Before the
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	D.T.E. 04-33

REPLY BRIEF OF THE COMPETITIVE CARRIER GROUP

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A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp., DIECA Communications Inc. d/b/a Covad Communications Company, DSCI Corp., IDT America Corp., KMC Telecom V, Inc. and XO Communications Services, Inc. (formerly XO Massachusetts, Inc. and Allegiance Telecom of Massachusetts, Inc.) (collectively, members of the "Competitive Carrier Group"), through counsel, hereby submit this Reply to the Initial Brief of Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon").[1]

INTRODUCTION

The competing interconnection agreement amendments proposed by Verizon and various competitive local exchange carriers ("CLECs") participating in this arbitration, including members of the Competitive Carrier Group, highlight a single, fundamental disagreement between the parties that the Department must conclusively resolve: whether Verizon is entitled, under section 252 of the 1996 Act,[2] to impose on competitive LECs contractual changes to change of law

[1] Verizon Massachusetts' Initial Brief, filed Apr. 1, 2005.

[2] 47 U.S.C. § 252.

processes that would permit Verizon to unilaterally implement future unbundling determinations by the Federal Communications Commission ("FCC"),[3] without having to follow the section 252 negotiation and arbitration process. Verizon is not. The responses of the Competitive Carrier Group and other Massachusetts CLECs to the issues submitted for arbitration by the Department, in the above-captioned proceeding, make clear that the 1996 Act, and the rules and orders of the FCC, including the *Triennial Review Order* and the *Triennial Review Remand Order*, compel a finding by the Department that Verizon's contract proposal fails to comply entirely with federal law. Therefore, the Department should reject the interconnection agreement amendment framework proposed by Verizon wholesale.

Verizon's proposed Amendment 1, addressing primarily those section 251(c)(3) network elements "de-listed" by the FCC under the *Triennial Review Remand Order*, introduces contract language that would permit Verizon to disregard, and in fact, to nullify existing change of law processes set forth in the Verizon's interconnection agreements with competitive LECs that the Department has approved, under section 252 of the 1996 Act. At bottom, the modified "change of law" provisions proposed by Verizon flatly contradict the *Triennial Review Order* and the *Triennial Review Remand Order*, both of which expressly require that Verizon and competitive LECs implement substantive changes to the FCC's unbundling rules **only** as directed by section 252 of the 1996 Act, through negotiation and, as necessary, state commission arbitration. Indeed, as stated by the FCC in the *Triennial Review Order*, "permitting voluntary negotiations for binding interconnection agreements is the very essence of section 251 and 252." The FCC twice rejected requests by the Bell Operating Companies, including Verizon, to

[3] *n the Matter of Unbundled Access to Network Elements* (WC Docket No 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order on Remand, FCC 04-290 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*").

override the change of law processes required by section 252 of the 1996 Act and to unilaterally implement modifications to the FCC's unbundling rules, and the Department should do the same in this arbitration.

Of critical importance, the contract language proposed by Verizon's amendment also imposes unlawful limitations on the authority of state commissions, including the Department, under section 252 of the 1996 Act, to oversee compliance with incumbent LEC unbundling obligations arising under all applicable law, including without limitation, sections 251 and 271 of the 1996 Act, the Verizon Merger Order, the rules and orders of the FCC and Massachusetts state law. The 1996 Act imposes only narrow restrictions on the authority of the state regulatory commissions, under section 252, to promulgate and enforce federal and state law unbundling obligations imposed on incumbent LECs through the interconnection agreement arbitration process. Thus, the Department should not tolerate efforts by Verizon to curtail the authority reserved for state commissions by Congress, under the 1996 Act, through provisions that define the scope of existing, Department-approved interconnection agreements to only those network elements that Verizon is required to provide, on unbundled basis, under section 251(c)(3).

The interconnection agreement amendment proposed by Verizon, which pre-dates the release date of the *Triennial Review Remand Order* by several months, also fails to incorporate the substantive requirements imposed by the FCC's modified unbundling rules applicable to local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high capacity (DS1 and DS3) and dark fiber dedicated transport, including the transition framework established by the FCC for network elements that Verizon no longer is required to provide under section 251(c)(3) of the Act. For example, as the Competitive Carrier Group consistently has

maintained, the Amendment to the parties' interconnection agreements must incorporate and detail the transition plans and transition rates ordered by the FCC, under the *Triennial Review Remand Order*, for each UNE and UNE combination "de-listed" under section 251(c)(3) of the 1996 Act, including the wire center and route locations designated by Verizon to satisfy the "non-impairment" service eligibility criteria for unbundled loops and dedicated transport facilities. The Department may not order the parties to execute an Amendment to existing interconnection agreements that does not comply with existing federal law

ISSUES

ISSUE 1: 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 state law?

Yes. Consistent with the existing interconnection agreements between Verizon and members of the Competitive Carrier Group, the Amendment should incorporate, by reference, all Applicable Law, including incumbent LEC unbundling obligations that do not arise under section 251 and 252 of the 1996 Act.[4] Indeed, as discussed more fully below, and in response to Issue No. 31, Verizon remains subject to independent obligations, under section 271 of the 1996 Act and Massachusetts state law, to provide to competitive LECs unbundled access to section 251(c)(3) network elements "de-classified" by the FCC, in *Triennial Review Order* and the *Triennial Review Remand Order*. The FCC's unbundling orders do not displace the authority reserved by Congress for the state commissions, under the 1996 Act, and do not otherwise preempt state commission unbundling regulations that are consistent with, and further

[4] For example, Applicable Law is defined in the Cleartel and DSCI Agreements with Verizon as "[a]ll effective laws, government regulations and government orders, applicable to each Party's performance of its obligations under this Agreement." Section 2.8. The *Triennial Review Order* and the *Triennial Review Remand Order* did not change the scope of Applicable Law and did not pre-empt the state commissions' authority.

the local competitive objectives of the 1996 Act. Thus, the Department should approve the definition of "Applicable Law" proposed by the Competitive Carrier Group, at § 2.1, and other references to Verizon's unbundling obligations under Massachusetts state law.[5]

The contract language proposed by Verizon, to implement the *Triennial Review Order* and the *Triennial Review Remand Order*, improperly restricts the scope of the unbundling obligations set forth in the parties' interconnection agreements to only those obligations arising under section 251(c)(3) of the 1996 Act.[6] Specifically, as set forth in its Initial Brief, Verizon has adduced that FCC's unbundling rules, arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, preempt the authority of state commissions to promulgate and enforce statewide unbundling obligations for network elements that Verizon no longer is required to unbundle pursuant to section 251(c)(3) of the 1996 Act. The legal position asserted by Verizon, in support of its proposed interconnection agreement amendment, is inconsistent both with the 1996 Act and the *Triennial Review Order*. To the contrary, the 1996 Act and the *Triennial Review Order* each include provisions that expressly foreclose giving blanket preemptive effect to the FCC's section 251(c)(3) unbundling rules where a state commission establishes concurrent unbundling obligations that are consistent with and do not frustrate the objectives of the 1996 Act. Accordingly, Verizon's efforts to include in the Amendment a wholesale exemption from unbundling obligations arising under Massachusetts state law must be rejected by the Department.

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[5] *See also* Competitive Carrier Group Proposed Amendment, §§3.2.1.2, 3.2.2.2, 3.2.2.4, 3.3.1.3, 3.3.2.2, 3.4.1.1, 3.6.1.1, 3.7.2.1.

[6] *See e.g.*, Verizon Proposed Amendment, §§3.1.1, Verizon Proposed Amendment II, §§ 2.1. 2.3, 3.1, 3.2.2, 3.4.1.1, 3.4.1.2, 3.5.

As set forth in the Initial Brief of the Competitive Carrier Group,[7] the plain language of the 1996 Act expressly preserves the authority of the state commissions to promulgate and enforce incumbent LEC unbundling obligations, under state law, including those obligations established through the section 252 interconnection agreement arbitration process.[8] Specifically, section 251(d)(3) of the 1996 Act, entitled "Preservation of State Access Regulations," provides that the FCC may not "preclude the enforcement of any regulation, order, or policy of a State commission," establishing incumbent LEC access obligations, that is consistent with section 251 of the 1996 Act, and that does not "substantially prevent implementation" of section 251 of the 1996 Act or it purposes. In addition, section 252(e)(3) of the 1996 Act provides that "nothing in [section 252] shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements." Thus, contrary to the legal position asserted by Verizon, the Act protects state commission actions that promote the local competition objectives of the 1996 Act, and in turn, expressly prohibits preemption by the FCC of state commission unbundling rules that do not "substantially prevent" implementation of the federal unbundling framework.

Consistent with the so-called "savings clauses" included in the 1996 Act, the FCC flatly declined to preempt, as a matter of law, state commission regulation of incumbent LEC interconnection and unbundling obligations.[9] Indeed, in the *Triennial Review Order*, the FCC expressly recognized that "[i]f Congress intended to preempt the field, Congress would not have

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7 *See* Competitive Carrier Group Initial Brief at 2-4, AT&T Initial Brief at 5-10, CCC Initial Brief at 6-11, MCI Initial Brief at 2-5.

8 *See* 47 U.S.C. §§ 251(c)(3), 252(e)(3).

9 *Triennial Review Order* at ¶ 192.

included section 251(d)(3) in the 1996 Act."[10] Rather, the FCC concluded that state commission authority to establish incumbent LEC unbundling obligations is limited only by sections 251(d)(3)(B) and (C) of the 1996, which apply to specific state law requirements that are contrary to the FCC's rules, and that thwart or frustrate the federal unbundling framework. Therefore, consistent with the 1996 Act and the *Triennial Review Order*, the Department lawfully may establish, in this proceeding, incumbent LEC unbundling obligations that comport with section 251 of 1996, and that do not frustrate implementation of the FCC's modified unbundling rules, arising under *Triennial Review Order* and the *Triennial Review Remand Order*.

In its Initial Brief, Verizon mistakenly implies that all state law unbundling obligations applicable to network elements that the incumbent LECs no longer are obligated to provide, under section 251(c)(3) of the 1996 Act, are preempted by mandate of the FCC, in the *Triennial Review Order*. However, the D.C. Circuit, in *USTA II*, reached a contrary result. Specifically, in responding to concerns of state regulators regarding the preemptive scope of the *Triennial Review Order*, the D.C. Circuit concluded that the FCC did not issue a final agency action foreclosing state commission regulations that would require incumbent LECs to unbundle network elements that the FCC determined are no longer subject to a concurrent, federal obligation, under section 251(c)(3) of the 1996 Act.[11] By contrast, consistent with the *Triennial Review Order*, the *USTA II* court noted that such a controversy is appropriately resolved through the declaratory ruling procedures established by the FCC, whereby the FCC may consider whether "a particular state unbundling obligation is inconsistent with the limits of section

[10] *Id.*

[11] *USTA II*, 594.

251(d)(3)(B) and (C)" of the 1996 Act.[12] Verizon's wholesale attempt to block future unbundling regulations by the Department, implemented through the interconnection agreement arbitration process, curtails the authority of the Department, under sections 251 and 252 of the 1996 Act, in a manner that is inconsistent with existing federal law.

The *BellSouth Declaratory Ruling* relied on by Verizon, in its Initial Brief, also does not support Verizon's proposal to exempt, from the amendments to its existing interconnection agreements, any and all incumbent LEC unbundling obligations that the Department may now, or in the future, establish for network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act.[13] Indeed, the *BellSouth Declaratory Ruling* applies narrowly to a group of specific orders of the Florida, Georgia, Louisiana and Kentucky commissions addressing unbundled access to the Low Frequency Portion of the Loop, and thus, is simply not relevant to this arbitration. As discussed above, the *Triennial Review Order* permits parties, under limited circumstances, to request preemption by the FCC of a specific state-imposed unbundling obligation that the parties believe conflicts with section 251 of the 1996 Act, and "substantially prevents" implementation of the federal unbundling framework established by the FCC. The declaratory review process set forth in the *Triennial Review Order* does not, however, permit a generic order by the FCC preempting *all* state commission actions that establish incumbent LEC unbundling obligations in addition to those specifically ordered by the FCC. The *BellSouth Declaratory Ruling* grants only the relief

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12 *Id. See also Triennial Review Order* at ¶ 195.

13 *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, Memorandum Opinion and Order and Notice of Inquiry, WC Docket No., 03-251, FCC 05-78 (March 25, 2005).

requested by BellSouth's Petition,[14] and does not purport, as Verizon claims, to displace any state commission authority to promulgate and enforce unbundling regulations applicable to network elements that incumbent LECs no longer are obligated to provide under section 251(c)(3) of the 1996 Act.

ISSUE 2: **What terms and conditions and/or rates regarding implementing changes in unbundling obligations or changes of law should be included in the Amendment to the parties' interconnection agreements?**

As the Competitive Carrier Group repeatedly has emphasized in this proceeding, changes to the FCC's unbundling rules arising from the *Triennial Review Order* and the *Triennial Review Remand Order* may be implemented only through the change of law processes set forth in the Department-approved interconnection agreements between Verizon and competitive LECs. The FCC's unbundling orders do not direct or even permit Verizon, through this arbitration, to simply discard binding change of law processes, and to replace those processes with contract provisions that would permit Verizon to unilaterally implement, without state commission oversight, future determinations by the FCC that certain network elements no longer shall be subject to section 251(c)(3) unbundling obligations. Thus, the contract "change of law" processes that Verizon seeks to impose upon competitive LECs,[15] by its proposed interconnection agreement amendment, unquestionably violate sections 251 and 252 of the 1996 Act, as well as the FCC's mandates, under the *Triennial Review Order* and the *Triennial Review Remand Order*, for implementing changes to its unbundling rules.

The FCC's unbundling orders expressly require that Verizon negotiate in good faith, and arbitrate before the Department, as necessary, an interconnection agreement

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[14] *Id.*

[15] Verizon Proposed Amendment, §2, Verizon Proposed Amendment II, §2.

amendment that properly implements modifications to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*. The FCC, in the *Triennial Review Order*, directed carriers to implement its modified unbundling rules in accordance with the contractual change of law provisions set forth in existing state commission-approved interconnection agreements. In so doing, the FCC explicitly recognized that "modification of existing interconnection agreements to reflect these new rules cannot be accomplished overnight," and further, that "many interconnection agreements contain change of law provisions that allow for negotiation and some mechanism to resolve disputes about new agreement language implementing the new rules."[16] Nonetheless, the FCC rejected, out of hand, pleas by the Bell Operating Companies ("BOCs"), including Verizon, to "override the section 252 process and unilaterally change all interconnection agreements to avoid delay associated with renegotiation of contract provisions."[17] Specifically, the FCC stated:

> Permitting voluntary negotiations for binding interconnection agreements is the very essence of section 251 and 252. We do not believe that the lag time involved in negotiating and implementing new contract language warrants the extraordinary step of the Commission interfering with the contract process.[18]

Accordingly, there can be no doubt that the *Triennial Review Order* leaves intact the state commission-approved change of law processes set forth in existing interconnection agreements, which require carriers to implement changes to the FCC's unbundling rules only through negotiation and arbitration, as required by sections 251 and 252 of the 1996 Act.

In the *Triennial Review Remand Order*, the FCC again directed carriers to implement changes to the FCC's unbundling rules "as directed by section 252 of the [1996]

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16 *Triennial Review Order* at ¶ 700.

17 *Id.* at ¶ 701.

18 *Id.*

Act," and in accordance with the contractual change of law provisions set forth in existing state-commission approved interconnection agreements. Importantly, in the *Triennial Review Remand Order*, the FCC noted that "the failure of incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and [the FCC's] implementing rules may subject that party to an enforcement action." Thus, the *Triennial Review Remand Order*, like the *Triennial Review Order*, makes clear that Verizon's efforts to forego, through its proposed contract language, negotiation and arbitration of an appropriate interconnection agreement amendment to implement changes to the FCC's unbundling rules, including any future section 251(c)(3) unbundling determinations by the FCC, are flatly inconsistent with existing federal law.

Of critical importance, as discussed in the Initial Brief of AT&T, the interconnection agreement amendment proposed by Verizon unlawfully seeks to displace the Department as the regulatory body charged with ensuring that Verizon complies fully with its obligations, under all Applicable Law, to provide to competitive LECs access to its network elements, on an unbundled basis. Specifically, as noted above, the contract language proposed by Verizon would permit Verizon to unilaterally implement all future determinations by the FCC "de-listing" section 251(c)(3) UNEs, without state commission supervision through the negotiation and arbitration processes required by section 252 Act. Thus, Verizon would maintain authority to interpret its own unbundling obligations arising under federal law, and to impose on competitive LECs' a self-serving unbundling framework, unfettered by state commission regulation. The result sought by Verizon unquestionably violates section 252 of the 1996 Act, and therefore, Verizon's proposed interconnection agreement amendment must be rejected by the Department.

The Competitive Carrier Group responds below, in turn, to specific contract language proposed by Verizon to address discontinuation of UNEs that Verizon no longer is obligated to provide, under section 251(c)(3) of the 1996 Act, and transition of such UNEs to alternative service arrangements. First, as discussed in response to Issue Nos. 3, 4 and 5 below, the interconnection agreement amendment proposed by Verizon fails to incorporate the transition framework required by the *Triennial Review Remand Order* and the FCC's modified unbundling rules for local circuit switching, high capacity (DS1 and DS3) loops and high capacity (DS1 and DS3) dedicated transport that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act. Second, as discussed in response to Issue Nos. 6 and 7 below, the alternative transition scheme proposed by Verizon, through its interconnection agreement amendment, to discontinue or re-rate UNEs or combinations of UNEs that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act directly contradicts the substantive transition plans for local circuit switching, high capacity (DS1 and DS3) loops and high capacity (DS1, DS3 and dark fiber) dedicated transport established by the FCC.

ISSUE 3: **What obligations, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching (including Four-Line Carve-Out switching), and tandem switching, should be included in the Amendment to the parties' interconnection agreements?**

As set forth in response to Issue No. 2 above, the *Triennial Review Remand Order* unequivocally requires that Verizon and competitive LECs implement changes to the FCC's unbundling rules applicable to local circuit switching, including mass market switching and enterprise switching (including Four-Line Carve-Out Switching), and tandem switching, in accordance with section 252 of the 1996 Act and the change of law processes set forth in existing, state commission-approved interconnection agreements. In detailing a transition plan to migrate the embedded base of unbundled local circuit switching used to serve competitive LECs'

mass market customers, the FCC exercised great care to prohibit incumbent LECs from eliminating such arrangements on a "flash cut basis," in a manner that could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors.[19] Thus, to ensure a seamless transition from unbundled local circuit switching that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, the amendment to the parties' interconnection agreements must establish specific requirements, consistent with the *Triennial Review Remand Order*, to implement changes to the FCC's unbundling rules, including the transition plans and transition rates applicable to unbundled local circuit switching used to serve competitive LECs' embedded customers.

As discussed in its Initial Brief, the Competitive Carrier Group has proposed to Verizon a comprehensive interconnection agreement amendment that complies fully with the *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to local circuit switching. The amendment proposed by the Competitive Carrier Group, consistent with the *Triennial Review Remand Order*, details the rights and obligations of Verizon and competitive LECs during the twelve-month transition period established by the FCC for local circuit switching that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including Verizon's obligation to provide to competitive LECs, without interruption, unbundled local circuit switching used to serve competitive LECs' embedded customers, at the transition rates ordered by the FCC, and subject to the terms and conditions set forth in carriers' existing interconnection agreements. Importantly, the proposed amendment of the Competitive Carrier Group also restricts rate increases by Verizon, at the close of the FCC-mandated transition period, as necessary to prevent service disruptions to the end user customers of

[19] *Triennial Review Remand Order* at ¶ 226.

competitive LECs and adverse effects to service quality that may result from dramatic cost increases borne by competitive LECs in an unregulated market.

By contrast, the interconnection agreement amendment proposed by Verizon, which pre-dates the release of the *Triennial Review Remand Order* by several months, fails entirely to address the transitional framework required by the FCC for local circuit switching that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act. Indeed, Verizon's proposed contract language makes no reference to the *Triennial Review Remand Order*, or to the transition plan and transition rates established by the FCC thereunder for local circuit switching. Rather, the interconnection agreement amendment proposed by Verizon merely classifies local circuit switching as a "Discontinued Facility" that Verizon may cease to provide at will, in accordance with the streamlined, non-compliant competitive LEC notification provisions set forth therein. At bottom, Verizon's proposed interconnection agreement amendment cannot be squared with the requirements imposed by the *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to local circuit switching, and therefore, must be rejected to by the Department.

For the reasons set forth above, the additional contract language proposed by Verizon, in its Initial Brief, to "address the concerns" of Massachusetts competitive LECs impacted by the FCC's unbundling determinations for local circuit switching,[20] also fails to properly address the complete transitional framework established by the *Triennial Review Remand Order* and the FCC's modified unbundling rules. Indeed, the mere reference to the *Triennial Review Remand Order* recently included in Verizon's proposed contract language does not protect competitive LECs against efforts by Verizon to unilaterally interpret and enforce

[20] Verizon Initial Brief at 31-32.

specific requirements of the FCC's transition plan for unbundled local circuit switching in a manner that would irreparably harm competitive LEC businesses and Massachusetts consumers. For example, on the effective date of the *Triennial Review Remand Order*, Verizon in certain states, immediately commenced blocking competitive LEC orders for UNE-P lines used to serve existing customers, solely on the basis of its narrow and unlawful construction of the transitional framework established by the FCC. Accordingly, the detail set forth in contract language proposed by the Competitive Carrier Group is necessary to resolve such ambiguities that otherwise would permit Verizon to evade its existing unbundling obligations on the basis of its self-serving interpretation of current law.

Importantly, the interconnection agreement amendment proposed by the Competitive Carrier Group, at §§ 3.2.2.1 and 3.2.2.4, expressly defines the scope of the transition plan for unbundled local circuit switching established by the FCC, in terms of the "embedded" customers served by competitive LECs on the effective date of the *Triennial Review Remand Order*. Specifically, as set forth in § 3.2.2.1, the Parties, under the proposed amendment, expressly acknowledge that, during the transition period, competitive LECs may continue to order unbundled Mass Market Local Switching for servicing their respective end user customers who were customers as of the effective date of the *Triennial Review Remand Order*. Conversely, § 3.2.2.4 expressly defines "new customers" as customers that a competitive LEC acquires on or after either the beginning of the transition period, or the Amendment Effective Date, whichever is later, and do not include competitive LECs' existing customers at additional locations, or existing customers for which a competitive LEC is providing additional or expanded services or facilities on or after the effective date, or for customers whose connectivity is changed on or after the effective date of this Amendment. Accordingly, the contract language proposed by the

Competitive Carrier Group is consistent with the *Triennial Review Remand Order*, at ¶ 227, and makes clear which competitive LEC *customers* are subject to the FCC's transition plan for unbundled local circuit switching are which are not.

The interconnection agreement amendment proposed by the Competitive Carrier Group does not overstep the federal unbundling framework for local circuit switching established by the *Triennial Review Remand Order* and the FCC's modified unbundling rules. Indeed, contrary to the claims raised in Verizon Initial Brief,[21] the contract language proposed by the Competitive Carrier Group does not impose on Verizon any unbundling obligation that is inconsistent with Applicable Law. Indeed, as discussed more fully in response to Issue Nos. 1 and 31, the interconnection agreement amendment proposed by the Competitive Carrier Group properly incorporates, by reference, all Applicable Law, including incumbent LEC unbundling obligations that do not arise under section 251 and 252 of the 1996 Act. Notwithstanding the section 251(c)(3) unbundling determinations of the FCC set forth in the *Triennial Review Remand Order*, Verizon remains subject to independent obligations, under section 271 of the 1996 Act, Massachusetts state law and other Applicable Law to provide to competitive LECs unbundled access to section 251(c)(3) network elements "de-classified" by the FCC, including local circuit switching. Nothing in the *Triennial Review Remand Order* displaces the authority of the Department, under section 252 of the 1996 Act, to enforce such unbundling obligations through the interconnection agreement arbitration process.

[21] *Id.*, at 32-34.

ISSUE 4: **What obligations, if any, with respect to unbundled access to DS1 loops, DS3 loops and dark fiber loops should be included in the Amendment to the parties' interconnection agreements?**

As set forth in response to Issue No. 2 above, the *Triennial Review Remand Order* unequivocally requires that Verizon and competitive LECs implement changes to the FCC's unbundling rules applicable to high capacity loops, including DS1 and DS3 loops, and dark fiber loops, in accordance with section 252 of the 1996 Act and the change of law processes set forth in existing, state commission-approved interconnection agreements. The contract language proposed by Verizon, to implement portions of the *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to high capacity (DS1 and DS3) loops and dark fiber loops, suffers the same infirmities discussed in response to Issue No. 3: namely, Verizon's proposed interconnection agreement amendment fails to incorporate, or even address, the specific transitional framework, including rates, ordered by the FCC for high capacity (DS1 and DS3) and dark fiber loops that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act. Thus, for the reasons set forth in response to Issue No. 3, the contract language proposed by Verizon, applicable to high capacity (DS1 and DS3) and dark fiber loops, fails to comply with the *Triennial Review Remand Order* and the FCC's modified unbundling rules, and should be rejected by the Department.

By contrast, the Competitive Carrier Group has proposed to Verizon a comprehensive interconnection agreement amendment that complies fully with the *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to high capacity loops, including DS1 and DS3 loops, and dark fiber loops. The amendment proposed by the Competitive Carrier Group, at § 3.3.1, consistent with the *Triennial Review Remand Order*, details the rights and obligations of Verizon and competitive LECs during the twelve-month transition period established by the FCC for unbundled high capacity (DS1 and DS3) loops that

Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including Verizon's obligation to provide to competitive LECs, without interruption, unbundled high capacity (DS1 and DS3) loops used to serve competitive LECs' embedded customers, at the transition rates ordered by the FCC, and subject to the terms and conditions set forth in carriers' existing interconnection agreements. In addition, the proposed amendment of the Competitive Carrier Group, at §§ 3.3.1.1 and 3.3.1.2, incorporates the specific service eligibility criteria for both DS1 and DS3 loops, established by the *Triennial Review Remand Order*, as well as Verizon's initial list of wire center locations satisfying the FCC's service eligibility criteria for DS1 loops and DS3 loops, for which Verizon's obligations, under section 251(c)(3) of the 1996 Act, have been relieved. The Competitive Carrier Group, through its interconnection agreement amendment, at § 3.3.2, also has proposed to Verizon contract language addressing Verizon's obligation to provide to competitive LECs without interruption, for the duration of the eighteen-month transition period established by the *Triennial Review Remand Order*, unbundled access to dark fiber loops used to serve competitive LECs' embedded customers, at the transition rates ordered by the FCC, and subject to the terms and conditions set forth in carriers' existing interconnection agreements.

In response to the contract language proposed by the Competitive Carrier Group, Verizon asserts only that it may, consistent with the *Triennial Review Remand Order*, re-price unbundled loops subject to the transition rates established by the FCC, to the extent that such loops are converted by Verizon to alternative service arrangements before the close of the applicable twelve-month (for DS1 and DS3 loops) or eighteen (for dark fiber loops) month transition period. The *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to high capacity (DS1 and DS3) and dark fiber loops provide no basis for

Verizon's claim. Specifically, in the *Triennial Review Remand Order*, the FCC concluded that "**during the relevant transition period**, any high-capacity loop UNEs that a competitive LEC leases as of the effective date of th[e] Order, but for which the Commission determines that no section 251(c) unbundling requirement exists, shall be available for lease from the incumbent LEC at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004 and the effective date of th[e] Order." (emphasis added). Moreover, under the *Triennial Review Remand Order*, the transitional framework established by the FCC for unbundled high capacity (DS1 and DS3) and dark fiber loops "de-listed" under section 251(c)(3) of the 1996 Act may be superseded only if carriers negotiate, pursuant to section 251(a) of the 1996 Act, alternative arrangements superseding the transition period or otherwise enter into commercial arrangement. Thus, to the extent that competitive LECs, including members of the Competitive Carrier Group, continue to obtain access to Verizon's local loops, on an unbundled basis, pursuant to the rates, terms and conditions set forth in their amended interconnection agreements, the transition rate for such network elements established by the FCC, under the *Triennial Review Remand Order*, must apply.

ISSUE 5: **What obligations, if any, with respect to unbundled access to dedicated transport, including dark fiber transport, should be included in the Amendment to the parties' interconnection agreements?**

As set forth in response to Issue No. 2 above, the *Triennial Review Remand Order* unequivocally requires that Verizon and competitive LECs implement changes to the FCC's unbundling rules applicable to dedicated interoffice transport, including DS1 and DS3 transport, and dark fiber transport, in accordance with section 252 of the 1996 Act and the change of law processes set forth in existing, state commission-approved interconnection agreements. The

contract language proposed by Verizon, to implement portions of the *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to high capacity (DS1 and DS3) dedicated transport and dark fiber transport, suffers the same infirmities discussed in response to Issue No. 3: namely, Verizon's proposed interconnection agreement amendment fails to incorporate, or even address, the specific transitional framework, including rates, ordered by the FCC for high capacity (DS1 and DS3) and dark fiber transport that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act. Thus, for the reasons set forth in response to Issue No. 3, the contract language proposed by Verizon, applicable to high capacity (DS1 and DS3) and dark fiber transport, fails to comply with the *Triennial Review Remand Order* and the FCC's modified unbundling rules, and should be rejected by the Department.

By contrast, the Competitive Carrier Group has proposed to Verizon a comprehensive interconnection agreement amendment that complies fully with the *Triennial Review Remand Order* and the FCC's modified unbundling rules applicable to high capacity interoffice transport, including DS1 and DS3 dedicated transport, and dark fiber transport. The amendment proposed by the Competitive Carrier Group, at § 3.6.1, consistent with the *Triennial Review Remand Order,* details the rights and obligations of Verizon and competitive LECs during the twelve-month transition period established by the FCC for unbundled high capacity loops that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including Verizon's obligation to provide to competitive LECs, without interruption, unbundled high capacity (DS1 and DS3) transport used to serve competitive LECs' embedded customers, at the transition rates ordered by the FCC, and subject to the terms and conditions set forth in carriers' existing interconnection agreements. In addition, the proposed amendment of the Competitive Carrier Group, at §§ 3.6.1.1, incorporates the specific service eligibility criteria for

both DS1 and DS3 dedicated transport, established by the *Triennial Review Remand Order*, as well as Verizon's initial list of route locations satisfying the FCC's service eligibility criteria for DS1 transport and DS3 transport, for which Verizon's obligations, under section 251(c)(3) of the 1996 Act, have been relieved. The Competitive Carrier Group, through its interconnection agreement amendment, at § 3.6.1.i(e)(ii), also has proposed to Verizon contract language addressing Verizon's obligation to provide to competitive LECs without interruption, for the duration of the eighteen-month transition period established by the *Triennial Review Remand Order*, unbundled access to dark fiber transport used to serve competitive LECs' embedded customers, at the transition rates ordered by the FCC, and subject to the terms and conditions set forth in carriers' existing interconnection agreements.

ISSUE 6: Under what conditions, if any, is Verizon permitted to re-price existing arrangements which are no longer subject to unbundling under federal law?

In its Initial Brief, Verizon concedes that it must re-price section 251(c)(3) UNEs "de-listed" by the FCC, under the *Triennial Review Remand Order*, consistent with the element-specific transition plans and transition rates established by the FCC for unbundled local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high-capacity (DS1 and DS3) and dark fiber dedicated interoffice transport.[22] Therefore, the Department should adopt the following sections of the interconnection agreement amendment proposed by the Competitive Carrier Group, which address implementation of the transition rates required by the FCC, under the *Triennial Review Remand Order*: § 3.2.2.2 (Transition Period Pricing for Unbundled Local Circuit Switching); § 3.3.1.3(b) (Transition Period Pricing for Declassified DS1 and DS3

[22] Verizon Initial Brief at 40-41.

Loops); § 3.3.2.2(b) (Transition Period Pricing for Dark Fiber Loops); § 3.6.1.1(e)(1) (Transition Period Pricing for DS1, DS3 and Dark Fiber Dedicated Transport Routes).

Further, discussed in response to Issue No. 25, Verizon is not permitted to exclude from state commission-approved interconnection agreements, arising under section 252 of the 1996 Act, rates, terms and conditions applicable to network elements that Verizon provides to competitive LECs, on an unbundled basis, consistent with its obligations under other Applicable Law, including section 271 of the 1996 Act and Massachusetts state law.

ISSUE 7: **Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements? Should the Amendment state that Verizon's obligations to provide notification of discontinuance have been satisfied?**

As discussed in response to Issue No. 2, the FCC confirmed in the *Triennial Review Order* and the *Triennial Review Remand Order* that changes in section 251(c)(3) unbundling obligations must be implemented only through the change of law amendment processes set forth in the Department-approved interconnection agreements between Verizon and competitive LECs. Verizon, by its proposed contract language, at § 3.1, seeks to overhaul these change of law processes, and to bypass state commission authority under section 252 by unilaterally implementing future changes to the FCC's section 251(c)(3) unbundling rules, upon notice to affected competitive LECs. Verizon must not be permitted to end-run CLEC rights and state commission authority in this manner and the interconnection agreement amendment proposed by Verizon must be rejected by the Department.

ISSUE 8: **Should Verizon be permitted to assess non-recurring charges when it changes a UNE arrangement to an alternative service? If so, what charges should apply?**

As set forth in the Initial Brief of the Competitive Carrier Group,[23] the Department should not permit Verizon to impose on competitive LECs nonrecurring charges for converting a UNE or combination of UNEs to an alternative service arrangement where, as here, Verizon is the "causer" of any additional costs incurred as the result of such conversions. Specifically, as noted by the Competitive Carrier Group, the disconnection of UNEs or combinations of UNEs that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, and the subsequent reconnection of alternative service arrangements, are activities that Verizon voluntarily undertakes to avail itself of the unbundling relief accorded by the FCC under the *Triennial Review Order* and the *Triennial Review Remand Order*. Moreover, as conceded in its Initial Brief, Verizon is unable to produce, at this time, cost studies supporting that nonrecurring charges for functions undertaken by Verizon to convert UNEs and combinations of UNEs to alternative service arrangements are a legitimate means of cost recovery for services that Verizon provides to competitive LECs. Accordingly, the Department should reject the contract language proposed by Verizon that would permit Verizon in the future to assess nonrecurring charges for converting UNEs or combinations of UNEs, currently provided by Verizon under section 251(c)(3) of the 1996 Act, to alternative service arrangements.

[23] Competitive Carrier Group Initial Brief at 16.

ISSUE 9: **What terms should be included in the Amendment's Definitions Section and how should those terms be defined?**

As discussed in the Initial Brief of the Competitive Carrier Group,[24] the Amendment to the parties interconnection agreements must include complete and comprehensive definitions of those terms necessary to properly implement all of the changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*. The terms and definitions set forth in the Initial Brief of the Competitive Carrier Group, and the interconnection agreement Amendment proposed by the Competitive Carrier Group, comport with the FCC's unbundling determinations, under the *Triennial Review Order* and the *Triennial Review Remand Order*, and corresponding modifications to the FCC's unbundling rules, and thus should be approved by the Department.

ISSUE 10: **Should Verizon be required to follow the change of law and/or dispute resolution provisions in existing interconnection agreements if it seeks to discontinue the provisioning of UNEs under federal law? Should the establishment of UNE rates, terms and conditions for new UNEs, UNE combinations or commingling be subject to the change of law provisions of the parties' interconnection agreements?**

As discussed in response to Issue No. 2, changes to the FCC's unbundling rules arising from the *Triennial Review Order* and the *Triennial Review Remand Order* may be implemented only through the change of law processes set forth in the Department-approved interconnection agreements between Verizon and competitive LECs. Therefore, to the extent that Verizon is permitted to discontinue providing access to any UNE or combination of UNEs that Verizon currently makes available to competitive LECs, on an unbundled basis, pursuant to Applicable Law, Verizon must abide by the contract change of law and dispute resolution provisions set forth in existing Department-approved interconnection agreements. Conversely,

[24] *Id.*, at 17.

in the event that the FCC, or the Department, imposes on Verizon any obligation to provide to competitive LECs, on an unbundled basis, a network element or combination of network elements that Verizon currently does not provide under Applicable Law, the rates, terms and conditions for such network element or combination of network elements must be properly incorporated into the parties interconnection agreements through existing change of law processes.[25]

ISSUE 11: How should any rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented?

As discussed in response to Issue Nos. 2 and 6, Verizon must implement rate increases and new charges applicable to section 251(c)(3) UNEs "de-listed" by the FCC, under the *Triennial Review Remand Order*, through the change of law processes set forth in the Department-approved interconnection agreements between Verizon and competitive LECs, and consistent with the element-specific transition plans and transition rates established by the FCC for unbundled local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high-capacity (DS1 and DS3) and dark fiber dedicated interoffice transport.

ISSUE 12: How should the interconnection agreements be amended to address changes arising from the TRO with respect to commingling of UNEs or Combinations with wholesale services, EELs and other combinations? Should Verizon be obligated to allow a CLEC to commingle and combine UNEs and Combinations with services that the CLEC obtains wholesale from Verizon?

The Competitive Carrier Group has consistently maintained that Verizon's obligation under federal law to permit requesting carriers to commingle UNEs and combinations of UNEs Combinations with services that Verizon provides on a wholesale basis existed prior to

[25] Because the *Triennial Review Order* offers only clarification with respect to Verizon's pre-existing obligation to provide to competitive LEC routine network modifications and commingling, the Competitive Carrier Group consistently has maintained that the *Triennial Review Order* does not constitute a "change of law" under the parties interconnection agreements for which a formal interconnection amendment is required.

the *Triennial Review Order*.[26] Nevertheless, in an abundance of caution and to ensure the continued availability of commingled UNEs and UNE Combinations, the Competitive Carrier Group submits that the Amendment should include language clarifying the scope of Verizon's commingling obligations. Accordingly, the Competitive Carrier Group has proposed such language in its Amendment at § 3.7.

In its Initial Brief, Verizon represents that its proposed amendment will not "prohibit commingling of UNEs with wholesale service" and "provides that Verizon will perform the functions necessary to allow CLECs to commingle or combine UNEs with wholesale services."[27] Verizon's claims in its brief are not, however, consistent with the language in § 3.4 of its proposed Amendment II, which limits CLECs' ability to commingle in many respects. As an initial manner, and as discussed in our Initial Brief in response to Issue 12, Verizon's proposed language limits the availability of commingling to "Qualifying UNEs" and Verizon expressly retains the right to deny commingling for any "Discontinued Facility," *i.e.*, a facility no longer subject to unbundling under section 251(c)(3) of the 1996 Act.[28] Verizon's proposed language would exclude UNEs that have been declassified, under section 251(c)(3), both now and in the future, without amending the interconnection agreement. This is inconsistent with the process mandated by the FCC in both the *Triennial Review Order* and the *Triennial Review Remand Order*, and would improperly circumvent the agreements' change in law provisions.[29]

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[26] *See* Competitive Carrier Group Initial Brief at 29.

[27] Verizon Initial Brief at 83.

[28] Verizon Proposed Amendment II, §3.4.1.2.1.

[29] *See* Competitive Carrier Group Initial Brief at 30.

The *Triennial Review Order* orders Verizon to allow CLECs to commingle. The FCC did not limit CLECs rights to commingle only "Qualifying UNEs" and did not disallow commingling of discontinued facilities, *i.e.*, a facility no longer subject to unbundling under section 251(c)(3) of the 1996 Act. Indeed, in the *Triennial Review Remand Order*, the FCC eliminated the "Qualifying UNE" definition. Thus, language regarding "Qualifying UNEs" should not be included in the interconnection agreement amendments. In addition, a declassified UNE that is in service is, during the transition period, still a UNE with a higher price and afterwards is a special access circuit. The *Triennial Review Order* allows CLECs to commingle both types of facilities. Indeed, this is the very purpose of commingling to allow CLECs to use UNEs and special access circuits in combination. Consequently, Verizon has no basis to refuse to do so.

In the *Triennial Review Order*, the FCC also directed parties to use section 252 and change in law provisions to effectuate the new unbundling rules and declined "the request of several BOCs that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associate with the renegotiation of contract provisions."[30] The FCC reiterated this requirement in the *Triennial Review Remand Order*, "[w]e expect incumbent LECs and competition carriers will implement the Commission's findings as directed by section 252 of the 1996 Act."[31] Based on this clear precedent, the Department should reject Verizon's proposed language and rule that subsequent to any future UNE declassification, under section 251(c)(3), Verizon must adhere to the requirements of

[30] *Triennial Review Order* at ¶427.

[31] *Triennial Review Remand Order* at ¶233.

section 252 of the 1996 Act as well as the change in law provisions in the parties' interconnection agreements.

Verizon also seeks to limit CLECs' ability to engage in commingling by reserving the right to assess recurring and non-recurring charges on CLECs that are not supported by the *Triennial Review Order* and the *Triennial Review Remand Order*. In section 3.4.2.4 of its proposed Amendment II, Verizon references its "Pricing Attachment" and states that the charges in that Attachment apply for each circuit converted. Any attempt by Verizon in the future to assess charges for the conversion of wholesale facilities to UNEs or UNE Combinations would violate the *Triennial Review Order*, which states:

> 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, or could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to 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***. Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any person or class of persons (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or disadvantage.[32]

As with Verizon's attempt to limit the UNEs that may be commingled with access services without adhering to the change in law provisions in the parties' interconnection

[32] *Triennial Review Order* at ¶587. See also, 47 C.F.R. § 51.316 (c).

agreements, any Verizon attempt to assess charges for commingling would violate the *Triennial Review Order* and the *Triennial Review Remand Order* and must be rejected.

Further, the Competitive Carrier Group joins the position of AT&T and disputes Verizon's proposed service eligibility criteria set forth in § 3.4.2 of its proposed Amendment II.[33] The Competitive Carrier Group explicitly states in its proposed Amendment that it will "certify its compliance with the criteria set forth in Rule 51.318."[34] Rule 51.318 does not require carriers to "re-certify" existing UNE and UNE Combination arrangements, as Verizon proposes in its Amendment II at §3.4.2.1. Verizon seeks to put an unreasonable onus to justify commingling on competitive carriers, which contravenes the *Triennial Review Order*.[35] Moreover, and as discussed in more detail in response to Issue 16, the Department should not allow Verizon to exempt itself from provisioning intervals, performance measurements and associated remedies when commingling facilities for CLECs.[36] Accordingly, the Department should reject Verizon's proposed language at § 3.4 and adopt the language proposed by the Competitive Carrier Group at § 3.7.

ISSUE 13: **Should the parties' agreements be amended to address changes or clarifications, if any, arising from the TRO with respect to:**

a) line splitting;

b) newly built FTTP, FTTH or FTTC loops;

c) overbuilt FTTP, FTTH or FTTC loops;

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33 *See* AT&T Initial Brief at 38-40; Verizon Initial Brief at 84.

34 Competitive Carrier Group Proposed Amendment, §3.7.2.1.

35 Based on the nondiscrimination requirements of section 251(c)(3), and because incumbent LECs are in the best position to perform the functions necessary to provide UNE combinations (and to separate UNE combinations upon request) through their control of the elements of their networks that are unbundled, our rules require incumbent LECs to provide UNE combinations upon request. *Triennial Review Order* at ¶573.

36 Verizon Proposed Amendment II, § 3.4.1.1.

d) access to hybrid loops for the provision of broadband services;

e) access to hybrid loops for the provision of narrowband services;

f) retirement of copper loops;

g) line conditioning;

h) packet switching;

i) Network Interface Devices (NID);

j) Line sharing?

If so, how?

As stated in our Initial Brief, and reiterated throughout this Reply Brief, the Amendment should incorporate any changes to the FCC's section 251(c)(3) unbundling rules arising under the *Triennial Review Order* that were not vacated by the D.C. Circuit in *USTA II*, or modified by the FCC in the *Triennial Review Remand Order* or other FCC order.[37] The Competitive Carrier Group addresses proposals for each of the facilities and services listed in Issue 13 below:

k) line splitting;

The Amendment should incorporate the FCC's rules with regard to line splitting as set forth at 47 C.F.R. § 51.319(a)(1)(ii). The language proposed by the Competitive Carrier Group at § 3.4.2 tracks the FCC rule, including Verizon's obligation to enable CLECs to engage in line splitting using a splitter collocated in a Central Office (§3.4.2.1); allow line spitting regardless of whether the carrier providing voice services provides its own switching or obtained local circuit switching as a UNE (§3.4.2.2); and perform all necessary routine network modifications. (§3.4.2.2). Moreover, the Competitive Carrier Group's proposed Amendment

[37] Competitive Carrier Group Initial Brief at 31.

provides that to the extent that the FCC issues further orders regarding line sharing or the Department issues its own line sharing rules, the Competitive Carrier Group retains the ability to avail itself of any rights under "Applicable Law."[38]

Verizon does not propose any language for line splitting in its Amendment as it claims that line splitting is not a new obligation and therefore, "there is no basis for addressing this issue in this arbitration."[39] Verizon further states that if any CLEC agreement currently lacks any line splitting provisions, that CLEC should sign a separate, "Verizon standard" line splitting amendment.[40] The Competitive Carrier Group reiterates that there are issues addressed in this arbitration, such as commingling and routine network modifications, that are not new obligations. Nevertheless, in order to avoid any doubt as to the nature and extent of the parties' obligations, the Competitive Carrier Group has included language in its proposed Amendment to address such issues. The same should be done with respect to line splitting. The *Triennial Review Order* and *Triennial Review Remand Order* have such a significant impact on the underlying Agreement, the Department should not leave any areas of doubt as to the parties' obligations under these orders. This is especially important in a situation (like here) where Verizon has chosen to arbitrate, on a consolidated bases, against numerous CLECs, many of which have different interconnection agreements containing different language. Accordingly, the Department should adopt the Competitive Carrier Group's proposed line sharing language which incorporates the FCC's rule.

l) newly built FTTP, FTTH or FTTC loops ;

m) overbuilt FTTP, FTTH or FTTC loops;

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38 *See* Competitive Carrier Group Proposed Amendment, § 3.4.2.

39 *See* Verizon Initial Brief at 86.

40 *Id*.

The Amendment should include provisions addressing newly built and overbuilt FTTH loops. The Competitive Carrier Group has proposed such language in § 3.3.4 of its Amendment that is consistent with FCC's FTTH rules and orders. As an initial matter, the Department must not allow Verizon to alter the meaning of FCC terms in its Amendment. As stated by AT&T and the CCC, the term Fiber-to-the-Home ("FTTH"), as used by the FCC, should be adopted by the Department and not the term Fiber-to-the-Premises ("FTTP"), created by Verizon.[41] Verizon claims that by using FTTH, as opposed to the Verizon-created FTTP terms, CLECs are seeking "to expand Verizon's fiber unbundling obligations."[42] How Verizon can argue against using an FCC term in the Amendment is beyond reason, and should not be considered by the Department. The types of loops that are at issue from the *Triennial Review Order* and subsequent FCC orders[43] are FTTH loops. Therefore, such is the term used by the Competitive Carrier Group in its proposed Amendment.

In addition to Verizon's attempt to manipulate its obligations by renaming and redefining FCC terms, Verizon has again sought to end-run the change in law and arbitration process with regard to FTTH loops. The Competitive Carrier Group's proposed language at §3.3.4.1 tracks Rule 47 C.F.R. § 51.319(a)(3)(i) and alleviates Verizon of its obligation to provide non-discriminatory access to a FTTH loop when it deploys such a loop on a premise that previously has not been served by any loop facility "subject to a change of law provision in the Agreement." Not surprisingly, Verizon's proposed language in its corresponding § 3.1 does not

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41 *See* AT&T Initial Brief at 42-43; *see also* CCC Initial Brief at 55.

42 Verizon Initial Brief at 55.

43 *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers*, Order on Reconsideration, CC Docket No. 01-338, FCC 04-191 (rel. Aug. 9, 2004). *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, CC Docket No. 01-338, FCC 04-248 (rel. Oct. 18, 2004).

include similar change in law language. It merely states, "[n]otwithstanding any other provision of the Amendment Agreement…or any Verizon tariff or SGAT." The Department should recognize the importance of ensuring that Verizon adheres to the change in law process in Massachusetts, and adopt the language proposed by the Competitive Carrier Group.

With regard to overbuilt FTTH loops, the Competitive Carrier Group's proposed language tracks FCC's rule 51.319(a)(3)(ii), including the requirement that if Verizon retires copper loops as a result of an overbuild, Verizon must 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."[44] Verizon is attempting to limit any other possible source of law that impacts its obligation to provide FTTH loops in overbuild situations. Specifically, in §3.1 of Verizon's proposed Amendment II, Verizon limits its unbundling obligation "only to the extent required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." The Department should not allow Verizon to preemptively prohibit competitive carriers from utilizing any Applicable Law other than section 251(c)(3) to maintain continued access to FTTH loops. Accordingly, the Department should adopt the language of the Competitive Carrier Group, which most closely tracks the FCC's rules without limiting rights of competitive carriers or the jurisdiction of the Department.

n) access to hybrid loops for the provision of broadband services;

o) access to hybrid loops for the provision of narrowband services;

The Competitive Carrier Group has proposed language that tracks the FCC's rule for hybrid loops, 47 C.F.R. 51.319(a)(2). Specifically, the proposed language states that Verizon must provide access to hybrid loops for the provision of broadband and narrowband services,

[44] 47 C.F.R. § 51.319(a)(3)(ii)(C).

"only to the extent required by 4 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law."[45] In its Initial Brief, Verizon argues that the language proposed by AT&T is not consistent with federal law (the proposed Amendment language of the Competitive Carrier Group and AT&T are substantially similar for hybrid loops).[46] Specifically, Verizon claims that "Applicable Law" expands the scope of Verizon's unbundling obligation of hybrid loops for broadband and narrowband services.[47] Verizon is incorrect. As discussed by the Competitive Carrier Group, there are numerous sources of law that impact Verizon's obligations to provide unbundling. Accordingly, in order to encompass all relevant sources of law, (*i.e*, section 251, section 271, FCC Rules, state law, etc.), the Competitive Carrier Group (as well as AT&T), include references to Applicable Law. The Competitive Carrier Group also agrees with AT&T's position that Verizon should not be permitted to limit the type of electronics that are available for access to high-capacity loops, but rather that "the electronics associated with the next-generation loop architecture should be considered part of the loop."[48] The language proposed by the Competitive Carrier Group is consistent with the FCC's rules and allows flexibility for interpretation by the Department. Nothing in the language proposed by the Competitive Carrier Group is *contrary* with federal law, and, therefore, Verizon's objections should be rejected.

p) retirement of copper loops;

FCC Rule 51.319(a)(3)(iii) states that Verizon must comply with network modification and disclosure requirements before retiring any copper loop or copper subloop that has been replaced with a FTTH loop. The retirement notice provisions set forth in the

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[45] *See* Competitive Carrier Group Proposed Amendment, §§3.3.5.1 and 3.3.5.2.

[46] *See* Verizon Initial Brief at 89-91.

[47] *Id*.

[48] AT&T Initial Brief at 44.

Competitive Carrier Group's proposed Amendment at §§3.3.4.5-3.3.4.9 are consistent with the FCC's network modification and disclosure requirements set forth in FCC Rules §§51.325-51.335. Verizon claims that AT&T's proposed language gives CLECs 180 days notice, which is inconsistent with the FCC's rules (as with the issue above, the proposed language of the Competitive Carrier Group is substantially similar to that of AT&T).[49] The FCC's rules provide, however, that a notice of retirement will be deemed "approved" 90 days after the FCC issues a Public Notice. Therefore, the 90 days only applies from the time the retirement notice goes on public notice. It does not encompass the entire notice period. Moreover, 180 days is a reasonable notice period considering the modifications CLECs must undertake to accommodate Verizon's copper loop or subloop replacement.

In addition, Verizon disputes the language proposed by AT&T (and also the Competitive Carrier Group) because it includes a reference to copper subloop, even though the FCC uses the exact same term in its rules.[50] As with its use of the term "FTTP" loops, Verizon is again attempting to redefine FCC-established terms to its benefit and such effort should be rejected by the Department. Accordingly, for the reasons discussed above and in order to ensure that Massachusetts consumers are not harmed by the retirement of copper loops, the Department should reject Verizon's proposal and adopt the language proposed by the Competitive Carrier Group.

q) line conditioning;

The Amendment must specifically list Verizon's obligations with regard to line conditioning. Verizon, however, has not proposed any line conditioning provisions as it claims

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[49] Verizon Initial Brief at 92. *See* Competitive Carrier Group Proposed Amendment, §§3.3.4.4 -3.3.4.9.

[50] Verizon Initial Brief at 92. *See* AT&T Proposed Amendment, §3.2.2.6, Competitive Carrier Group Proposed Amendment, § 3.3.4.6.

this is not a new obligation.[51] The Competitive Carrier Group maintains that, out of an abundance of caution and to avoid doubt, the Department should adopt the proposed language set forth in its proposed Amendment, which clearly establishes the parties' obligations.[52] At the onset, the definition of Line Conditioning in the Definitions Section of the Competitive Carrier Group's proposed Amendment is the same as the definition in 47 C.F.R. §51.319(a)(1)(iii)(A), and should be incorporated into the Amendment. Moreover, line conditioning is part of the underlying loop and, therefore, Verizon may not assess charges above those the CLEC must pay for the unbundled loop.[53] Verizon must not be allowed to assess non-TELRIC line conditioning charges in violation of the FCC's rule that Verizon "shall recover the costs of line conditioning…in accordance with the Commission's forward looking pricing principles…."[54] In order to avoid any Verizon's "back-door" attempts to institute non-TELRIC rates for line conditioning, the Department should not leave line conditioning unaddressed in the Amendment, but rather should adopt the Competitive Carrier Group's proposed language at §34.3, which is consistent with the *Triennial Review Order* and the FCC's unbundling rules.

r) packet switching;

The language proposed by the Competitive Carrier Group acknowledges the FCC's decision in the *Triennial Review Order* that CLECs are not impaired without access to packet switching, including routers and DSLAMs.[55] The Competitive Carrier Group's proposed Amendment, as well as the Amendments proposed by AT&T and the CCC, also include

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51 Verizon Initial Brief at 93.

52 *See* Competitive Carrier Group Proposed Amendment, § 3.4.3.

53 *Triennial Review Order* at ¶643 "line conditioning is properly seen as a routine network modification that incumbent LECs regularly perform in order to provide xDSL service to their own customers.".

54 47 C.F.R. § 51.319(a)(1)(iii)(B). *See also*, AT&T Initial Brief at 45-47.

55 *Triennial Review Order* at ¶537.

language that addresses Verizon switches that have both packet and switching capability.[56] In such situations, the Competitive Carrier Group's language provides that "circuit switching, even if performed by a Packet Switch, is a network element that Verizon is obligated to provide on an Unbundled Network Element basis."[57] Such Amendment language is necessary. As stated by AT&T in its Initial Brief, CLEC customers need to be protected from service disruption.[58] To do so, the Department must implemented the transition periods set forth in the *Triennial Review Remand Order*.[59] Verizon claims that such language is contrary to federal law because the FCC has held that packet switching need not be unbundled.[60] Verizon , however, completely ignores the fact that the FCC's findings relate to packet switching used to provide *broadband* services:

> Finally, ***because packet switching is used in the provision of broadband services,*** our decision not to unbundle stand-alone packet switching is also guided by the goals of, and our obligations under, section 706 of the Act. In order to ensure that both incumbent LECs and competitive LECs retain sufficient incentives to invest in and deploy broadband infrastructure, such as packet switches, we find that requiring no unbundling best serves our statutorily-required goal. ***Thus, we decline to require unbundling on a national basis for stand-alone packet switching because it is the type of equipment used in the delivery of broadband.***[61]

When packet switching is being used as a substitute for circuit switching primarily to provide *voice* service to local customers, such circuit switching should be provided as a UNE. Verizon

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[56] Competitive Carrier Group Proposed Amendment, § 2.28, AT&T Proposed Amendment, §2.26, CCC Proposed Amendment, § 1.1.2.

[57] *See* Competitive Carrier Group Proposed Amendment § 2.28; *see also* §2.25 (definition Local Circuit Switching).

[58] AT&T Initial Brief at 47-48.

[59] *Id*.

[60] Verizon Initial Brief at 95.

[61] *Triennial Review Order* at ¶541 (emphasis added).

cannot use the *Triennial Review Order's* analysis of broadband services to bootstrap its efforts to end unbundling for voice circuits.

Further, the FCC's definition of "local switching" proves that Verizon must provide UNEs for voice circuits regardless of the underlying technology employed. The FCC broadly defined "local switching to encompass line-side and trunk-side facilities, plus the features, and capabilities of the switch. The features, functions, and capabilities of the switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks."[62] It does not matter whether the underlying switch is circuit or packet-based.

Verizon's proposal would allow a technical change invisible to callers to subvert Verizon's duty to provide unbundled local switching to CLECs before Verizon has a clear direction from the FCC or the Department. Accordingly, the Department should adopt the language proposed by the Competitive Carrier Group, which is supported by other CLECs in this proceeding, and allow for the continued use of a packet switch as a section 251(c)(3) UNE for local circuit switching for the reasons discussed above.

s) Network Interface Devices (NID);

The Competitive Carrier Group's proposed language addressing NIDs sets forth Verizon's obligation to provide unbundled access to NIDs as well as its obligation to provide a NID as part of the local loop. Verizon, alternatively, claims that the Amendment need not include any NID provisions as it believes this item is adequately covered in both its "standard agreement" and Massachusetts Tariff.[63] The Department should not allow for any ambiguity

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62 *Id*. at 433.

63 Verizon Initial Brief at 97

with regard to Verizon's obligation to provide access to NIDs and should not force the CLECs in this proceeding to look to Verizon's "standard agreement" or tariffs to determine their rights. Additionally, the Department should remain very cautious of Verizon's use of its tariffs as an outside source to this Amendment and the underlying Agreement. The CLECs are justifiably concerned that Verizon will use tariff amendments in an effort to end-run any change in law obligations under the Agreement.

In the *Triennial Review Order*, the FCC found that there are at least "three scenarios where competitive LECs are impaired without access to the NID functionality: (1) access to a stand alone unbundled NID; (2) access to the NID functionality as a component of an unbundled end-to-end loop or a subloop and (3) access to the NID to utilize the inside wire subloop."[64] Consequently, the Competitive Carrier Group's proposed §3.3.7 establishes Verizon's obligation to provide the NID functionality as part of the local loop and §.5.9 establishes Verizon's obligation to provide the NID as a stand alone UNE and to access inside wiring. Verizon's NID obligations should be precisely laid out in this Amendment and CLECs should not be forced to look to Verizon's tariff, which it can modify to subvert the change in law procedures, or Verizon's "standard agreement" which many CLECs have not adopted without modification. Accordingly, the Department should adopt the proposed language of the Competitive Carrier Group.

t) Line sharing?

Despite Verizon's contentions to the contrary, line sharing should remain a part of the Amendment. As discussed at length in the Competitive Carrier Group's Initial Brief, the Department has authority under the 1996 Act to utilize Section 271 and state law to maintain

[64] *Triennial Review Order* at ¶352.

Verizon's unbundling obligations.[65] Verizon's obligations under this Agreement are not limited to Section 251. The Agreements, including any Amendments, are governed by Applicable Law and Applicable Law includes section 271 of the 1996 Act. Verizon is, at a minimum, obligated to continue providing line sharing to CLECs under Checklist Item 4 of Section 271.

The FCC established a three-year phase out for line sharing in conjunction with the FCC's section 251 unbundling analysis, which consequently applies to ILECs for whom the obligation to provide line sharing arises under section 251.[66] However, Verizon is both an ILEC and a Bell Operating Company. Section 271 of the 1996 Act imposes separate and independent obligations on ILECs who are also BOCs operating under section 271 authority. In the words of the FCC:

> [S]ection 271 places specific requirements on BOCs that were not listed in section 251 . . . . recognizing an independent obligation on BOCs under section 271 would by no means be inconsistent with the structure of the statute. Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are unique to the BOCs. As such, BOC obligations under section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis.[67]

As a consequence, the FCC's transition plan applies to ILECs for whom the obligation to provide access to line sharing was removed pursuant to the FCC's section 251

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65 *See* Competitive Carrier Group Initial Brief at 2-4, 47-48.

66 *Triennial Review* Order at ¶ 264 (Stating the policy objective of the transition plan as providing "carriers . . .adequate time to implement new internal processes and procedures, design new product offerings, and negotiate new arrangements with **incumbent LECs** to replace line sharing. . . .) (emphasis added).

67 *Triennial Review Order* at ¶ 655.

unbundling analysis, but not to BOCs, like Verizon, who have an independent obligation to provide access to line sharing under section 271.[68]

Verizon mischaracterized the proposed language of the Competitive Carrier Group as "intentionally ambiguous and misleading, if not directly contrary to federal law."[69] Rather, the proposed language of the Competitive Carrier Group is precise in that it states that Verizon is obligated to provide nondiscriminatory access to line sharing on an unbundled basis pursuant to Applicable Law.[70] As discussed above, Verizon is obligated to provide line sharing pursuant to Section 271, which falls within the definition of Applicable Law. The Competitive Carrier Group has briefed the issue of Applicable Law in response to Issues, 1, 28 and 31 and its initial and this Reply Brief. For the reasons discussed above and further discussed in response to the issues identified above, the Department should adopt the proposed language of the Competitive Carrier Group.

ISSUE 14: What should be the effective date of the Amendment to the parties' agreement?

As reflected in their Initial Briefs, the parties agree that the effective date of the Amendment to the parties' interconnection agreements should be the date on which the Amendment is executed by the parties.[71]

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[68] *Id.*

[69] Verizon Initial Brief at 99.

[70] Competitive Carrier Group Proposed Amendment, §3.4.

[71] Competitive Carrier Group Initial Brief at 31-32. *See also*, AT&T Initial Brief at 49-50.

ISSUE 15: **How should CLEC requests to provide narrowband services through unbundled access to a loop where the end user is served via Integrated Digital Loop Carrier (IDLC) be implemented? Should Verizon be permitted to recover its proposed charges (e.g., engineering query, construction, cancellation charges)?**

The Competitive Carrier Group has proposed language in its Amendment that, when a requesting carrier seeks access to a hybrid loop for the provision of narrowband services, Verizon must provide nondiscriminatory access to either an entire unbundled hybrid loop capable of providing voice-grade service, using time division multiplexing technology, or a spare home-run copper loop serving that customer on an unbundled basis.[72] This language is consistent with FCC Rule 51.319(a)(2)(iii) and paragraph 297 of the *Triennial Review Order*. Verizon disputes this language, claiming it provides CLECs the "choice of an existing copper loop, and UDLC loop, or an unbundled TDM channel on the Hybrid Loop."[73] Instead of providing CLECs with this "choice," Verizon's proposed language states that it will "endeavor" to provide CLECs with an existing copper loop or a loop served by a UDLC, but if no such loop exists, Verizon will construct the loop facilities, with a host of charges, including engineering, construction and ordering charges.[74]

Verizon should not be permitted to use this unbundling obligation as a profit mechanism by establishing a host of non-TELRIC charges CLECs must pay for Verizon to meet its statutory obligations. Rather, such loops should be made available using routine network modifications as necessary, unless no such facility can be made available via routine network modifications as set forth in the Competitive Carrier Group proposed Amendment, §3.3.6.

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72 *Id.*, § 3.3.6.

73 Verizon Initial Brief at 102.

74 Verizon Proposed Amendment II, §3.2.4.2.

As stated in our Initial Brief, the *Triennial Review Order* does not permit Verizon to recover any additional charges in connection with a CLEC's request to provide narrowband services through unbundled access to a loop where the end user is served via IDLC.[75] Verizon's complaint that the CLEC's proposed language would require it to create a new copper loop for free or brand a new copper loop for a CLEC for free is a gross overstatement.[76] As stated by AT&T, there are engineering solutions available to provide access to such loops and Verizon need not construct a new loop plant or UDLC system.[77] Verizon has provided no reason why routine network modifications cannot be used to fulfill its statutory obligation. Accordingly, the Department should reject Verizon's attempt to gouge CLECs with its proposed language and host of associated charges, and adopt the language of the Competitive Carrier Group which would require Verizon to provide access to such loops using routine network modifications, as necessary.

ISSUE 16: **Should Verizon be subject to standard provisioning intervals or performance measurements and potential remedy payments, if any, in the underlying agreement or elsewhere, 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 required;

e) batch hot cut, large job hot cut and individual hot cut processes;

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75 Competitive Carrier Group Initial Brief at 32-33.

76 Verizon Initial Brief at 102.

77 AT&T Initial Brief at 52.

f) network elements made available under section 271 of the Act or under state law?

As stated by the Competitive Carrier Group and other CLEC parties in the proceeding, Verizon should be required to meet provisioning intervals, performance measurements and be subject to potential remedy payments for the facilities and services addressed above.[78] Moreover, as stated by the Competitive Carrier Group in its Initial Brief, if existing interconnection agreements include any such intervals, measurements, or payments, their applicability is not affected by the requirements the FCC adopted in the *Triennial Review Order* and *Triennial Review Remand Order*.[79] Although the Department is considering performance metrics in other dockets, the Department must to make clear in this arbitration proceeding that Verizon is not exempt from performance responsibilities for facilities and services provided in the Agreement. Verizon is attempting to "exclude its performance in provisioning IDLC Hybrid Loops, commingling, conversions, and routine network modifications from all performance measurements and remedies."[80] Verizon claims that the above-referenced tasks are "non-standard" and therefore, are exempt from performance intervals and measurements.[81] The Department must not allow Verizon to protect itself from any accountability in satisfying its statutory obligations.

With regard to IDLC loops, Verizon relied on the FCC's *WorldCom Virginia Arbitration* decision for the proposition that since the provisioning of IDLC loops may include additional provisioning steps, Verizon should be *completely excluded* from any performance

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[78] Competitive Carrier Group Initial Brief at 33-35, AT&T Initial Brief at 54-55, CCC Initial Brief at 64.

[79] Competitive Carrier Group Initial Brief at 34.

[80] Verizon Initial Brief at 104. Verizon Proposed Amendment II, §§ 3.2.4.3, 3.4.1.1, 3.5.2.

[81] Verizon Initial Brief at 104.

intervals or measurements.[82] The Department should not be mislead by Verizon's attempt to expand the FCC's determination. Although the FCC did recognize that provisioning an IDLC loop may involve additional steps, it has in no way absolved Verizon of any performance accountability.[83] Accordingly, the Department should reject Verizon's language and adopt appropriate performance intervals and measurements for IDLC loops and apply such metrics to the Agreement.

With regard to routine network modifications, the Competitive Carrier Group agrees with AT&T's statement that "Routine Network Modifications are already contemplated in the activities in the Verizon cost study that establishes the non-recurring and recurring charges for High Capacity Loops and Transport."[84] Verizon can't have it both ways, *i.e.*, enjoy the cost recovery for its routine network modifications, yet be exempt from any performance accountability. Exempting Verizon from performance accountability for routine network modifications would allow it to thwart competitors' ability to obtain high-capacity loops in contravention to the *Triennial Review Order*.[85] Ultimately it will be Massachusetts consumers who will be harmed by poor service quality.

For this reason, the Competitive Carrier Group has proposed language that would allow the Department to establish performance metrics that account for routine network modifications. Specifically, §3.8.2 states, "Verizon's performance in connection with the

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82 *Id.*

83 *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order 17 FCC Rcd 27039, ¶578 (2002).

84 AT&T Initial Brief at 54.

85 *Triennial Review Order* at ¶633 "Were we not to adopt such a [Routine Network Modification] requirement, the incumbent LECs would have the ability to dictate the parameters of their unbundling requirements and thereby readily thwart competitors' ability to obtain access to high-capacity loops."

provisioning of unbundled Network Elements for which Routine Network Modifications are necessary remains subject to standard provisioning intervals, and to performance measures and remedies, if any, contained in the Amended Agreement or under Applicable Law." The Competitive Carrier Group's language allows the Department to set the appropriate provisioning intervals, performance measurements and associated remedies that should apply to UNEs that require routine network modifications. The Department should adopt this language and reject Verizon's proposed language which simply seeks to absolve Verizon of any responsibility for the provisioning of UNEs with routine network modifications.

With regard to performance metrics for commingling and conversions, the Competitive Carrier Group maintains that there is no reason that commingling arrangements and conversions of access circuits to UNEs should impact a provisioning interval or performance measurement.[86] Commingling and conversions are largely billing changes, and Verizon has provided no justification for its proposed language that would exclude such functions from performance intervals, measurements and remedies. Accordingly, the Department should, again, reject Verizon's proposed language in favor of the language proposed by the Competitive Carrier Group, which would rightfully hold Verizon responsible for providing commingling and conversions so CLECs can adequately serve Massachusetts consumers. With regard to batch cuts and hot cuts, it is imperative that the Department establish performance intervals, measurements and associated remedies. As aptly noted by AT&T, with UNE-P being phased out, adequate hot cut and batch cut processes are essential to the successful transfer of CLECs' UNE-P lines to other arrangements.[87] In the *Triennial Review Remand Order*, the FCC based its

[86] Competitive Carrier Group Initial Brief at 34.

[87] AT&T Initial Brief at 55.

no-impairment finding for mass market switching in part on the newly-improved BOC hot cut procedures.[88] Therefore, in order to ensure that Verizon maintains adequate hot cut and batch cut processes in Massachusetts, Verizon must be subject to intervals, measurements and penalties for non-compliance.

Finally, to the extent the Department finds that certain UNEs, declassified under section 251(c)(3), are, in fact, required under section 271 of the 1996 Act, the FCC merger conditions, or Massachusetts law, Verizon should be subject to the same provisioning intervals, performance measurements, and penalties as if such UNEs were ordered under section 251(c)(3) of the 1996 Act. A CLEC must serve a Massachusetts customer the same way regardless of whether a UNE it purchases is a 271 element or a 251(c)(3) element. Massachusetts CLECs will be held to no lesser of a standard by their customers, and therefore, Verizon should not be held to a lesser standard. For these reasons, the Department should reject Verizon's language that would completely exclude itself from provisioning intervals, performance measurements, and associated remedies and ensure that Verizon is held accountable for providing adequate service to Massachusetts CLECs and consumers.

ISSUE 17: How should the Amendment address sub-loop access under the TRO?

It is undisputed that the FCC's rules require Verizon to provide CLECs with unbundled access to Verizon's copper subloops and network interface devices. Verizon must not be allowed to utilize the amendment process to narrow the definition of such access. The FCC, in the *Triennial Review Order* defines the copper subloop UNE as "the distribution portion of the copper loop that is technically feasible to access at terminals in the incumbent LEC's outside

[88] *Triennial Review Order* at ¶116.

plant (*i.e.*, outside its central offices), including inside wire."[89] The FCC found that "any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal."[90] The FCC has further provided that, to facilitate competitive LEC access to the copper subloop UNE, incumbent LECs are required to provide, upon a site-specific request, access to the copper subloop at a splice near their remote terminals."[91] Moreover, the FCC requires Verizon to construct a Single Point of Interconnection ("SPOI") at multi-tenant premises, and provide unbundled access to Inside Wire Subloop in multi-tenant environments.

Verizon seeks to limit CLECs' ability to obtain access to subloops. As an initial matter, Verizon fails to provide clear definitions of the applicable subloops. Although Verizon defines a "Sub-Loop for Multiunit Premises Access,"[92] it does not provide a separate definition for a "Inside Wire Subloop," as proposed by the Competitive Carrier Group.[93] Moreover, Verizon attempts to limit the location were a CLEC can obtain access to a subloop. As pointed out by AT&T, the FCC, in the *Triennial Review Order*, recognized that a competitive carrier needs to interconnect with an ILECs' network, "at or near the customer premises to serve customers in multiunit premises."[94] Verizon's proposed language and the justification for its language in its Initial Brief predominately focuses on limits on CLECs' access to subloops, a number of which are not supported by the *Triennial Review Order*. Alternatively, the language proposed by the Competitive Carrier Group focuses on the ability of CLECs to access subloops

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89 *Triennial Review Order* at ¶254.

90 *Id.*

91 *Id.*

92 Verizon Proposed Amendment II, §4.7.24.

93 Competitive Carrier Group Proposed Amendment, §2.21.

94 AT&T Initial Brief at 57, *see also Triennial Review Order* at ¶344.

in compliance with the FCC's rules. For these reasons and the reasons set forth in response to the subissues below, the Department should reject Verizon's proposed language and adopt the language proposed by the Competitive Carrier Group at §3.5.

a) Should the Amendment address access to the feeder portion of a loop? If so, how?

As stated in our Initial Brief, the language proposed by the Competitive Carrier Group recognizes that Verizon is no longer required to provide, under the parties' existing interconnection agreements, unbundled access to the feeder portion of the subloop on a standalone basis.[95] The Department, however, should find that the Amendment does not affect the right of Massachusetts CLECs to purchase, on an unbundled basis, access to the feeder portion of the loop consistent with Verizon's SGAT and applicable tariff.

b) Should the Amendment address the creation of a Single Point of Interconnection (SPOI)? If so, how?

The FCC's rules clearly require Verizon to create a Single Point of Interconnection ("SPOI") for requesting CLECs. Indeed, in the *Triennial Review Order*, the FCC denied Verizon's request that it eliminate the SPOI requirement, rejecting the argument that the SPOI requirement is inconsistent with either section 251(c)(2) or the Eighth Circuit decision in *Iowa Utilities Board*.[96] Verizon's new tactic is to attempt to thwart CLECs' ability to gain access to SPOIs by proposing amendment language that would force CLECs to negotiate a new amendment for each SPOI.[97] Negotiating a new amendment for each SPOI not only is unnecessary and inefficient, it burdens the CLEC, delays its operations, and is generally discriminatory. Verizon was unsuccessful in its previous attempts to eliminate the SPOI

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95 Competitive Carrier Group Initial Brief at 35.

96 *Triennial Review Order*, note 1058 (footnotes omitted).

97 Verizon Initial Brief at 108-109.

requirement, so now it attempts to make SPOI creation as difficult as possible for CLECs. Verizon's amendment language should be rejected because it opens the door to discrimination against CLECs, and future disputes between the parties.[98] In contrast, the Competitive Carrier Group's proposed Amendment is consistent with *Triennial Review Order* requirements, and eliminates doubt by providing specific guidelines regarding the details of SPOI creation, yet is flexible enough to allow the parties to come to a "mutual agreement" regarding those details.[99] The Competitive Carrier Group's language should, therefore, be adopted.

c) Should the Amendment address unbundled access to Inside Wire Subloop in a multi-tenant environment? If so, how?

The FCC found CLECs to be impaired on a nationwide basis without access to unbundled subloops to access customers in multiunit premises, noting that CLECs face significant barriers to obtaining access to customers in multi-tenant environments.[100] Because ILECs previously had exclusive access to multi-tenant environments, and due to the substantial costs and risks associated with self-deployment to these environments, the FCC found that "[u]nless a competitor has access to the unbundled incumbent LEC inside wire subloop, competitors may simply have no alternative, especially in multiunit premises, if the premises owner simply refuses to enable the competitive LEC to construct its own wiring."[101] Accordingly, the FCC's rules require inside wire subloop unbundling to reach all customers

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98 Verizon Initial Brief at. 109. "Verizon's Amendment provides that the parties shall negotiate in good faith an amendment memorializing the terms, conditions, and rates under which Verizon will provide a SPOI."

99 *See* Competitive Carrier Group Proposed Amendment, § 3.5.5. ("Unless mutual agreement is reached with respect to completion of SPOI construction, Verizon shall complete the construction of the SPOI and provide CLEC with unrestricted access thereto not more than forty-five (45) days from receipt of a request by CLEC to construct a SPOI.")

100 *Triennial Review Order* at ¶ 348.

101 *Id*. at ¶354.

residing in multi-unit premises, and defines inside wire subloops as "all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in §68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in §68.3 of this chapter."[102]

Verizon attempts to impose various restrictions on CLECs' ability to access inside wire subloops, none of which are contemplated by the *Triennial Review Order* or the FCC's rules. For example, Verizon contends that (1) CLECs must install their facilities no closer than fourteen inches from the point of interconnection, unless otherwise agreed to by the parties;[103] (2) CLEC facilities cannot be attached, otherwise affixed or adjacent to Verizon's facilities or equipment, cannot pass through or otherwise penetrate Verizon's facilities or equipment and cannot be installed so that they are located in a space where Verizon plans to locate its facilities or components;[104] (3) it shall perform any cutover of a customer by means of a House and Riser Cable subject to a negotiated interval,[105] and (4) it shall determine how to perform such installation.[106]

While Verizon alleges that these provisions "are geared towards the practical and logistical implementation of CLEC orders,"[107] in reality they constitute unwarranted limitations on CLECs' ability to access and utilize inside wire subloops that go well beyond the bounds of the FCC's rules and, as such, must be rejected by the Department.

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[102] 47 C.F.R. §51.319(b)(2).

[103] Verizon Proposed Amendment, §3.3.1.1.1.2.

[104] *Id*., §3.3.1.1.1.3.

[105] *Id*., §3.3.1.1.1.6.

[106] *Id*.

[107] Verizon Initial Brief at 110.

ISSUE 18: **Where Verizon collocates local circuit switching equipment (as defined by the FCC's rules) in a CLEC facility/premises (i.e., reverse collocation), should the transmission path between that equipment and the Verizon serving wire center be treated as unbundled transport? If so, what revisions to the parties' agreements are needed?**

The FCC's rule regarding reverse collocation is clear, "to the extent that an incumbent LEC has local switching equipment, as defined by the [FCC's] rules, "reverse collocated" in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as a transport between incumbent LEC switches or wire centers."[108] The FCC is also clear that a "reverse collocation" arrangement is different from an "entrance facility" and ILECs must treat transport between the reverse collocation premises to the ILEC wire center as unbundled transport.[109]

Despite the FCC's clear findings with regard to reverse collocation, Verizon makes no offer to incorporate these findings into the Amendment.[110] Although Verizon does not dispute the FCC's finding, it claims that reverse collocation is not a "real world" scenario and Verizon does not own any local switching equipment in a CLEC premise.[111] Therefore, Verizon's proposal is not to address this issue in the Amendment. Verizon's approach is unacceptable. While Verizon may claim that it does not engage in any reverse collocation, it has provided no evidence to support its claim. Further, regardless of whether Verizon currently has any reverse collocation arrangements, Verizon may utilize such collocation in the future .[112] The purpose of the Amendment is to account for all changes in law that resulted from the *Triennial*

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[108] *Triennial Review Order* at ¶ 369, n. 1126.

[109] *Id.*

[110] Verizon Initial Brief at 111.

[111] *Id.*

[112] *See* CCC Initial Brief at 69-70, "The FCC expressly incorporated into the definition of 'reverse collocation' all of the *specific examples* raised by SNiP LiNK in its comments."

Review Order and *Triennial Review Remand Order* and not only those changes that Verizon believes are applicable. Accordingly, the Department should adopt the Competitive Carrier Group's proposed definition of Dedicated Transport at §2.9 which includes transmission facilities from Verizon's switching equipment located at a CLEC premise.

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

As stated by the Competitive Carrier Group and other parties to this proceeding, the *Triennial Review Order* revised the definition of dedicated transport to exclude entrance facilities, finding that they "exist outside the incumbent LEC's local network," but did not alter the obligations of Verizon to continue to provide interconnection trunks, pursuant to section 251(c)(2), at TELRIC rates.[113] Verizon has proposed no language to reflect the FCC's holding that interconnection facilities are distinct from entrance facilities, claiming that the *Triennial Review Order* and *Triennial Review Remand Order* did not impact any of the parties' preexisting rights regarding interconnection facilities.[114] The Competitive Carrier Group is not satisfied, nor should the Department be, to rely on Verizon's claim that its obligation is clear and therefore, no language is required. Language must be adopted to avoid confusion and potential future disputes.

Verizon's obligation to provide nondiscriminatory access to interconnection trunks is clear and should be reflected in the Amendment. Thus, the Department should adopt the Competitive Carrier Group's language at §3.6.1.2. This language clearly tracks the FCC's finding in the *Triennial Review Remand Order* in distinguishing interconnection facilities as

[113] Competitive Carrier Group Brief at 38-39, AT&T Initial Brief at 60-62, CCC Initial Brief at 70-71.

[114] Verizon Initial Brief at 113.

251(c)(2) facilities and not 251(c)(1) network elements.[115] The language proposed by the Competitive Carrier Group also makes clear that interconnection facilities include "transport facilities and equipment between the CLEC switch and the Verizon Tandem Switch, or other Point of Interconnection designated by the CLEC, used for the exchange of traffic between CLEC and Verizon."[116] Considering the amount of time and resources expended on negotiating and arbitrating this Amendment, the Department must include all language that reflects the FCC's findings in the *Triennial Review Order* and *Triennial Review Remand Order* to avoid any misunderstanding between the parties that could result in future disputes. Accordingly, the Department should adopt the language proposed by the Competitive Carrier Group that adequately reflects the FCC's rules for interconnection facilities.

ISSUE 20: What obligations, if any, 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?

The FCC explicitly requires Verizon to provide CLECs with access to EELs. This obligation, as well as the criteria for ordering or converting existing circuits to EELs, is found in 47 C.F.R. § 51.318. The FCC noted in the *Triennial Review Order* that "[o]ur rules currently require incumbent LECs to make UNE combinations, including loop-transport combinations, available in all areas where the underlying UNEs are available and in all instances where the requesting carrier meets the eligibility requirements."[117] The FCC once again affirmed this requirement in the *Triennial Review Remand Order*, finding "to the extent that the loop and

[115] *Triennial Review Order* at ¶¶136-41.

[116] Competitive Carrier Group Proposed Amendment §3.6.1.2.

[117] *Triennial Review Order* at ¶575.

transport elements that comprise a requested EEL circuit are available as unbundled elements, then the incumbent LEC must provide the requested EEL."[118]

a) 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 (1) convert existing circuits/services to EELs or (2) order new EELs?

FCC rules set forth certain eligibility criteria, which require a CLEC to be certificated by the state and to provide self-certification that each DS1 circuit and each DS1-equivalent circuit on a DS3 EEL meet certain criteria.[119] CLECs must provide Verizon with a letter certifying that it meets those criteria when ordering either a new EEL or converting existing circuits to an EEL; however, CLECs are not required to provide detailed information regarding each circuit – just the self-certification. The FCC expressly established a framework of self-certification, recognizing that a letter sent to the incumbent LEC is a "practical method" for certification.[120] In doing so, the FCC rejected attempts by Verizon and other incumbent LECs to impose additional requirements, finding that such requirements would "constitute unjust, unreasonable, and discriminatory terms and conditions for obtaining access to UNE combinations and are prohibited by the Act and our rules."[121]

While the FCC's rules specify a streamlined process of self-certification Verizon, through its proposed Amendment, attempts to impose various conditions that appear designed to constrain CLECs' ability to utilize EELs. For example, Verizon proposes to require CLECs to provide the specific local telephone number assigned to each DS1 circuit or DS-1

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[118] *Triennial Review Remand Order* at ¶ 85.

[119] 47 C.F.R. § 51.318.

[120] *Supplemental Order Clarification*, 15 FCC Rcd at 9602-04, ¶¶ 28-33.

[121] *Triennial Review Order* ¶577.

equivalent; the date each circuit was established in the 911/E911 database; the specific collocation termination facility assignment for each circuit and a showing that the particular collocation arrangement was established pursuant to the provision of the 1996 Act dealing with local collocation and the interconnection trunk circuit identification number that serves each DS1 circuit.[122] This information goes well beyond what is required by the FCC's rules for a CLEC to self-certify satisfaction of the service eligibility criteria. For that reason, and since Verizon has proffered no justification for these extraordinary requirements, they must be rejected by the Department.

b) Conversion of existing circuits/services to EELs:

(1) Should Verizon be prohibited from physically disconnecting, separating, changing or altering the existing facilities when Verizon performs conversions unless the CLEC requests such facilities alteration?

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 unless the CLEC specifically requests that such work be performed.[123] There is no reason for Verizon to have "flexibility" to unilaterally alter facilities, particularly when conversions are required to be a seamless process that does not alter the customer's perception of service quality.[124] Allowing Verizon unfettered access to alter existing facilities would inappropriately jeopardize service quality and must not be permitted by the Department.

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[122] Verizon Proposed Amendment II, §3.4.2.3.

[123] 47 C.F.R. § 51.316(b) provides that "[a]n 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."

[124] *Triennial Review Order* at ¶ 586.

(2) What type of charges, if any, and under what conditions, if any, can Verizon impose for Conversions?

FCC rules expressly prohibit non-recurring charges on a circuit-by-circuit basis when wholesale services (*e.g.*, special access facilities) are being converted to EELs.[125] The FCC declared these fees to be discriminatory, since incumbent LECs are never required to perform a conversion in order to continue serving their own customers.[126] Furthermore, such charges are inconsistent with section 202 of the 1996 Act, which prohibits carriers from subjecting any person or class of persons to undue or unreasonable prejudice or disadvantage.[127] Verizon attempts to justify a "retag fee" and other nonrecurring charges as legitimate cost recovery items, but Verizon may not legally impose these charges.[128] The prohibition on these charges has nothing to do with "wasteful and unnecessary charges," as Verizon attempts to argue in its Initial Brief,[129] and has everything to do with discrimination against and intimidation of CLECs. As the FCC aptly noted, these "charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service."[130] Verizon should not be allowed the flexibility to impose these discriminatory and predatory charges on CLECs, therefore Verizon's proposed Amendment language should be rejected.

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[125] 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."

[126] *Triennial Review Order* at ¶ 587.

[127] *Id.*

[128] *See* Verizon Proposed Amendment II, §§3.4.2.4, 3.4.2.5.

[129] Verizon Initial Brief at 116.

[130] *Id.*

(3) Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC's service eligibility criteria?

Verizon may not force CLECs to "re-certify" existing arrangements on a circuit-by-circuit basis.[131] Verizon has presented no legitimate justification for this process when eligibility for these circuits has already been established. Verizon's only goal in this respect is to create additional burdens and costs for CLECs. Although the FCC specifies that carriers must satisfy the service eligibility criteria, it does not require CLECs to re-certify existing arrangements or a circuit-by-circuit basis.

(4) 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)?

Although the FCC declined to require retroactive billing, to any time before the effective date of the *Triennial Review Order*, the FCC made clear that Verizon's obligation to provide for conversions commenced upon the effective date of the Order and "[t]o the extent pending requests have not been converted…competitive LECs are entitled to the appropriate pricing up to the effective date of this Order."[132] Verizon's assertion that the CLECs used delay tactics to avoid amending their agreements "solely to receive more favorable UNE pricing" is patently false.[133] Verizon mischaracterizes the CLECs' attempts to enforce their rights under the law as "continuing obstruction" in the arbitration process.[134] Yet throughout these proceedings, Verizon has attempted to force CLECs into amendments that neither reflected the *Triennial Review Order* nor the requirements of the 1996 Act; thus any delay in completing these

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131 Verizon Proposed Amendment II, §3.4.2.1.

132 *Triennial Review Order* at ¶ 589.

133 Verizon Initial Brief at 119.

134 *Id.*

amendments falls squarely on Verizon. In accordance with the *Triennial Review Order*, therefore, CLECs are entitled to UNE pricing effective as of the date the CLEC submitted its conversion request.

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

The Competitive Carrier Group supports the limited audit rights set forth in the *Triennial Review Order*, in which the FCC notes that "an annual audit right strikes the appropriate balance between the incumbent LECs' need for usage information and risk of illegitimate audits that impose costs on qualifying carriers."[135] However, the Department must not allow Verizon to impose its own more onerous audit requirements on CLECs. Despite the FCC's provision for *annual* audits, Verizon incorrectly assumes that it should be allowed to audit CLECs once per calendar year.[136] Yet that would give Verizon the explicit authority to bully CLECs with burdensome audits. If Verizon had the authority to perform one audit per calendar year, Verizon would be free to harass a CLEC by auditing it in December, again in April, and yet again in January of the following year. Although technically that would constitute one audit per calendar year, in reality it would amount to almost three audits in one year. Moreover, although incumbent LECs are required to reimburse CLECs for the cost of an audit where the CLEC is found to be in compliance in all material respects with the eligibility criteria,[137] this may not be sufficient to deter abusive auditing practices by Verizon. Audit costs can be prohibitive to many CLECs, yet they are nothing more than a minor nuisance to a giant company like Verizon. The

[135] *Triennial Review Order* at ¶ 626.

[136] Verizon Initial Brief at 119.

[137] *Triennial Review Order* at ¶ 628.

FCC noted that states are in a better position to address the implementation of audits,[138] therefore the Department must ensure that Verizon is required to abide by both the letter and the spirit of the FCC's requirements.

ISSUE 21: **How should the Amendment reflect an obligation that Verizon perform routine network modifications necessary to permit access to loops, dedicated transport, or dark fiber transport facilities where Verizon is required to provide unbundled access to those facilities under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51? May Verizon impose separate charges for Routine Network Modifications?**

At the onset, the Competitive Carrier Group notes that it is unnecessary to amend the Agreement to reflect this requirement, as there has been no "change in law" to require an amendment. Verizon already was obligated to perform routine network modifications prior to adoption of the *Triennial Review Order*.[139] The FCC's rules in 47 C.F.R. § 51.319(e)(5) obligate Verizon to perform routine network modifications; the *Triennial Review Order* merely clarified

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[138] *Triennial Review Order* at ¶ 625.

[139] Other state commissions in Verizon territory have determined that the *Triennial Review Order* did not constitute a "change in law" that triggers the requirement to amend parties' interconnection agreements. *See, e.g., In Re: Petition of Verizon-Rhode Island for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Rhode Island to Implement the Triennial Review Order*, Rhode Island Public Utilities Commission, Docket No. 3588, Procedural Arbitration Decision, April 9, 2004, at 14 ("The current ICAs already require VZ-RI to provide UNEs such as routine network modifications at TELRIC rates."); *Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order*, New York Public Service Commission, Case 04-C-0314, Order Directing Routine Network Modifications, February 10, 2005 at 18 ("In 2001, Verizon unilaterally interpreted the scope of its obligation to provide UNE loops by articulating its "no facilities" policy. It did so with no amendment to its agreements or invocation of change of law procedures. Now that it must adopt the FCC's interpretation of the same obligation, there is similarly no need for amending language. Rather, Verizon must immediately cease its "no facilities" policy, which has been declared discriminatory by the FCC, without the delay inherent in the amendment negotiation process."); *Verizon Maine Petition for Consolidated Arbitration*, Maine Public Utilities Commission, Docket No. 2004-135, Order, June 11, 2004, at 8 ("We find, on balance, that the *TRO* did not establish new law but instead clarified existing obligations. Section 251(c)(3) has always required that Verizon provide access to its UNEs on a non-discriminatory basis. The FCC's new rules merely clarify what is required under that existing obligation. Thus, Verizon must perform routine network modifications on behalf of CLECs in conformance with the FCC's rules. Verizon may not condition its performance of routine network modifications on amendment of a CLEC's interconnection agreement.").

and reinforced Verizon's obligations.[140] For example, the *Triennial Review Order* underscores the requirement that Verizon must perform all loop modification activities it performs for its own customers, and further addresses Verizon's refusals to comply with its obligations through its unlawful "no build" practice.[141]

Notwithstanding the above, the Competitive Carrier Group proposes language that accurately reflects the FCC's rules, and addresses ambiguities clarified by the *Triennial Review Order*. The Competitive Carrier Group's proposed Amendment correctly states that "[d]etermination of whether a modification is "routine" shall be based on the tasks associated with the modification, not on the end-user service that the modification is intended to enable." This accurately reflects the FCC's task-oriented approach for routine network modifications. Verizon has criticized CLECs that have incorporated the FCC's task-oriented approach into their amendments, suggesting that Verizon's own Amendment is fair and does not attempt to limit routine network modifications to any particular services.[142] Yet in practice, if allowed the loophole, Verizon could attempt to limit routine network modifications to only those services that mimic Verizon end-user service offerings, and to the exact same degree that Verizon would provide them for its own customers. The Competitive Carrier Group's proposed Amendment is in keeping with the FCC's approach, thereby closing that loophole and preventing future disputes over services. The Department should therefore reject Verizon's proposed amendment language and approve the Amendment proposed by the Competitive Carrier Group.

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[140] *Triennial Review Order* at ¶¶ 632-641.

[141] *Id.* at ¶¶ 632-634.

[142] Verizon Initial Brief at 126.

More troubling, however, is Verizon's argument that it reserves the right to impose an additional charge for routine network modifications at a later date, pending the results of its new TELRIC study.[143] There is no support in the *Triennial Review Order* for permitting Verizon to impose a charge to perform routine network modifications. The FCC has made clear that the costs associated with routine network modifications are included in existing TELRIC rates, and therefore no further cost recovery is justified.[144] Indeed, the FCC specifies that Verizon may not recover its costs twice.[145] Existing non-recurring and recurring UNE rates have been set at levels that fully recover Verizon's forward-looking cost of performing routine network modifications and, as a consequence, no further cost recovery is justified. The New York Public Service Commission recently issued a ruling requiring Verizon to make all routine network modifications without charge, as have a number of other state commissions.[146] Thus, Competitive Carrier Group's proposed Amendment accurately reflects the FCC's rules, addresses ambiguities clarified in the *Triennial Review Order*, and should be approved.

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[143] *Id.*

[144] *Triennial Review Order* at ¶ 640. ("We note that the 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.")

[145] *Id.*

[146] *Petition of Verizon New York Inc. for Consolidated Arbitration to Implement Changes in Unbundled Network Element Provisions in Light of the Triennial Review Order*, New York Public Service Commission, Case 04-C-0314, (citations omitted), Order Directing Routine Network Modifications, Feb. 10, 2005. See also footnote 16, infra; Petition of Cavalier Telephone, LLC for Injunction Against Verizon Virginia Inc. for Violations of Interconnection Agreement and for Expedited Relief to Order Verizon Virginia Inc. to Provision Unbundled Network Elements in Accordance with the Telecommunications Act of 1996, Case No. PUC-2002.

ISSUE 22: Should the parties retain their pre-Amendment rights arising under the Agreement and tariffs?

As stated in our Initial Brief, the parties should retain their pre-Amendment rights under the Agreement and tariffs. In doing so, the Competitive Carrier Group does not waive any of its rights to obtain facilities and services under Applicable Law, as defined in the parties underlying Agreement. Verizon, however, seeks to use this Amendment to limit its unbundling obligations only to the extent required by 251(c)(3).[147] Verizon's position is in conflict with the "Applicable Law" definition in its Agreements, which encompasses section 271 of the 1996 Act, the FCC's merger conditions and Massachusetts state law.[148] Nothing in this Amendment should be construed to limit a party's rights or exempt a party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption.

In its Initial Brief, AT&T raised the issue that Verizon should not be able to make ambiguous references to sources external to the Agreement, such as tariffs.[149] The Competitive Carrier Group agrees with AT&T; to the extent that Verizon seeks to incorporate a tariff or other external document into the Agreement, such external source must be precisely cited. The Competitive Carrier Group has negotiated with Verizon and participated in this arbitration so that its rights will be governed by the terms and conditions of the Agreement, including the Amendment. The Department must not allow Verizon to "end-run" the interconnection

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147 Verizon Initial Brief at 19 "…the Department must reject CLEC proposals to define unbundling obligations by reference to "Applicable Law," merger conditions, or anything other than section 251(c)(3) and the FCC's unbundling rules." *Id.*

148 The Competitive Carrier Group has addressed this issue in discussing the scope of the Amendment throughout its initial brief and this Reply Brief, specifically in response to Issues 1, 2, 10, 27, 28, 30, 31, and 32.

149 AT&T Initial Brief at 82.

amendment process by filing tariff changes that could undermine the terms and conditions resulting from this arbitration. Accordingly, the Department should adopt the language proposed by the Competitive Carrier Group that incorporates the precise findings of the FCC in the *Triennial Review Order* and the *Triennial Review Remand Order*, while preserving parties' rights under the Agreement to obtain network elements and services pursuant to Applicable law.

ISSUE 23: Should the Amendment set forth a process to address the potential effect on the CLECs' customers' services when a UNE is discontinued?

The Department must protect Massachusetts consumers from potential service disruption as a result of Verizon's discontinuance of certain UNEs. In order to ensure that customers are not harmed, the Department should implement the transition framework established in the *Triennial Review Remand Order* into the Amendment. As discussed in the introduction to this Reply Brief, the FCC has set forth a basic framework for CLECs to transition from network elements declassified under section 251(c)(3). It is up to the Department, however, through this arbitration proceeding, to implement the framework and establish the precise processes to ensure an efficient transition. AT&T recognized the importance of this in its Initial Brief, stating that the transition plan "is not an area in which the parties or the Department can tolerate any ambiguity."[150] The Competitive Carrier Group has proposed transition language that follows the framework established in the *Triennial Review Remand Order* with specific identification processes, notice periods and dispute provisions that fill-in the details of the FCC's transition framework and provide a comprehensive plan that can be adopted by the Department.[151]

[150] AT&T Initial Brief at 83.

[151] *See* Competitive Carrier Group Proposed Amendment, § 3.9.

The notice periods proposed by the Competitive Carrier Group are consistent with the notice periods prescribed by the FCC in the *Triennial Review Remand Order* and would enable CLECs sufficient time to transition to alternative arrangements without disrupting their customers' service. Verizon has not included adequate transition language in its proposed Amendment. Verizon has proposed providing only 90-days notice - obviously because it is in Verizon's interest to keep transition details out of the Amendment so it may begin discontinuing UNE arrangements without regard to CLECs' Massachusetts customers. Verizon claims that it "will not disconnect any CLEC unless that CLEC chooses that option."[152] Such a statement from Verizon does not comfort the Competitive Carrier Group and should not satisfy the Department's obligation to protect Massachusetts customers from possible service disruption.

The transition plan must also allow for resolution of potential disputes over identification of a declassified UNE. The Competitive Carrier Group's proposed language provides for the CLEC to object to Verizon's identification of a declassified UNE and for the parties to seek resolution from the Department if the parties cannot agree to the applicable rates, terms and conditions of the identified UNE.[153] The Department should adopt the procedures proposed by the Competitive Carrier Group above, and reflected in its proposed language, to ensure that Massachusetts consumers are not harmed from the implementation of the *Triennial Review Order* and *Triennial Review Remand Order*.

[152] Verizon Initial Brief at 129.

[153] Competitive Carrier Group Proposed Amendment, § 3.9.2.

ISSUE 24: **How should the Amendment implement the FCC's service eligibility criteria for combinations and commingled facilities and services that may be required under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51?**

The Competitive Carrier Group addresses this issue in response to Issues 12 and 20, above.

ISSUE 25: **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 Section 251 UNE?**

As noted in response to Issue No. 6, Verizon is not permitted to exclude from state commission-approved interconnection agreements, arising under section 252 of the 1996 Act, agreed upon rates, terms and conditions applicable to network elements that Verizon provides to competitive LECs, on an unbundled basis, consistent with its obligations under other Applicable Law, including section 271 of the 1996 Act and Massachusetts state law. Importantly, the obligations of Verizon and competitive carriers to file with the Department, for its review under section 252 of the 1996 Act, *any* rates, terms and conditions applicable to network elements provided by Verizon to competitive LECs encompasses commercial and other negotiated agreements executed by the parties outside of this arbitration. Thus, the Department should reject efforts by Verizon to minimize its federal and state law unbundling obligations through commercial contracts intended to evade state commission oversight, under section 252 of the 1996 Act.[154]

In the event that Verizon enters into an agreement with a competitive LEC addressing Verizon's ongoing obligations to provide network elements, on an unbundled basis, under any applicable law, including under section 271, such agreement must be treated by the Department as an "interconnection agreement," subject the requirements of section 252 of the

[154] Verizon Initial Brief at 130-31.

1996 Act. Thus, a commercial or other negotiated agreement between Verizon and a competitive LEC, setting forth rates, terms and conditions applicable to network elements and combinations of network elements offered by Verizon, must be filed with Department. Section 252 of the 1996 Act requires that the Department review and approve any agreement addressing Verizon's ongoing obligation to offer access to its network elements, or otherwise reject such agreement if (i) the agreement (or a portion thereof) discriminates against another telecommunications carriers; or (ii) the implementation of such agreement or portion thereof is not consistent with the public interest, convenience or necessity. Furthermore, in the interest of preventing discrimination among carriers within Massachusetts, the Department must require that the rates, terms and conditions applicable to network elements and combinations of network elements offered by Verizon be made available for adoption, pursuant to section 252(i) of the Act, by other competitive LECs.

The *Qwest Declaratory Ruling* relied on by Verizon, in its Initial Brief,[155] in fact directs the Department to reject the position that Verizon is not required, under the 1996 Act, to set forth, in its state commission approved interconnection agreements, rates, terms and conditions for non-section 251 network elements that Verizon provides to competitive LECs consistent with its unbundling obligations under federal and state law, including section 271 of the 1996 Act. Specifically, in that ruling, the FCC required that private agreements, including those agreements setting forth rates, terms and conditions applicable to network elements offered by the BOCs under section 271 of the 1996 Act must be filed with the state commissions. In so doing, the FCC expressly concluded that section 252 of the 1996 Act creates a broad obligation to file agreements (subject to specific narrow exceptions), including those agreements that

[155] *Id*. at 40.

impose on carriers "ongoing" obligations pertaining to, among other things, unbundled network elements.[156] The FCC concluded that the state commissions should be the "first line of defense" against any efforts by incumbent LECs to evade their unbundling obligations. As the FCC explained:

> We rejected this [Qwest's] "cramped reading" of section 252, noting that "on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions. Instead, we broadly construed section 252's use of the term "interconnection agreement" holding that carriers must file with the state commissions for review and approval under section 252 any agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements or collocation…[157]

Accordingly, the *Qwest Declaratory Ruling* and related *Qwest NAL* make clear that any agreement entered into by Verizon and any competitive LEC pertaining to Verizon's ongoing obligation to offer network elements and combinations of network elements on an unbundled basis must be filed with Department, and subject to the Department's procedures for "review and approval" of interconnection agreements. Importantly, such agreements applicable to Verizon's unbundling obligations under any Applicable Law, including section 271 of the Act, fall squarely within that requirement, and must be treated as "interconnection agreements" by the Department. To the extent that any question remains as to those obligations, the state commissions are to decide that issue in the first instance.[158]

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[156] Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under section 252(a) (1), WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337 (2002) ("*Qwest Declaratory Ruling*").

[157] Qwest Corporation, Notice of Apparent Liability for Forfeiture, FCC 04-57 (rel. Mar. 12, 2004), at ¶ 11. ("*Qwest NAL*").

[158] *Qwest Declaratory Ruling* at ¶ 11.

Of further importance, the *Qwest Declaratory Ruling* supports the finding that the section 252 process for review and approval of interconnection agreements by the state commissions, including section 252(i), is critical to detect and prevent discrimination against any telecommunications carrier.[159] Specifically, section 252(i) of the 1996 Act ensures that competitive LECs are aware of, and may adopt the interconnection agreements of other carriers, including the rates, terms and conditions applicable to network elements. Moreover, because section 252(i) of the Act requires ILECs to offer to any carrier the same rates, terms, and conditions set forth in a specific interconnection agreement, market forces may place additional pressure on any discriminatory arrangement. Accordingly, the section 252(i) adoption process is entirely consistent with enforcing Verizon's obligation to provide to Massachusetts CLECs network elements, including local switching, dedicated transport and high-capacity loop facilities, on an unbundled basis and subject to nondiscriminatory rates, terms and conditions.

ISSUE 26: Should Verizon provide an access point for CLECs to engage in testing, maintaining and repairing copper loops and copper subloops?

The Competitive Carrier Group and other CLECs in the proceeding have proposed language to ensure they receive adequate access to test, maintain and repair copper loops and subloops.[160] CLECs in this proceeding recognize that language addressing loop maintenance, repair and testing must be included in the Amendment. Verizon has taken its standard tactic, failing to propose any language for those issues, maintaining that including

[159] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98), First Report and Order, FCC 96-325, 11 FCC Rcd 15499 at ¶ 167 (Aug. 8, 1996) ("*Local Competition Order*") ("…requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements… and to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest.").

[160] *See* Competitive Carrier Group Proposed Amendment, §3.4.4. *See also* AT&T Proposed Amendment, § 3.3, Competitive Carrier Coalition Proposed Amendment, § 1.5.3.

language to cover loop access for testing and repair would be "a waste of resources."[161] Verizon would rather have the CLECs engage in a separate negotiation to draft a separate Amendment to cover this issue if the CLECs believe it is necessary. The fact that numerous CLECs have proposed language addressing loop maintenance and repair in this arbitration demonstrates that the issue is important to CLECs and it is much more efficient to address the issue in this proceeding than in an entirely separate forum, at some unspecified later date, as proposed by Verizon.

The language proposed by the Competitive Carrier Group is consistent with the FCC's finding in the *Triennial Review Order* and is almost verbatim from the FCC's loop maintenance, repair and testing rules.[162] The FCC stated in the *Triennial Review Orde*r that it "readopts" it rules. For this reason and the fact that there have been substantial changes to the FCC's loop unbundling rules as a result of the *Triennial Review Order* and the *Triennial Review Remand Order*, the Department should reject Verizon's proposal to ignore loop testing, maintenance and repair in this proceeding and adopt the language proposed by the Competitive Carrier Group.

ISSUE 27: What transitional provisions should apply in the event that Verizon no longer has a legal obligation to provide a UNE? Does Section 252 of the 1996 Act apply to replacement arrangements?

As discussed in response to Issue Nos. 3, 4 and 5, the Amendment to the parties' interconnection agreement must expressly incorporate the transitional framework set forth in the

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161 Verizon Initial Brief at 131.

162 *Triennial Review Order* at ¶252, 47 C.F.R. §51.319(a)(1)(iv)(A), "An incumbent LEC shall provide, on a nondiscriminatory basis, physical loop test access points to a requesting telecommunications carrier at the splitter, through a cross-connection to the requesting telecommunications carrier's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops." *Id*.

Triennial Review Remand Order for UNEs that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including the transition plans and transition rates mandated by the FCC for local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high capacity (DS1 and DS3) and dark fiber dedicated transport. Thus, contrary to the legal position asserted by Verizon, in its Initial Brief,[163] the Amendment to the parties interconnection agreements must include rates, terms and conditions applicable to the replacement arrangements provided by Verizon during the transition periods established by the *Triennial Review Remand Order*, which shall be subject to Department review and approval, under section 252 of the 1996 Act.

ISSUE 28: Should Verizon be required to negotiate terms for service substitutions for UNEs that Verizon no longer is obligated to make available under section 251 of the Act?

As discussed in response to Issue Nos. 1 and 31, notwithstanding the unbundling determinations of the FCC set forth in the *Triennial Review Order* and the *Triennial Review Remand Order*, Verizon remains subject to independent, ongoing obligations, under Applicable Law, including section 271 of the 1996 Act, the Verizon Merger Order and Massachusetts state law, to provide to competitive LECs those network elements that Verizon no longer is require to provide, on unbundled basis, pursuant to section 251(c)(3) of the Act. The rates, terms and conditions for network elements that Verizon provides to competitive LECs under Applicable Law, not including section 251(c)(3) of the 1996 Act, must be set forth in amended interconnection agreements between Verizon and competitive LECs, and must be subject to approval by the Department, under section 252 of the 1996 Act. Thus, the Department may

[163] Verizon Initial Brief at 131.

require that Verizon and competitive LECs negotiate rates, terms and conditions for network elements, facilities and services that Verizon under Applicable Law, other than section 251(c)(3).

ISSUE 29: Should the FCC's permanent unbundling rules apply and govern the parties' relationship when issued, or should the parties not become bound by the FCC order issuing the rules until such time as the parties negotiate an amendment to the ICA to implement them, or Verizon issues a tariff in accordance with them?

The "permanent" unbundling rules established by the FCC, under the *Triennial Review Remand Order*, are binding on Verizon and competitive LECs as directed by the FCC. Therefore, as discussed in response to Issue Nos. 2, 3, 4, and 5, the parties must implement all changes to the FCC's unbundling rules arising from the *Triennial Review Order* and the *Triennial Review Remand Order* through the change of law processes set forth in the Department-approved interconnection agreements between Verizon and competitive LECs. In accordance with the *Triennial Review Order* and the *Triennial Review Remand Order*, the FCC's modified unbundling rules will be given full force and effect at such time as they are properly implemented by the parties, through an appropriate interconnection agreement amendment negotiated by the parties, and arbitrated, as necessary, by the state commission, under section 252 of the 1996 Act.

ISSUE 30: Do Verizon's obligations to provide UNEs at TELRIC rates under applicable law differ depending upon whether such UNEs are used to serve the existing customer base or new customers? If so, how should the Amendment reflect that difference?

As set forth in response to Issue Nos. 3, 4 and 5, the Amendment to the parties' interconnection agreements must expressly incorporate the transitional framework set forth in the *Triennial Review Remand Order* for UNEs that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including transition plans and transition rates mandated by the FCC for local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high

capacity (DS1 and DS3) and dark fiber dedicated transport. The specific transition plans and transition rates established by the FCC, under the *Triennial Review Remand Order*, for network elements that Verizon no longer is obligated to provide, on an unbundled basis, under section 251(c)(3) of the Act, including local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high capacity (DS1 and DS3) and dark fiber dedicated transport, apply to competitive LECs "embedded" end user customers. Therefore, consistent with the *Triennial Review Remand Order*, the contract language proposed by the Competitive Carrier Group makes clear that the transition plans and transition rates shall apply for all end user customers of a competitive LEC that were customers of the competitive LEC as of the effective date of the *Triennial Review Remand Order*, including existing customers of a competitive LEC at additional locations, existing customers of a competitive LEC for which the competitive LEC is providing additional or expanded services or facilities on or after the effective date of the Amendment, or existing customers of a competitive LEC whose connectivity is changes on or after the Effective date of the Amendment.[164]

ISSUE 31: Should the Amendment address Verizon's Section 271 obligations to provide network elements that Verizon no longer is required to make available under section 251 of the Act? If so, how?

The Competitive Carrier Group maintains that notwithstanding the legal conclusions set forth in the *Triennial Review Order* and the *Triennial Review Remand Order*, Verizon remains obligated to provide to Massachusetts CLECs nondiscriminatory access to network elements set forth in section 271(c)(2)(B) of the 1996 Act.[165] Although the Competitive Carrier Group's position has been repeatedly supported by the FCC, Verizon continues to argue

[164] *See, e.g.* Competitive Carrier Group Proposed Amendment, §§ 3.2.2.1, 3.2.2.4, 3.3.1.3(a), 3.3.2.2(a), 3.6.1.1.(e).

[165] *See* Competitive Carrier Group Initial Brief at 50-51.

that the Amendment, which is governed by Applicable Law, should not address any of Verizon's section 271 obligations.[166]

In its Initial Brief, Verizon makes two arguments to support its position that the Department should not require Verizon to provide access to network elements beyond that which is required under section 251(c)(3) of the Act. First, Verizon argues that the Department has no authority to enforce section 271 of the Act. Second, Verizon argues that the section 271 Competitive Checklist does not include UNEs as set forth under 251(c)(3) of the 1996 Act. In support of its first claim that the Department has no authority to enforce section 271 of the Act, Verizon incorrectly relies on a specific Department order that narrowly addresses packet switching.[167] The 1996 Act permits, and in fact requires, that the Department oversee the rates, terms and conditions applicable to the network elements provided by Verizon to Massachusetts CLECs on an unbundled basis. Specifically, the broad delegation of authority by Congress to the state commissions, including the Department, under section 252 of the Act requires the Department to supervise Verizon's ongoing compliance with the unbundling obligations imposed by sections 251 and 271 of the Act. In light of the D.C. Circuit's *USTA II* mandate, such authority necessarily includes the following important tasks: (1) the Department must determine whether and to what extent current business relationships between Verizon and Massachusetts CLECs are impacted by the *USTA II* decision, and must interpret and enforce the unbundling obligations set forth in existing interconnection agreements consistent with existing federal law; (2) the Department must review and approve separate commercial agreements, including those agreements applicable to network elements and combinations of network elements offered by

[166] Verizon Initial Brief at 136.

[167] *Id*. at 136-37.

Verizon under section 271 of the Act, to ensure that such agreements are consistent with existing federal law; (3) the Department must reject any modification to Verizon's wholesale tariff offerings that would alter the availability or pricing of network elements in a manner inconsistent with existing federal law; and (4) the Department must initiate, as necessary, a proceeding to implement "just, reasonable and nondiscriminatory" rates for network elements and combinations of network elements offered by Verizon to Massachusetts CLECs under section 271 of the Act.

Moreover, the FCC has recognized in its section 271 approval orders that state commissions play an important role, more than just a consultative role, in enforcing 271 checklist obligations. Specifically, in its order approving the first section 271 in-region, interLATA application, for Bell Atlantic New York, the FCC stated "[c]omplaints involving a BOC's alleged noncompliance with specific commitments the BOC may have made to a state commission, should be directed to that state commission rather than the FCC."[168] Moreover, in the FCC's order approving Verizon's Section 271 Application for Massachusetts, it stated that Verizon's potential backsliding of its section 271 commitments would be deterred by Department oversight.[169] Based on the ample FCC precedent, the Department is completely justified, under federal law, to order Verizon to continue providing nondiscriminatory access to UNEs under section 271 of the 1996 Act, including without limitation, local circuit switching, line sharing, high capacity loops and high capacity dedicated transport facilities.

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[168] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York,* Memorandum Opinion and Order, CC Docket 99-295, FCC 99-404, ¶452 (Dec. 22, 1999).

[169] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts,* Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130, ¶¶242, 252 (Apr. 16, 2001).

With regard to Verizon's second argument that section 271 obligations are not UNEs, it attempts to cloud the Department, in its Initial Brief, with endless points of difference between section 271 network elements and section 251(c)(3) elements, attempting to define section 271 elements as *independent elements held to the same requirements* of section 251(c)(3).[170] The bottom line is that the FCC has held that section 271 of the 1996 Act imposes on BOCs, including Verizon, a separate and distinct unbundling obligation applicable to the "Competitive Checklist" network elements, regardless of whether *the same* network elements are subject to the unbundling obligations imposed by section 251(c)(3).[171] The FCC never has held that section 271 network elements are to be defined separately from section 251(c)(3) elements and, indeed, there is no support in the Act for doing so.

Further, in order to ensure that section 271 elements are priced in accordance with the FCC's "just, reasonable and nondiscriminatory" standard, the Department should price such elements at the last TELRIC compliant rates for such network elements until such time as the Department may conduct its own pricing proceeding to establish "just, reasonable and nondiscriminatory" rates.

ISSUE 32: Should the Department adopt Verizon's proposed new rates for the items specified in the Pricing Attachment to Amendment 2?

As discussed in the Initial Brief of the Competitive Carrier Group,[172] Verizon's proposed nonrecurring charges for the items set forth in Verizon's Pricing Attachment to its

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[170] Verizon Initial Brief at 140-42. 47 U.S.C. §271(c)(2)(B)(ii) states that BOCs must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

[171] *See, e.g., Triennial Review Order* at, ¶ 654 (stating "the plain language and the structure of section 271(c)(2)(B) establish that BOCs have an independent and ongoing access obligation under section 271.").

[172] Competitive Carrier Group Initial Brief at 51.

proposed Amendment 2, including routine networks modifications, commingling and conversions, presumably are not before the Department in this arbitration. However, to the extent that Verizon seeks to include in the Amendment its proposed nonrecurring charges for items that Verizon is required to provide under the *Triennial Review Order*, including routine network modifications, commingling and conversions, such charges must be rejected by the Department. Specifically, Verizon failed to produce, in this arbitration, supporting cost studies ordered by the Department demonstrating: (1) that the nonrecurring charges for routine network modifications proposed by Verizon are just and reasonable; and (2) that Verizon's proposed nonrecurring charges for routine network modifications do not permit double recovery by Verizon of the costs in any charges it seeks to impose for routine network modifications. Moreover, Verizon, in fact, stated to the Department that it would not provide the data ordered by the Department to support its proposed nonrecurring charges for the items set forth in the Pricing Attachment to its proposed Amendment 2, but instead would address such charges in its next TELRIC study, when both the recurring and nonrecurring charges for the specific UNEs are examined in a comprehensive matter.[173] At bottom, Verizon must honor its commitment to the Department and to competitive LECs within Massachusetts to provide the items set forth in the Pricing Attachment to Verizon's proposed Amendment 2, including routine network modifications, commingling and conversions, at no additional charge to competitive LECs, immediately upon executing the Amendment.

SUPPLEMENTAL ISSUES

[173] Letter from Bruce R. Beausejour, Verizon, to Mary L. Cottrell, Massachusetts Department of Telecommunications and Energy, Re: DTE: 04-33 Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements (March 1, 2005).

ISSUE S-1: **Should the Amendment identify the central offices that satisfy the FCC's criteria for purposes of application of the FCC's loop unbundling rules?**

ISSUE S-2: **Should the Amendment identify the central offices that satisfy the Tier 1, Tier 2 and Tier 3 criteria, respectively, for purposes of application of the FCC's dedicated transport unbundling rules?**

ISSUE S-3: **Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?**

As discussed in response to Issue Nos. 3, 4 and 5, the Amendment should expressly detail the transition plans established by the FCC, under the *Triennial Review Remand Order,* for specific network elements that Verizon no longer is obligated to provide to competitive LECs, on an unbundled basis, under section 251(c)(3) of the 1996 Act, including local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high capacity (DS1 and DS3) transport. To properly implement the transitional framework ordered by the FCC, under the *Triennial Review Remand Order*, the Amendment necessarily must specify the central office and wire center locations for which unbundling relief, under section 251(c)(3) of the 1996 Act has been granted. For avoidance of doubt, the Department should adopt, consistent with the *Triennial Review Remand Order*, Exhibit A to the Amendment of the Competitive Carrier Group, listing those central office and wire center locations satisfying the "non-impairment" criteria established by the FCC for high capacity (DS1 and DS3) loop and dedicated transport that Verizon no longer is obligated to provide to competitive LECs, on an unbundled basis, under section 251(c)(3) of the 1996 Act.

ISSUE S-4: **What are the parties' obligations under the TRRO with respect to additional lines, moves and changes with a CLEC's embedded base of customers?**

As set forth in response to Issue Nos. 3, 4 and 5, the Amendment to the parties' interconnection agreements must expressly incorporate the transitional framework set forth in the *Triennial Review Remand Order* for UNEs that Verizon no longer is obligated to provide under

section 251(c)(3) of the 1996 Act, including transition plans and transition rates mandated by the FCC for local circuit switching, high capacity (DS1 and DS3) and dark fiber loops, and high capacity (DS1 and DS3) and dark fiber dedicated transport. Thus, the respective rights and obligations of Verizon and competitive LECs applicable to "additional lines, moves and changes" of a competitive LECs' embedded end user customers must be included in the Amendment to the parties' existing Department-approved interconnection agreements.

Under the *Triennial Review Remand Order*, Verizon must continue to provide to competitive LECs' "embedded" end user customers, throughout the element-specific transition periods established by the FCC, all network elements that Verizon no longer is obligated to provide under section 251(c)(3) of the Act and the FCC's modified unbundling rules. As discussed more fully above, in response to Issue No. 3, the "embedded" base of customers subject to the transition plans established by the FCC includes all end user customers of a competitive LEC that were customers of the competitive LEC as of the effective date of the *Triennial Review Remand Order*, including existing customers of a competitive LEC at additional locations, existing customers of a competitive LEC for which the competitive LEC is providing additional or expanded services or facilities on or after the effective date of the Amendment, or existing customers of a competitive LEC whose connectivity is changes on or after the Effective date of the Amendment.[174] For those network elements provided by Verizon to competitive LECs during the transition periods established by the FCC, the transition rate set forth in the *Triennial Review Remand Order* must apply. During the transition periods established by the FCC, the *Triennial Review Remand Order* requires that competitive LECs

[174] *See, e.g.* Competitive Carrier Group Proposed Amendment, §§ 3.2.2.1, 3.2.2.4, 3.3.1.3(a), 3.3.2.2(a), 3.6.1.1.(e).

work cooperatively with Verizon to migrate their "embedded" end user customers to alternative service arrangements offered by Verizon, that ultimately will replace those UNEs and combinations of UNEs that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act.

CONCLUSION

Consistent with the foregoing, A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp., DIECA Communications Inc. d/b/a Covad Communications Company, DSCI Corp., IDT America Corp., KMC Telecom V, Inc., Talk America Inc., XO Communications Services, Inc. (formerly XO Massachusetts, Inc. and Allegiance Telecom of Massachusetts, Inc.) respectfully request that the Department reject Verizon's proposed Amendment and approve the Amendment proposed by the Competitive Carrier Group in this proceeding, filed with the Department on March 18, 2005.

Respectfully submitted,

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