7.22 is adopted.

(n.) Hot cuts (this issue has been deferred)

(o.) Section 4.7.27 – Hybrid Loop

Verizon claims that a hybrid loop is not one that serves a mass market customer. The CLECs assert that Verizon is incorrect. The FCC stated that DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops and that the unbundling obligation associated with DS1 loops is in no way limited with respect to hybrid loops typically used to serve mass market customers.[59]

The CLECs' proposed language in Section 4.7.27 is adopted as is Verizon's language which makes clear that FTTC loops are covered by FTTH rules and cannot be considered hybrid loops.[60]

(p.) Section 4.7.28 – Inside Wire Subloop

Verizon asserts that since California is not an inside wire state, the CLECs' definition of inside wire subloop is superfluous. The CLECs disagree saying that the *TRO* clearly states that ILECs must offer unbundled access to subloops where the incumbent LEC owns, controls or leases the wiring at such premises.[61] The CLECs assert that their definition of inside wire subloop is not superfluous and instead is consistent with the FCC's rules. In addition, inside wire subloop is addressed in Section 3.3.1 of the Amendment and it is therefore appropriate to include in the definitions.

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[59] *TRO* ¶ 325, n. 956.

[60] Memorandum Opinion and Order, *In the Matter of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160C,* FCC 04-254 at 5, rel. October 27, 2004.

[61] *TRO* ¶ 7.

We concur with the CLECs. Their proposed language in Section 4.7.28 is adopted, with one modification. We eliminate the references to "leased" facilities, which is not included in the FCC's Rule 51.319(b).

(q.) Section 4.7.30 – Line Conditioning

Verizon points out that in the *TRO*, the FCC did not adopt any new rules related to line conditioning. Instead, it directly stated that "we readopt the [FCC's] previous line and loop conditioning rules for the reasons set forth in the UNE Remand Order."[62] Verizon asserts that because the requirement to provide line conditioning is not a new obligation, there is no need to address this issue in this proceeding, the purpose of which is to address changes of law.

The CLECs respond that if the definition is not included, Verizon could argue that it has no obligations regarding line conditioning because the definition was not included in the Amendment.

In order to ensure that all parties' obligations and rights are clearly stated, we will adopt the CLECs' proposed language in Section 4.7.30.

(r.) Section 4.7.32 – Loop or Local Loop

According to Verizon, neither the *TRO* nor the *TRRO* affected the FCC's definition of "loop," and there is no need for the Commission to revisit that issue here. We agree with Verizon. The CLECs' proposed definition of a loop in Section 4.7.32 is rejected.

(s.) Section 4.7.33 – Loop Distribution

The CLECs' proposed definition in Section 4.7.33 is rejected.
See Issue 24(i).

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[62] *TRO* ¶ 642 (citing *UNE Remand Order* ¶ 172).

(t.) Section 4.7.36 – Packet Switching

The CLECs object to Verizon's proposed definition of packet switching, saying there is no reason for the definition to be included in the Amendment. Verizon asserts that its definition is in accordance with federal law and should be adopted. We will adopt Verizon's proposed language in Section 4.7.36.

(u.) Section 4.7.38 – Routine Network Modifications

Verizon asserts that the definition is unnecessary because the substantive provision of the Amendment already define the scope of routine network modifications. In addition, it is not clear what "prospective or reactive" activities might mean.

We believe that it is important to include a definition of the phrase "routine network modifications," but we agree with Verizon that the phrase "those prospective or reactive" activities is cryptic and subject to dispute. The CLECs' proposed definition in Section 4.7.38 is adopted, with the exception of that phrase.

Since Routine Network Modficiations is a defined term, it should be capitalized wherever it appears in the Amendment.

(v.) Section 4.7.39– Signaling (Signaling System 7)

Verizon states that the CLECs agree with Verizon's definition of signaling. However, the CLECs add additional language that Verizon has an obligation to provide interconnection with its signaling network. We have already discussed the access to SS7 under Issue 20, and that does not need to be reiterated here. We adopt Verizon's simple definition of signaling in Section 4.7.39.

(w.) Section 4.7.40 – Single Point of Interconnection (SPOI)

Verizon asserts that this definition is unnecessary for the reasons Verizon explained in Issue 9. Verizon does not own inside wire subloop because of its MPOE policy in California; hence, the SPOI is an irrelevant concept here.

According to the CLECs, in the *TRO* the FCC denied Verizon's request to eliminate the SPOI requirement.[63] Verizon claimed that the SPOI rule required Verizon to construct a new network element. The FCC clarified in footnote 1058 that a SPOI is a means of interconnection with a network element, rather than part of the network element. The FCC cited Section 251(c)(2) of the Act in support of this conclusion that incumbent LECs are required to provide interconnection at any technically feasible point within the carrier's network.

The CLECs assert that the FCC concluded that incumbent LECs are under a continuing obligation to accommodate technically feasible methods of interconnection, including modifying their networks to do so. ILECs are not relieved of the requirement to construct a SPOI necessary to accommodate subloop access at multiunit premises.[64]

We concur with the CLECs that their definition complies with the FCC's rules. The CLECs' language is adopted in Section 4.7.40.

(x.) Section 4.7.41 -- Sub-Loop for Multiunit Premises Access

According to Verizon, there are two disputes over this definition. First, the CLECs propose to add language assuming that Verizon owns inside wire

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[63] *TRO* FN 1058.

[64] *Id.*

subloops in California, which, as explained earlier, is contrary to Verizon's MPOE policy and practice.

The CLECs object to Verizon's statement that "[i]t 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 spice case to reach the wiring within the cable." Verizon asserts this language is consistent with the FCC's rule § 51.319(b)(1)(i).

The CLECs' proposed language in Section 4.7.41 is adopted. This language is consistent with the TRO definition that the LEC must provide access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or type of loop that the requesting carrier seeks to provide for its customer. This includes subloop "owned, controlled or leased by Verizon." To the extent that Verizon does not own or control the inside wire, clearly this provision does not apply.

Verizon's proposed language in Section 4.7.41 is also adopted. Verizon's language is consistent with the FCC's rule. Verizon is not required to remove a splice case in order to access a portion of a loop.

25. Issue 25: Pricing Attachment:

(a.) Section 1.2 – When applying any applicable rates what documents should control? Specifically, should the Pricing Attachment reference the Agreement, the Amended Agreement, Exhibit A, and/or Verizon's federal or state tariff?

In Section 1.2 Verizon provides that charges for services under the Amendment shall generally be those set forth in "Exhibit A" and the underlying ICA, including any cross references to applicable tariffs. Verizon states that Exhibit A will be superseded by any new charges that are required or allowed to go into effect by the Commission or the FCC, including a filed tariff. Verizon

notes that since it withdrew its proposed new rates, they no longer appear in Exhibit A. Also, if Exhibit A indicates that a charge is "to be determined" (TBD) but the underlying ICA already contains a charge for the service, the ICA will control until and unless a new charge applies under Exhibit A.

The CLECs object to the references to Exhibit A. Second, the CLECs object to the sentence that allows the underlying ICA (where applicable) to provide a charge for services until a new charge takes effect. Verizon asserts that if the underlying ICA already contains a charge for RNM or other items, the adoption of the amendment should not allow the CLEC to escape charges to which it previously agreed to which the Commission approved.

We find that it is appropriate to reference Exhibit A, since if new rates go into effect, they would be included in that exhibit. We concur with the CLECs that they need certainty in the prices they are paying. Therefore, we delete the phrase that refers to cross reference to Verizon's tariffs.

In their comments on the DD, the CLECs assert that it is not reasonable to allow Verizon to continue to assess charges for RNMs if such charges were previously established in a party's ICA. CLECs that, for one reason or another , previously entered into ICAs that establish charges for these activities are entitled, in response to the *TRO* and *TRRO* to invoke the change-of-law provisions of their ICAs for the purpose of revising such pricing to conform to law. Allowing Verizon to continue indefiniately to assess previously established prices denies these CLECs their rights under their ICAs to revise any prices that do not meet the requirements of the *TRO* and *TRRO*. In Paragraph 640 of the *TRO,* the FCC indicates that the costs associated with RNMs "often are reflected in the recurring rates that competitive LECs pay for loops." The FCC also states that "there may not be any double recovery of these costs." Therefore, since we have not had an opportunity to examine the rates in the underlying ICAs to

determine whether the costs of those RNMs are being recovered in existing UNE rates, we will not allow Verizon to charge the rates in its underlying ICAs. We have set up a process for Verizon to come to the Commission so that we can determine which RNMs are included in Verizon's current UNE rates, and which are not.

We note that some of the items listed in Exhibit A, are items for which we have determined that no charges will apply; "conversion – service order" and "circuit retag" are two such examples. Any functions that we have determined in this Amendment should be performed at no charge by Verizon should be removed from the list in Exhibit A.

In their reply comments on the DD, the CLECs concede that xDSL line conditioning charges previously adopted should remain in place. We concur.

(b.) Section 1.3 – Should the Pricing Attachment provide that any charges approved or allowed by the Commission or FCC should apply without further amendment to the ICA?

Verizon states that Section 1.3 provides that if the Commission or FCC approves or allows a charge to go into effect (including by tariff) then those charges shall apply under the Amendment as if set forth in Exhibit A. According to Verizon those charges will be effective automatically and shall not be retroactive absent a Commission decision on that point.

Verizon's proposed language in Section 1.3 is rejected. We have already stated that we will not approve references back to a tariff that can easily be changed by Verizon. CLECs have no certainty in the prices they will pay, if those rates can be changed by tariff at any time. Also, changes ordered by the Commission or FCC would be subject to change-of-law provisions.

(c.) Section 1.4 – Should the Pricing Attachment provide that charges covered by Sections 1.2 and

1.3 are applicable whether or not so stated in the text of the Amendment?

Verizon indicates that it cannot be forced to perform work for free merely because the Amendment does not "specifically" state that a charge applies for a given service. Verizon's language is adopted. It does not matter whether the text of the Amendment specifically states that a charge applies for a particular service. Since we have deleted Section 1.3, the reference to that section should be deleted from Section 1.4. With that change, Section 1.4 is adopted.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(5) of the Commission's Rules of Practice and Procedure. Comments were filed on February 8, 2006 and Reply Comments, on February 14, 2006. Those comments have been taken into account, as appropriate, in finalizing this decision.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. Verizon's tariff should not be allowed to take precedence over the ICAs.

2. The Commission is precluded from ordering any unbundling where the FCC has determined that no unbundling should be required.

3. CLECs are not precluded from making future arguments that Verizon's commercial agreements should be subject to Commission approval under Section 252.

4. This Amendment is not intended to implement future changes in law regarding unbundling obligations.

5. Change-of-law provisions in the underlying ICAs govern such future changes in unbundling rules.

6. CLECs' customers' service should not be disconnected because the CLEC has not submitted an LSR or ASR by the end-date of the transition period.

7. Verizon is not required to unbundle packet switching.

8. When a copper loop is retired, the ILEC must provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the home loop.

9. In overbuild situations, fiber loops must be unbundled for narrowband services only.

10. The rules adopted for FTTH/FTTC loops apply to all customers.

11. When a CLEC requests unbundled access to an IDLC loop, Verizon should employ the least-cost method of providing a loop to the CLEC.

12. When a CLEC requests access to an IDLC loop, Verizon is afforded the discretion to choose which form of access to provide.

13. If the CLEC requests construction of a loop, the CLEC should pay all appropriate charges.

14. To the extent that Verizon does not own or control on-premises wiring, the Amendment language relating to access to those subloops does not apply.

15. The FCC does not address the issue of CLEC affiliates for purposes of applying the FCC's caps on availability of unbundled DS1 and DS3 UNE loops and transport.

16. The cap of 10 UNE DS1's applies on all routes, not just those for which the FCC determines that there is no unbundling obligation for DS3 transport.

17. If a CLEC submitted an order for a DS1 loop prior to March 11, 2005 but Verizon did not process the order, it is considered leased by the CLEC and should be encompassed in the embedded base subject to the transition rates.

18. CLECs are not entitled to transition pricing once their services have been transitioned.

19. Verizon has the information about each wire center, and the CLECs do not.

20. In order to make a diligent inquiry, CLECs need to obtain information about the wire centers from Verizon.

21. Verizon should maintain an updated wire center list on its website for easy access by CLECs.

22. It is appropriate that the data regarding wire centers be provided subject to a Commission-approved protective order.

23. There is no reason for CLECs to obtain data for those wire centers which have satisfied the no-impairment criteria.

24. CLECs should have access to the names of fiber-based collocators, subject to the protective agreement.

25. Thirty days is a reasonable period for Verizon to notify a CLEC of a dispute once a CLEC has self-certified a particular circuit.

26. To the extent that Verizon is entitled to retroactive pricing, it is fair that it should be at the lowest rate the CLEC could have obtained if it had not ordered the facility as a UNE.

27. It is appropriate to adopt a transition period of 9 months for DS1/DS3 high capacity loops and DS1/DS3 dedicated transport, and 12 months, for dark fiber.

28. The *TRRO* does not allow CLECs to add new high-capacity loops or dedicated transport during the transition period.

29. If a CLEC enters into a long-term contract to receive discounted services, the CLEC may not dissolve the long-term contract based on new circumstances.

30. CLECs should not be required to self-certify within 60 days after Verizon's designation of a wire center as non-impaired.

31. CLECs have three years after Verizon designates a wire center as non-impaired to self certify.

32. Verizon should continue to provide new UNEs during the dispute resolution process.

33. If a non-impaired wire center reverts back to an impaired wire center due to an error in Verizon's classification, CLECs are entitled to convert their services back to UNEs and to be compensated for the difference in pricing.

34. Changing a circuit i.d. does not involve physical work.

35. Some costs typically associated with establishing new services will not be incurred by Verizon in carrying out transitions or conversions.

36. In D.05-03-027, the Commission granted an extension to May 1, 2005 for the ordering of additional UNE-P's for the embedded base of customers. The stated purpose of that extension was to allow the parties time to negotiate amendments to their ICAs.

37. Large orders may be coordinated on a project basis.

38. Disruptions to an end user's service should be reduced to a minimum.

39. The entity paying a bill should be given the information necessary to enable it to ensure that the bill is correct.

40. The disconnection of a particular UNE and the initiation of an analogous serving arrangement must be intertwined in order to avoid disruption in service to CLECs' customers.

41. The FCC did not condition unbundling relief for high-capacity facilities upon access to conduit.

42. It is in appropriate to establish precedent, based on decisions made by other state commissions.

Conclusions of Law

1. Any carrier with an interconnection agreement with Verizon that has a dispute over the change-of-law provisions related to the FCC's *TRO* and *TRRO* orders will be subject to the outcome of this proceeding.

2. A state commission is preempted from ordering unbundling in those instances where the FCC has determined that no unbundling should be required.

3. Nothing in this Amendment would eliminate the reliance on applicable law in underlying ICAs.

4. The FCC's FTTH rule for New Builds (Rule 51.319(a)(3)(i) does not require the ILEC to provide access on an unbundled basis.

5. Because ILECs are never required to perform conversions in order to continue serving their own customers, such charges are inconsistent with Section 202 of the Act.

6. CLECs are entitled to interconnect to Verizon's SS7 network pursuant to Section 251(c)(2).

7. Verizon has no obligation to provide de-listed UNEs after March 11, 2006.

8. Pursuant to Rule 77.7(f)(5) of the Commission's "Rules of Practice and Procedure," the comment period for public review and comment of a draft decision under the state arbitration provisions of the federal Telecommunications Act of 1996, may be reduced or waived.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Pursuant to the Telecommunications Act of 1996, the Amendment to the Interconnection Agreements between Verizon California Inc. and various Competitive Local Exchange Carriers (CLECs) and Commercial Mobile Radio Service Providers is adopted.

2. Within 30 days of the effective date of this order, the parties shall file as an Advice Letter with the Commission's Telecommunications Division the final version of this Amendment, along with a list of the CLECs covered by the terms of the Amendment.

3. The effective date for the amendments shall be the effective date of this order.

4. Parties shall file the proposed protective order via a motion in this docket to be approved by a Ruling of the assigned Administrative Law Judge.

This order is effective today.

Dated February 16, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners