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

INITIAL BRIEF OF THE COMPETITIVE CARRIER GROUP

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A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Broadview Networks Inc. and Broadview NP Acquisition Corp., 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. and XO Communications Services, Inc. (formerly XO Massachusetts, Inc. and Allegiance Telecom of Massachusetts, Inc.) (collectively, members of the "Competitive Carrier Group"), through counsel and pursuant to the Arbitrators' March 8, 2005 Procedural Memorandum,[1] submit this Initial Brief addressing the Issues[2] and Supplemental Issues[3] identified for arbitration by Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"), the Competitive Carrier Group, and other parties to the above-captioned proceeding before the Massachusetts Department of Telecommunications and Energy ("Department"). The responses of the Competitive Carrier

[1] Memorandum from Tina W. Chin, Arbitrator and Jesse S. Reyes, Arbitrator to D.T.E. 04-33 Service List Re: Procedural Schedule (Mar. 8, 2005).

[2] Letter from Alexander W. Moore, Assistant General Counsel, Verizon New England, Inc. d/b/a Verizon Massachusetts to Mary, L. Cottrell, Secretary, Massachusetts Department of Telecommunications and Energy (enclosing Joint Matrix of Issues to be Arbitrate in D.T.E. 04-33) (Feb. 18, 2005).

[3] Letter from Alexander W. Moore, Assistant General Counsel, Verizon New England, Inc. d/b/a Verizon Massachusetts to Mary, L. Cottrell, Secretary, Massachusetts Department of Telecommunications and Energy (enclosing Supplement List of Issues to be Arbitrate in D.T.E. 04-33) (Mar. 4, 2005).

Group to the additional Briefing Questions posed by the Arbitrators' March 10, 2005 Memorandum[4] are appended hereto as Appendix 1.

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?

The Amendment must incorporate rates, terms, and conditions that reflect Verizon's ongoing obligations under state law to provide competitive local exchange carriers ("CLECs") access to its network elements on an unbundled basis. The federal Telecommunications Act of 1996 ("1996 Act") requires that the Department oversee the rates, terms and conditions applicable to the network elements provided by Verizon, whether under federal law or state law, to Massachusetts CLECs, and to impose on Verizon any unbundling obligation that is consistent with the 1996 Act and Massachusetts state law. Even in the absence of unbundling rules promulgated by the Federal Communications Commission ("FCC") pursuant to section 251(c) of the 1996 Act, the Department may require that Verizon offer network elements to Massachusetts CLECs on an unbundled basis and at TELRIC rates. The 1996 Act does not preempt, and in fact expressly permits the Department to issue and enforce its own unbundling rules. Thus, at a minimum, the Department should reject Verizon's proposal to limit its unbundling obligation to the FCC's rules implementing section 251(c)(3).

The Department has the authority under the 1996 Act to utilize state law to maintain Verizon's unbundling obligations. In amending the Communications Act of 1934, Congress specifically preserved state law as a basis of requiring access to network elements.[5]

[4] Memorandum from Tina W. Chin, Arbitrator and Jesse S. Reyes, Arbitrator to D.T.E. 04-33 Service List, Re: Briefing Questions to Additional Parties (Mar. 10, 2005).

[5] 47 U.S.C. § 251(d)(3).

Pursuant to section 252 of the 1996 Act, state commissions are charged with "ensur[ing]" that arbitrated agreements "meet the requirements of section 251 … including the regulations prescribed by the [FCC] pursuant to section 251…."[6] In addition, section 252(e)(3) of the 1996 Act provides that "nothing in this section 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."[7]

The Department also is authorized to make unbundling determinations on issues that the FCC has not yet resolved. Pursuant to section 252(c), states are tasked with arbitrating all "open issues," which includes issues that might not have been resolved by the FCC.[8] As such, the 1996 Act preserves and protects the Department's independent authority under federal law to ensure continued access to Verizon's network elements in furtherance of competition.

Section 251(d)(3) of the 1996 Act also provides the Department with the authority to establish unbundling obligations, as long as those obligations comply with subsections 251(d)(3)(B) and (C). Section 251(d)(3) states that the FCC "shall not preclude the enforcement of any regulation, order, or policy of a State commission that…establishes access and interconnection obligations of local exchange carriers."[9] Under this section, the 1996 Act protects state action that promotes the unbundling objectives of the statute and prohibits the FCC from interfering with such action. The FCC's *Triennial Review Order*[10] and *Triennial Review*

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[6] 47 U.S.C. § 252(c)(1).

[7] 47 U.S.C. § 252(e)(3).

[8] *See* 47 U.S.C. § 252(c).

[9] 47 U.S.C. § 251(d)(3).

[10] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Services Offering Advanced*

. . . Continued

Remand Order[11] do not displace the Department's authority to order unbundling pursuant to these provisions.

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?**

The Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and the *Triennial Review Remand Order*, including, without limitation, the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Massachusetts CLECs may implement changes of law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* only "as directed by section 252 of the Act,"[12] and consistent with the change of law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Massachusetts CLECs "negotiate in good faith regarding any rates, terms and conditions necessary to implement the FCC's rule changes."[13] Verizon therefore is bound by the unbundling obligations set forth in its existing interconnection agreements with Massachusetts

Telecommunications Capability (CC Docket No. 98-147), Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "TRO")), *vacated and remanded in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

[11] *In 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*").

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

[13] *Id.*

CLECs until such time as those agreements are properly amended to incorporate the changes of law and FCC-mandated transition plans established under the *Triennial Review Order* and the *Triennial Review Remand Order.*

Although the Amendment should reflect recent changes in federal law, those changes do not include any modification to the change of law provisions in CLECs' existing agreements. In its proposed interconnection agreement amendments, Verizon improperly attempts to modify the change in law provisions of the agreements so that any future change of law limiting or eliminating Verizon's obligation to provide certain UNEs would automatically be incorporated into the parties' agreements. Not surprisingly, this modification would solely benefit Verizon by permitting Verizon to reduce its unbundling obligations without going through negotiations or other procedures established in the agreements' change of law provisions. At the same time, Verizon proposes that it not be required to implement other changes of law that it does not like (i.e., commingling and routine network modifications) unless and until there is a written amendment to the parties' interconnection agreement. Verizon's proposed language is not even arguably reasonable.

Nothing in the *Triennial Review Order* or *Triennial Review Remand Order* requires parties to amend the change of law provisions in their existing agreements at all, much less automatically to incorporate only changes that benefit Verizon. To the contrary, the FCC repeatedly has stated that the changes to its rules reflected in the *Triennial Review Order* and *Triennial Review Remand Order* must be implemented using the existing change of law provisions in the agreements. The FCC expressly rejected the proposals of Verizon and other

ILECs to by-pass the interconnection agreements and make such changes to agreements self-effectuating.[14]

Verizon is asking the Department to nullify its obligations under federal law and Department-approved interconnection agreements when the FCC has repeatedly and expressly refused to grant that same request. The Department, therefore, should reject Verizon's proposed amendment language.

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?

The Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Order* and the *Triennial Review Remand Order,* including the transition plan set forth for mass market local switching no longer available under section 251 of the 1996 Act. Specifically, the Amendment must expressly provide a twelve-month transition period, beginning on March 11, 2005, during which competitive carriers may convert existing mass market customers to alternative local switching arrangements. The Amendment also must state that competitive carriers will continue to have access to the Unbundled Network Element Platform ("UNE-P") priced at TELRIC rates plus one dollar until such time as Verizon successfully migrates existing UNE-P customers to competitive carriers' switches or alternative switching arrangements (including UNE-P arrangements made available under section 271 of the 1996 Act), which rate shall be trued up to the March 11, 2005

[14] *Triennial Review Order* at ¶ 701. *See also Triennial Review Remand Order* at ¶ 233 ("We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, *the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes.*") (footnote omitted and emphasis added).

effective date of the *Triennial Review Remand Order*. In accordance with the *Triennial Review Remand Order*, Verizon and competitive carriers within Massachusetts must execute an amendment to existing interconnection agreements within the prescribed twelve-month transition period, including any change of law processes required by the parties' respective interconnection agreements.

In setting forth the transition plan for mass market local switching required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. Specifically, the Amendment should clarify that any UNE-P line added, moved or changed by a competitive carrier, at the request of a UNE-P customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. In addition, consistent with the *Triennial Review Remand Order*, the Department should not permit Verizon to refuse to provision UNE-P lines for new customers of competitive carriers, under section 251(c)(3) of the 1996 Act, until such time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the 1996 Act.

The Amendment also must reflect the fact that the FCC's Four-Line Carve-Out is no longer a component of the section 251(c) unbundling regime and must not be included in the Amendment. The *Triennial Review Remand Order* confirmed that CLECs are eligible to purchase unbundled mass market local switching, subject to the transition plan, to serve all customers at less than the DS1 capacity level.[15]

[15] *Triennial Review Remand Order* at n. 625.

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?**

The Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Order* and the *Triennial Review Remand Order*, including the transition plan set forth for high capacity (i.e., DS1 and DS3) and dark fiber loop facilities that no longer are available under section 251 of the 1996 Act. The Amendment must state that Verizon remains obligated to provide to Massachusetts CLECs unbundled access to its high capacity loops, including DS3 loops and DS1 loops, at any location within the service area of a Verizon wire center for which carriers would be impaired, under the criteria set forth in the *Triennial Review Remand Order*, without access to such facilities. The FCC has determined that competitive carriers are impaired without access to DS3 capacity loops at any location within the service area of a Verizon wire center containing fewer than 38,000 business lines or fewer than four fiber-based collocators, and are impaired without access to DS1 capacity loops at any location within the service area of a Verizon wire center containing fewer than 60,000 business lines or four or more fiber-based collocators. To be sure, the criteria established by the FCC for a determination of impairment, and thus, for competitive carriers' access to high capacity loops, including DS1 loops and DS3 loops, should be expressly incorporated into the terms and conditions of the Amendment. Further, the Amendment must clearly define "business lines" and "fiber-based collocators," as those terms are defined under the *Triennial Review Remand Order*.

Importantly, the Amendment must include a comprehensive list of the Verizon wire centers that satisfy the non-impairment criteria for DS1 and DS3 loops set forth in the *Triennial Review Remand Order*. This list must be the result of a process whereby the parties to this proceeding are afforded access to and a reasonable opportunity to review and verify the data

Verizon believes supports its initial identification of wire center locations where non-impairment exists for DS1 and DS3 loops.[16] In addition, the Amendment must establish a process for review and investigation of any future claim by Verizon that an additional specified wire center location within Massachusetts meets the FCC's criteria for unbundling relief. Specifically, the Amendment should require that Verizon submit to Massachusetts carriers all documentation and other information that reasonably supports its claim of "no impairment" for a specified wire center location within Massachusetts. In the event that Verizon and any Massachusetts carrier disagree as to whether any wire center location within Massachusetts actually satisfies the FCC's criteria for unbundling relief, or whether Verizon has presented documentation and other information that reasonably supports its "no impairment" claim, the Amendment must expressly permit either party to submit the dispute for resolution by the Department, in accordance with the dispute resolution provisions set forth in the parties' interconnection agreements. Moreover, the Amendment must establish a process for review, on an annual basis, of the list of Verizon wire centers that satisfy the FCC's criteria for unbundling relief, which shall include the same procedures for review of Verizon "no impairment" claims and for resolution of carrier disputes by the Department.

For high capacity loop facilities that Verizon no longer is obligated to provide under section 251(c) of the 1996 Act, the Amendment must expressly provide a transition plan, consistent with the *Triennial Review Remand Order*, during which competitive carriers may convert existing customers to alternative service arrangements. The time period established for

[16] For example, it appears that Verizon may have counted a single entity as two fiber-based collocators instead of one. Therefore, the Department and interested parties must have the opportunity to review and confirm the back-up data submitted by Verizon in support of its designation of Massachusetts wire centers satisfying the FCC's "no impairment" criteria for loops.

the transition of customers from DS1 and DS3 capacity loop facilities that no longer will be provided by Verizon subject to the impairment criteria set forth in the *Triennial Review Remand Order*, is twelve months, effective March 11, 2005. The time period established for the transition of customers from dark fiber loop facilities that no longer will be provided by Verizon under section 251(c) is eighteen months, effective March 11, 2005. The Amendment must state that Verizon will be required to provide, for the duration of the applicable transition period, grandfathered high capacity loops facilities, including DS1 and DS3 loops, and dark fiber loops, at the rates set forth in the *Triennial Review Remand Order*, which shall be the higher of (1) 115 percent of the rate of the requesting carrier for the loop facility on June 15, 2004; or (2) 115 percent of the rate that a state commission has established for the requested loop facility since June 16, 2004.

In setting forth the transition plan for high capacity and dark fiber loop facilities required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. For loop facilities that Verizon no longer is obligated to provide under section 251 of the 1996 Act, the Amendment should clarify that any loop added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. Consistent with the *Triennial Review Remand Order*, the Department should not permit Verizon to block "new adds" by competitive carriers, under section 251(c)(3) of the Act, until such time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the 1996 Act.

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?**

The Amendment to the parties' agreements must incorporate the complete unbundling framework ordered by the FCC under the *Triennial Review Remand Order*, including the transition plan set forth for dedicated interoffice transport facilities, including DS1, DS3 and dark fiber transport, that no longer are available under section 251 of the 1996 Act. The Amendment must state that Verizon remains obligated under section 251(c) of the 1996 Act to provide to Massachusetts carriers unbundled access to dedicated interoffice transport, including DS3 and DS1 transport facilities, at any location within the service area of a Verizon wire center for which carriers would be impaired, under the criteria set forth in the *Triennial Review Remand Order*, without access to such facilities. The FCC has determined that competitive carriers are impaired without unbundled access to DS3 dedicated transport facilities along any route that originates or terminates in any Tier 3 wire center (i.e., any wire center that contains less than three fiber-based collocators and less than 24,000 business lines), and are impaired without unbundled access to DS1 dedicated transport facilities in all routes where at least one end-point of the route is a wire center containing fewer than 38,000 business lines and fewer than four fiber-based collocators. To be sure, the criteria established by the FCC for a determination of impairment, and thus, for competitive carriers' access to dedicated interoffice transport facilities, including DS1 and DS3 transport facilities, under section 251(c) of the 1996 Act should be expressly incorporated into the terms and conditions of the Amendment. Further, the Amendment must clearly define "business lines" and "fiber-based collocators," as those terms are defined under the *Triennial Review Remand Order*.

Importantly, the Amendment must include a comprehensive list of the Verizon wire centers that satisfy the "no impairment" criteria for dedicated transport, including dark fiber

transport, set forth in the *Triennial Review Remand Order*. This list must be the result of a process whereby the parties to this proceeding are afforded access to and a reasonable opportunity to review and verify the data Verizon believes supports its initial identification of wire centers where non-impairment exists for DS1, DS3 and dark fiber transport. Further, the Amendment must establish a process for review and investigation of any future claim by Verizon that an additional specified wire center location within Massachusetts meets the FCC's criteria for unbundling relief. Specifically, the Amendment should require that Verizon submit to Massachusetts carriers all documentation and other information that reasonably supports its claim of "no impairment" for a specified wire center location within Massachusetts. In the event that Verizon and any Massachusetts carrier disagree as to whether any wire center location within Massachusetts actually satisfies the FCC's criteria for unbundling relief, or whether Verizon has presented documentation and other information that reasonably supports its "no impairment" claim, the Amendment must expressly permit either party to submit the dispute for resolution by the Department, in accordance with the dispute resolution provisions set forth in the parties' interconnection agreements. Moreover, the Amendment must establish a process for review, on an annual basis, of the list of the Verizon wire centers that satisfy the FCC's criteria for unbundling relief, which shall include the same procedures for review of Verizon "no impairment" claims and for resolution of carrier disputes by the Department.

For dedicated interoffice transport facilities that Verizon no longer is obligated to provide under section 251 of the 1996 Act, the Amendment must expressly provide a transition plan, consistent with the *Triennial Review Remand Order*, during which competitive carriers may convert existing customers to alternative service arrangements offered by Verizon. The time period established for the transition of customers from DS1 and DS3 transport facilities that

no longer will be provided by Verizon subject to the impairment criteria set forth in the *Triennial Review Remand Order*, is twelve months, effective March 11, 2005. The time period established for the transition of customers from dark fiber transport facilities that no longer will be provided by Verizon is eighteen months, effective March 11, 2005. The Amendment must state that Verizon will be required to provide, for the duration of the applicable transition period, grandfathered dedicated transport facilities, including DS1 and DS3 transport facilities, and dark fiber transport facilities, at the rates set forth in the *Triennial Review Remand Order*, which shall be the higher of (1) 115 percent of the rate of the requesting carrier for the interoffice transport facility on June 15, 2004; or (2) 115 percent of the rate that a state commission has established for the requested interoffice transport facility since June 16, 2004.

In setting forth the transition plan for dedicated interoffice transport facilities required by the *Triennial Review Remand Order*, the Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. For dedicated interoffice transport facilities that Verizon no longer is obligated to provide under section 251 of the 1996 Act, the Amendment should clarify that any circuit added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan applies. Consistent with the *Triennial Review Remand Order*, the Department should not permit Verizon to refuse to provision new dedicated transport circuits for competitive carriers until time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the 1996 Act.

In addition to the impairment criteria set forth in the *Triennial Review Remand Order* for DS1 dedicated transport facilities, the FCC also imposed a limitation on the availability of such facilities on routes for which the FCC determined that Verizon no longer is required to unbundle DS3 dedicated transport facilities under section 251 of the 1996 Act. Specifically, under the *Triennial Review Remand Order*, a competitive carrier may not obtain from Verizon more than ten DS1 transport circuits on a single route for which the FCC did not impose on Verizon a section 251 unbundling obligation for dedicated DS3 transport facilities. To the extent that Verizon elects to implement the so-called "DS1-cap" under the parties' agreements, the Amendment must state that the FCC's lifmitation on Verizon's obligation to provide to carriers unbundled DS1 dedicated transport facilities applies only if section 251(c) unbundling relief also has been granted for DS3 dedicated transport facilities on the same route.

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?**

As set forth more fully in response to Issues 2-5 above, the Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. Verizon may re-price existing section 251(c)(3) arrangements, however, only in accordance with the incremental rate increases prescribed by the FCC, and set forth in the Amendment. Under the *Triennial Review Remand Order*, Verizon is not permitted to impose any termination or other non-recurring charge in connection with any carrier's request to transition from a current arrangement that Verizon is no longer obligated to provide under section 251 of the 1996 Act. Notwithstanding the above, Verizon is bound by the unbundling obligations set forth in its existing interconnection

agreements with Massachusetts CLECs, including the rates, terms and conditions for section 251 unbundled network elements, until such time as those agreements are properly amended to incorporate the changes of law and FCC-mandated transition plans (including transition rates) established under the *Triennial Review Remand Order*.

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 set forth more fully in response to Issues 2-5 above, the Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and/or the *Triennial Review Remand Order*, including, without limitation, the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Massachusetts CLECs may implement changes of law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* only "as directed by section 252 of the Act," and consistent with the change of law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Massachusetts CLECs "negotiate in good faith regarding any rates, terms and conditions necessary to implement [the FCC's] rule changes. Therefore, the *Triennial Review Remand Order* expressly precludes any effort by Verizon to circumvent the change in law process set forth in its interconnection agreements with Massachusetts CLECs by providing notice of discontinuance of any network element in advance

of the date on which such agreements are properly amended to reflect changes to the FCC's unbundling rules.

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 more fully in response to Issues 2-5 above, the Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and/or the *Triennial Review Remand Order*, including, without limitation the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The transition plans ordered by the FCC for unbundled dedicated transport, high capacity loops and mass market local switching, each prescribe the rates that Verizon may impose when a "no impairment" finding exists and the *Triennial Review Remand Order* does not permit Verizon to impose any additional charges, including non-recurring charges, for the disconnection of a "de-listed" section 251(c)(3) UNE or the reconnection of an alternative service arrangement.

The cost of converting unbundled network elements to alternative arrangements, including arrangements made available by Verizon in order to comply with its obligations under section 271, should be incurred by the "cost causer," i.e., Verizon. Because the disconnection of UNE arrangements and the subsequent reconnection of alternative service arrangements is the result of Verizon's decision to forego section 251(c) unbundling, the cost of such network modifications should be borne by Verizon, not by the carrier that otherwise would continue under a section 251(c) UNE arrangement.

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

The Amendment's Definitions Section should include all terms necessary to properly implement changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, including new terms defined in the FCC's unbundling orders, as well as required modifications to those terms that already are defined under the parties' existing interconnection agreements. The terms set forth in the Definitions Section of the interconnection agreement amendment proposed by the Competitive Carrier Group, and their respective definitions, are set forth below:

Applicable Law. All laws, rules and regulations, including, but not limited to, the Act (including but not limited to 47 U.S.C. 251 and 47.U.S.C. 271), effective rules, regulations, decisions and orders of the FCC and the Department, and all orders and decisions of courts of competent jurisdiction.

Business Lines. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies shall (1) include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services and identified in ARMIS 43-08 business line data reports, (2) not include non-switched special access lines, and (3) account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. By way of example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines." Business lines do not include (i) dedicated or

shared transport; (ii) ISPs' transport facilities; (iii) lines used to serve subsidiaries or affiliates of the ILEC; (iv) data lines, or any portions of data lines, not connected to the end-office for the provision of switched voice services interconnected to the PSTN; (v) unused capacity on channelized high capacity loops; (vi) lines used for VoIP unless such facilities are switched at the wire center; and (vii) any lines not confirmed by the ILEC to conform to the above requirements. Verizon may not "round up" when calculating 64 Kbps equivalents for high capacity loops (e.g., a 144 Kbps service is equal to two business lines, not three). In addition, when calculating data speeds for purposes of determining 64 Kbps equivalents, an ILEC must use the lowest data speed associated with the line when sold to the customer, not a higher potential use or a higher one-way speed. For Centrex services, each 9 Centrex extensions shall be counted as a single Business Line.

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

Circuit Switch. A device that performs, or has the capability of performing switching via circuit technology. 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.

Combination. The provision of unbundled Network Elements in combination with each other, including, but not limited to, the Loop and Switching Combinations and Shared

Transport Combination (also known as Network Element Platform or UNE-P) and the Combination of Loops and Dedicated Transport (also known as an EEL).

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

Dark Fiber Loop. A local fiber loop that has not been activated through optronics to render it capable of carrying telecommunications services.

Dark Fiber Transport. Un-activated optical transmission facilities within a LATA, without attached multiplexing, aggregation or other electronics, between any two designated Verizon switches or wire centers (including Verizon switching equipment located at CLEC's premises).

Declassified Network Elements. Any facility that Verizon was obligated to provide to CLEC on an unbundled basis pursuant to the Agreement or a Verizon tariff or SGAT, but which, except as otherwise provided in Section 3.9 below, Verizon is no longer obligated to provide on an unbundled basis under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Declassified Network Elements include the following: (a) Enterprise Switching; (b) Mass Market Switching; (c) OCn Loops and OCn Dedicated Transport; (d) High Capacity Loops (but only to the extent service eligibility criteria have not been met as further described in Section 3.3.1); (e) DS1 and DS3 Dedicated Transport (but only to the extent service eligibility criteria have not been met as further described in Section 3.6.1); (f) the Feeder portion of a Loop; (g) Packet Switching; (h)

Entrance Facilities; and (i) Dark Fiber Loops. The Declassified Network Elements as contemplated under this Section do not impact any separate obligations of Verizon to provide such Network Elements under other applicable state of federal law, including 47 U.S.C. § 271.

Dedicated Transport. Transmission facilities, within a LATA, between Verizon switches or wire centers, (including Verizon switching equipment located at CLEC's premises), within a LATA, that are dedicated to a particular end user or carrier.

DS1 Dedicated Transport. Dedicated Transport having a total digital signal rate of 1.544 Mbps.

DS3 Dedicated Transport. Dedicated Transport having a total digital signal rate of 44.736 Mbps.

DS1 Loop. A digital transmission channel suitable for the transport of 1.544 Mbps digital signals. A DS1 Loop includes the electronics necessary to provide the DS1 transmission rate.

DS3 Loop. A digital transmission channel suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS1 channels). A DS3 Loop includes the electronics necessary to provide the DS3 transmission rate.

Enterprise Switching. Local Switching or Tandem Switching that, if provided to CLEC, would be used for the purpose of serving CLEC's customers using DS1 or above capacity Loops.

Feeder. The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving wire center and a remote terminal (if present) or feeder/distribution interface (if no remote terminal is present).

Fiber-based Collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or Comparable Transmission Facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth herein. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this definition: (i) the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation thereof; (ii) carriers that have entered into merger and/or other consolidation agreements, or otherwise announced their intention to enter into the same, will be treated as affiliates and therefore as one collocator; provided, however, in the case one of the parties to such merger or consolidation arrangement is Verizon, then the other party's collocation arrangement shall not be counted in the Fiber-based Collocation determination; (iii) a Comparable Transmission Facility means, at a minimum, the provision of transmission capacity equivalent to fiber-optic cable; (iv) the network of a Fiber-based Collocator may only be counted once in making a determination of the number of Fiber-based Collocators, notwithstanding that such single Fiber-based Collocator leases its facilities to other collocators in a single wire center; provided, however, that a collocating carrier's dark fiber leased from an unaffiliated carrier may only be counted as a separate fiber-optic cable from the unaffiliated carrier's fiber if the collocating carrier obtains this dark fiber on an IRU basis.

FTTH Loop. A mass market Loop consisting entirely of fiber optic cable, whether dark or lit, between the main distribution frame (or its equivalent) in a wire center and the demarcation point at the end user's customer premises. FTTH Loops do not include such intermediate fiber-in-the-loop architectures as fiber-to-the-curb ("FTTC"), fiber-to-the-node ("FTTN"), and fiber-to-the-building ("FTTB").

Hot Cut. The transfer of a loop from one carrier's switch to another carrier's switch.

Hybrid Loop. Any local Loop composed of both fiber optic cable and copper wire or cable, including such intermediate fiber-in-the-loop architectures as FTTC, FTTN, and FTTB.

Inside Wire Subloop. As set forth in FCC Rule 51.319(b), a Verizon-owned or controlled distribution facility in Verizon's network between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the Demarcation Point for such facility.

Line Conditioning. The removal from a copper loop or copper Subloop of any device that could diminish the capability of the loop or Subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

Line Sharing. The process by which CLEC is providing xDSL service over the same copper Loop that Verizon uses to provide voice service by utilizing the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions (the High Frequency Portion of the Loop, or "HFPL"). The HFPL includes the features, functions, and capabilities of the copper Loop that are used to establish a complete transmission path

between Verizon's distribution frame (or its equivalent) in its Wire Center and the demarcation point at the end user's customer premises, and includes the high frequency portion of any inside wire (including any Inside Wire Subloop) owned or controlled by Verizon.

Line Splitting. The process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop.

Local Circuit Switching. Local Circuit Switching is a function provided by a Circuit Switch or Packet Switch and encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. Local circuit switching includes all vertical features that the switch is capable of providing, including customer calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions. Specifically, this includes the line-side and trunk-side facilities associated with the line-side port on a circuit switch in Verizon's network, plus the features, functions, and capabilities of that switch, unbundled from loops and transmission facilities, including, but not limited to, (a) the line-side Port (including but not limited to the capability to connect a Loop termination and a switch line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription, and access to 911); (b) line and line group features (including but not limited to all vertical features and line blocking options that the switch and its associated deployed switch software are capable of providing that are provided to Verizon's local exchange service Customers served by that switch); (c) usage (including but not limited to the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks); and (d) trunk features (including but not limited to the connection between the trunk termination and a trunk card).

Loop Distribution. The portion of a Loop in Verizon's network that is between the point of demarcation at an end user customer premises and Verizon's feeder/distribution interface. It is technically feasible to access any portion of a Loop at any terminal in Verizon's outside plant, or inside wire owned or controlled by Verizon, as long as a technician need not remove a splice case to access the wire or copper of the Subloop; provided, however, near Remote Terminal sites, Verizon shall, upon site-specific request by CLEC, provide access to a Subloop at a splice.

Mass Market Switching. Local Switching or Tandem Switching that if provided to CLEC, would be used for the purpose of serving CLEC's end user customers over DS0 Loops.

Packet Switch. A network device that performs switching functions primarily via packet technologies. Such a device may also provide other network functions (e.g., Circuit Switching). 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.

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

Route. For purposes of FCC Rule 51.319 (e)(1) through (e)(5), a transmission path between one of Verizon's wire centers or switches and another of Verizon's wire centers or switches within a LATA. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more Verizon intermediate wire centers or switches (e.g., Verizon wire center or switch "X"). Transmission paths between identical end points (e.g., Verizon wire center or switch "A" and Verizon wire center or switch "Z") are the same "route", irrespective of whether they pass through the same intermediate Verizon wire centers or switches, if any.

Routine Network Modifications. Routine Network Modifications are those prospective or reactive activities that Verizon is required to perform for CLEC and that are of the type that Verizon regularly undertakes when establishing or maintaining network connectivity for its own retail customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop.

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

Subloop for Multiunit Premises Access. Any portion of a Loop that is technically feasible to access at a terminal in Verizon's outside plant at or near a multiunit premises. For access to copper Subloops, it is technically feasible to access any portion of a Loop at any

terminal in Verizon's outside plant, or inside wire owned or controlled by Verizon, as long as a technician need not remove a splice case to access the wire or copper of the Subloop; provided, however, near Remote Terminal sites, Verizon shall, upon site-specific request by CLEC, provide access to a Subloop at a splice.

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

Tier 1 Wire Center. A wire center with at least four Fiber-based Collocators, at least 38,000 business lines served, or a switching location having no line-side facilities. For purposes of making Tier 1 and Tier 2 Wire Center determinations, Verizon shall (i) provide the identification of all CLLI codes for each Tier 1 and Tier 2 wire center; (ii) provide the breakdown of the number of business analog switched access lines, business digital switched access line equivalents, business Centrex lines, business UNE loops not in combination with other network elements, and business UNE loops provided in combination with other network elements in each wire center; and (iii) disaggregate its wire center data provided in ARMIS 43-08, and provide Business Line counts by wire center in accordance with the standards for submission of such data in ARMIS 43-08. The initial list of Tier 1 Wire Centers, as of the Effective Date of this Amendment, is included in Schedule A, attached hereto.

Tier 2 Wire Center. A wire center with at least three Fiber-based Collocators or 24,000 – 37,999 Business Lines served. For purposes of making Tier 1 and Tier 2 Wire Center

determinations, Verizon shall (i) provide the identification of all CLLI codes for each Tier 1 and Tier 2 wire center; (ii) provide the breakdown of the number of business analog switched access lines, business digital switched access line equivalents, business Centrex lines, business UNE loops not in combination with other network elements, and business UNE loops provided in combination with other network elements in each wire center; and (iii) disaggregate its wire center data provided in ARMIS 43-08, and provide Business Line counts by wire center in accordance with the standards for submission of such data in ARMIS 43-08. The initial list of Tier 2 Wire Centers, as of the Effective Date of this Amendment, is included in Schedule A, attached hereto.

Tier 3 Wire Center. A wire center that is neither a Tier 1 nor Tier 2 Wire Center.

UNE-P. UNE-P consists of a leased combination of the loop, local switching, and shared transport UNEs.

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?

Verizon is required to follow the change of law and dispute resolution provisions set forth in its interconnection agreements with Massachusetts CLECs to discontinue any network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Massachusetts CLECs may implement changes in law arising under the *Triennial Review Order* and the *Triennial Review Remand Order* only "as directed by section 252 of the Act," and consistent with the change in law processes set forth in carriers' individual interconnection agreements with

Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Massachusetts CLECs "negotiate in good faith" any rates, terms and conditions necessary to implement the FCC's rule changes." Verizon is bound by the unbundling obligations set forth in its existing interconnection agreements with Massachusetts CLECs until such time as those agreements are properly amended to incorporate the changes in law and the FCC-mandated transition plans (and transition rates) established under the *Triennial Review Remand Order*.

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

The Amendment to the parties' interconnection agreements must include rates, terms and conditions that reflect any change to Verizon's federal unbundling obligations brought about by the *Triennial Review Order* and the *Triennial Review Remand Order*, including without limitation the transition plan set forth in the *Triennial Review Remand Order* for each network element that Verizon no longer is obligated to provide under section 251 of the 1996 Act. The *Triennial Review Remand Order* makes clear that the FCC's unbundling determinations are not "self-effectuating," and accordingly, that Verizon and Massachusetts CLECs may implement changes in law arising under the *Triennial Review Order* and the *Triennial Review Remand Order*, including without limitation, changes in the rates and new changes, only "as directed by section 252 of the Act," and consistent with the change in law processes set forth in carriers' individual interconnection agreements with Verizon. Furthermore, the *Triennial Review Remand Order* expressly requires that Verizon and Massachusetts CLECs "negotiate in good faith regarding any rates, terms and conditions necessary to implement the FCC's rule changes. Verizon is bound by the unbundling obligations and rates set forth in its existing interconnection agreements with Massachusetts CLECs until such time as those agreements are properly

amended to incorporate the changes in law and the FCC-mandated transition plans (including transition rates) established under the *Triennial Review Remand Order*.

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 provide to permit requesting carriers to commingle UNEs and combinations of UNEs ("Combinations) with services that Verizon provides wholesale existed prior to the *Triennial Review Order*. Therefore, because the *Triennial Review Order* provides only clarification with respect to Verizon's obligation to provide commingling, the *Triennial Review Order* does not constitute a "change of law" under the parties' agreements for which a formal amendment is required. Nonetheless, for avoidance of doubt, the Competitive Carrier Group maintains that the Amendment must include language clarifying the scope of Verizon's obligation to permit requesting carriers to commingle and combine UNEs and Combinations with services obtained from Verizon at wholesale.

The parties' interconnection agreements must be amended to reflect Verizon's obligation to provide commingling of unbundled network elements ("UNEs") or combinations of UNEs with wholesale services, as clarified by the FCC under the *Triennial Review Order*, including the terms under which carriers may commingle UNEs and wholesale services. Specifically, the FCC determined that "a restriction on commingling would constitute an unjust and unreasonable practice under section 201 of the Act," and an "undue and unreasonable prejudice or advantage" under section 202 of the 1996 Act, and would violate the

"nondiscrimination requirement in section 251(c)(3)."[17] Therefore, competitive carriers may "connect, combine or otherwise attach UNEs and UNE combinations to wholesale services," including switched or special access services offered under the rates, terms and conditions of an effective tariff.[18] Importantly, the *Triennial Review Order* also requires Verizon to effectuate commingling immediately, subject to penalties for noncompliance.

Verizon's language limits the availability of commingling to "Qualifying UNEs," which Verizon uses to exclude UNEs that have been declassified, both now and in the future, without amending the interconnection agreement. Such a restriction improperly seeks to circumvent the agreements' change in law provisions, and is inconsistent with the FCC's determination in both the *Triennial Review Order* and the *Triennial Review Remand Order* that changes in federal law are to be implemented consistent with section 252 and the change in law provisions in the parties' interconnection agreements.

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;

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;

[17] *Triennial Review Order* at ¶ 581.

[18] *Id.* at ¶ 579.

i) Network Interface Devices (NID);

j) Line sharing?

If so, how?

The parties' interconnection agreements should be amended to reflect any changes to the FCC's 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. The Amendment should expressly incorporate the requirements of the *Triennial Review Order* and the FCC's rules with regard to the following: line splitting; newly built fiber-to-the-home and fiber-to-the-curb loops; overbuilt fiber-to-the-home and fiber-to-the curb loops; access to hybrid loops for the provision of broadband services; access to hybrid loops for the provision of narrowband services; retirement of copper loops; line conditioning; packet switching; network interface devices (NIDs); and line sharing.

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

The Amendment to the parties' agreements should be effective as of the date of the last signature on the Amendment, except with respect to the transition rates for network elements that Verizon no longer is obligated to provide under section 251 of the 1996 Act, as expressly provided by the FCC's rules and orders, including the *Triennial Review Remand Order*. To the extent that any provision of the Amendment should be given retroactive effect, as required by the FCC, the Amendment must state the effective date of the specified provision of the Amendment and the controlling FCC rule or order.

With regard to any rates, terms and conditions set forth in the Amendment applicable to commingling and conversions, the effective date of such provisions will be, as required by the FCC, October 2, 2003, the effective date of the *Triennial Review Order*. Under

the *Triennial Review Order*, Verizon must permit commingling and conversions as of the effective date of the *Triennial Review Order* in the event that a requesting carrier certifies that it has complied with the FCC's service eligibility criteria. Under section 51.318 of the FCC's rules, Verizon must provide to requesting carriers, as of October 2, 2003, commingling and conversions unencumbered by additional processes or requirements not specified in the *Triennial Review Order*, and requesting carriers must receive pricing for new EELs/conversions as of the date the request was made to Verizon.

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 Amendment should require that Verizon comply with section 51.319(a)(iii) of the FCC's rules and the *Triennial Review Order* (¶ 297), which require that, where a requesting carrier seeks access to a hybrid loop for the provision of narrowband services, Verizon 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. However, in the event that a requesting carrier specifies access to an unbundled copper loop in its request to Verizon, the Amendment should obligate Verizon to provide an unbundled copper loop, using Routine Network Modifications as necessary, unless no such facility can be made available via Routine Network Modifications.

The *Triennial Review Order* does not permit Verizon to recover any additional charge in connection with a competitive LECs' request to provide narrowband services through unbundled access to a loop where the end user is served via Integrated Digital Loop Carrier (IDLC). Under the *Triennial Review Order*, at ¶ 297, the FCC concluded that incumbent LECs,

including Verizon, must provide competitive LECs access to a transmission path over hybrid loops served by IDLC. Under section 251(c)(3) of the 1996 Act and the FCC's rules, 47 C.F.R. § 51.319(a)(2), unbundled access to the hybrid loop, for the purpose of providing narrowband services, must be provided at Department-approved TELRIC rates. Thus, to the extent that Verizon incurs additional costs in connection with providing unbundled access to the hybrid loop where the end user is served by IDLC, such cost should be reflected in the Department-approved TELRIC rates for hybrid loops.

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;

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

Although the Department has not yet established many of these standards, Verizon should be subject to standard provisioning intervals or performance measurements, and potential remedy payments in the parties' underlying agreement or elsewhere for the facilities and services identified above, including unbundled loops provided by Verizon in response to a carrier's request for access to IDLC-served hybrid loops; commingled arrangements; conversion of access circuits to UNEs; Loops and Transport (including Dark Fiber Transport and Loops) for which routine network modifications are required; batch hot cut, large job hot cut and individual

hot cut processes; and network elements made available by Verizon under section 271 of the 1996 Act. To the extent that 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*.

Conversions and commingling are largely billing changes that have no impact on provisioning intervals or performance measurements. Even to the extent that a new UNE order includes commingling, Verizon has offered no evidence to demonstrate that provisioning such orders is any different than provisioning an order for the same facilities when commingling is not involved. In the absence of any such evidence, Verizon has identified no basis on which it can or should be relieved of its obligations to meet any performance metrics for orders for conversions or commingling.

The same is true with respect to routine network modifications. The *Triennial Review Order* expressly states that to the extent such modifications to existing loop facilities affect loop provisioning intervals contained in performance metrics, "we expect that states will address the impact of these modifications as part of their recurring reviews of incumbent LEC performance."[19] The FCC thus assumes that these performance metrics apply to all UNEs, including those requiring routine network modifications. Indeed, the FCC observed that Verizon "provides the routine modifications listed above with minimal delay, in most cases, to their own retail customers."[20] Verizon has offered no contrary evidence and thus has failed to identify any grounds on which the Department should relieve Verizon of its obligation to comply with

[19] *Id.* at ¶ 639.

[20] *Id*. at n.1940.

otherwise applicable service intervals or performance measurements when Verizon must undertake routine network modifications to provision a UNE order.

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

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

Yes. The Amendment should state that Verizon no longer is required to provide, under the parties' existing interconnection agreements, unbundled access to the feeder portion of the subloop on a standalone basis. However, the Amendment should 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?

Yes. The Amendment to parties' interconnection agreement should expressly state Verizon's obligations under 47 C.F.R. § 51.319(b)(2)(ii), to provide to competitive LECs a Single Point of Interconnection ("SPOI") at a multi-unit premises. The interconnection agreement amendment proposed by the Competitive Carrier Group, at § 3.5.5., expressly incorporates the requirements for the Single Point of Interconnection set forth in the FCC's rules. Specifically, Verizon must, "upon notification by a requesting telecommunications carrier that it requests interconnection at a multiunit premises where [Verizon] owns, controls or leases wiring…provide a single point of interconnection that is suitable for multiple carriers." Moreover, consistent with the FCC's unbundling rules, the amendment proposed by the Competitive Carrier Group makes clear that Verizon's obligation to provide a Single Point of Interconnection is in addition to, and not in lieu of, its obligation, under 47 C.F.R. § 51.319(b)(2), to provide unbundled access to a subloop for access to a multiunit premises, including any inside wire, at any technically feasible point. The Amendment must specify that

Verizon is not entitled to recover any charges for construction a SPOI, at a competitive LEC's request, in addition to Department-approved TELRIC rates.

The Amendment should include reasonable guidelines for construction of the SPOI, including a time certain during which construction of the SPOI must be completed by Verizon (the Competitive Carrier Group proposed a 45-day timeframe), as well as a description of the rights and obligations of the requesting carrier in the event that such construction is delayed. Under the FCC's rules, at 47 C.F.R. § 51.319(b)(2)(ii), the Amendment also should expressly state that any dispute between Verizon and a requesting carrier regarding the rates, terms and conditions for Verizon's provision a SPOI is subject to state commission arbitration, under section 252 of the 1996 Act.

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

Yes. The Amendment to the parties' interconnection agreements should expressly incorporate Verizon's obligations, under 47 C.F.R. § 51.319(b)(2), to provide to competitive LEC subloops for access to multiunit premises wiring. First, consistent with the FCC's unbundling rules, the Amendment must define the "subloop for access to multiunit premises wiring" as "any portion of the loop that it is technically feasible to access at a terminal in [Verizon's] outside plant at or near a multiunit premises." Under 47 C.F.R. § 51.319(b)(2)(i), a point of technically feasible access, in turn, is defined as "any point in [Verizon's] outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing the splice case to reach the wire or fiber within to access the wiring in the multiunit premises." Near remote terminal sites, Verizon must be required, upon a competitive

LEC's site-specific request, to provide access to a copper subloop at a splice.[21] Second, as required by the FCC's rules, at 47 C.F.R. § 51.319(b)(2), the Amendment must require that Verizon provide to any requesting telecommunications carrier nondiscriminatory access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or type of loop. The Amendment proposed by the Competitive Carrier Group, at § 2.34 and 3.5.4, properly incorporate the FCC's rules applicable to subloops for access to multiunit premises wiring.

As an additional matter, the definition of the "Inside Wire Subloop" proposed by the Competitive Carrier Group, at § 2.21 of its proposed amendment, incorporates and directly tracks the FCC's rules. Thus, the Amendment should define the "Inside Wire Subloop" as a "Verizon-owned or controlled distribution facility in Verizon's network between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the Demarcation Point for such facility."

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?**

Yes. The FCC requires that the transmission path between Verizon's local circuit switching equipment located in a CLEC's facilities and the Verizon serving wire center should be treated as unbundled transport. The FCC noted that "incumbent LECs may 'reverse collocate' in some instances by collocating equipment at a competing carrier's premises, or may place equipment in a common location, for purposes of interconnection … to the extent that an incumbent LEC has local switching equipment, as defined by the [FCC's] rules, "reverse

[21] *See* 47 C.F.R. § 51.319(b)(1)(i).

collocated" in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers…"[22] In making this finding, the FCC distinguished a "reverse collocation" arrangement from an "entrance facility." Therefore, Verizon continues to be obligated to provide such unbundled dedicated transport under the terms set forth in the *Triennial Review Remand Order*.

Proposed contract language should contain a definition of Dedicated Transport that reflects the FCC's findings, as follows: "Dedicated Transport - A transmission facility between Verizon switches or wire centers (including Verizon switching equipment located at CLEC premises), within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law."

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

The Amendment must reflect that interconnection trunks between a Verizon wire center and a CLEC wire center *established for the transmission and routing of telephone exchange service and exchange access* are interconnection facilities under section 251(c)(2) that must be provided at TELRIC rates. Section 251(c)(2) of the 1996 Act specifically provides that Verizon has an obligation to interconnect with the CLEC's network via interconnection trunks "for the transmission and routing of telephone exchange service and exchange access … on *rates*, terms and conditions … in accordance with … section 252 (251(c)(2)(A) and (D)." Section 252(d)(1), in turn, contains the TELRIC standard. Although the *Triennial Review Order*

[22] *Id.* at ¶ 369, n. 1126.

revised the definition of dedicated transport to exclude entrance facilities, finding that they "exist outside the incumbent LEC's local network," the FCC was very clear that this conclusion did not alter the obligations of Verizon to continue to provide interconnection trunks, pursuant to section 251(c)(2), at TELRIC rates. The FCC observed that "[c]ompetitive LECs use these transmission connections between incumbent LEC networks and their own networks both for interconnection and to backhaul traffic. Unlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection, we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic."[23] The FCC noted that, "to the extent that requesting carriers need facilities in order to "interconnect [] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation."[24]

In the *Triennial Review Remand Order* the FCC, relying on guidance from the D.C. Circuit in *USTA II*, reinstated the *Local Competition Order's* definition of dedicated transport.[25] However, after applying an impairment analysis to dedicated transport, the FCC found that CLEC carriers are not impaired without access to entrance facilities as an unbundled network element. The FCC did not, however, retreat from its finding regarding the availability of interconnection facilities at TELRIC prices. Rather, the FCC stated that while an ILEC is not

[23] *Id.* at ¶¶ 365-66. On this basis, the FCC found that "the transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LECs' local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network. Accordingly, such transmission facilities are not appropriately included in the definition of dedicated transport." *Id.*

[24] *Id.* at ¶ 366.

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

obligated to provide access to entrance facilities as UNEs, CLECs continue to have access to these facilities at cost-based rates.[26]

Therefore, it is clear that interconnection trunks between a Verizon wire center and a CLEC wire center established for the transmission and routing of telephone exchange service and exchange access, and not for the purpose of "backhauling" traffic, are interconnection facilities under section 251(c)(2) that must be provided at TELRIC rates.

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 parties' interconnection agreements should be amended to reflect that competitive carriers may convert tariffed services provided by Verizon to UNEs or UNE combinations, provided that the service eligibility criteria established by the FCC, under the *Triennial Review Order*, are satisfied. Neither the D.C. Circuit's *USTA II* decision nor the *Triennial Review Remand Order* displaced the FCC's earlier findings with regard to competitive carriers' rights to covert Verizon wholesale services to UNEs or combinations of UNEs, as permitted by the *Triennial Review Order*.

The Amendment should include the conversion requirements established in the *Triennial Review Order* and affirmed in the *Triennial Review Remand Order*. The contract language proposed by the Competitive Carrier Group most accurately reflects those requirements. Verizon proposes no language governing conversions, presumably because Verizon disagrees with the FCC that Verizon should be required to permit CLECs to convert

[26] *Id.* at ¶ 140 ("[o]ur finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain *interconnection facilities* pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities *at cost-based rates* to the extent that they require them to interconnect with the incumbent LEC's network.")(emphasis added).

wholesale services to UNEs. Yet Verizon must abide by the law. Therefore, the Department should adopt the Competitive Carrier Group's language.

The parties' interconnection agreements should be amended to incorporate changes in law that address Verizon's obligation to provide "new" EELs, in addition to EELs converted from existing special access circuits, including the high capacity EEL service eligibility criteria set forth in section 51.318 of the FCC's rules. In light of the FCC's rule setting forth Verizon's obligation to provide EELs, the Amendment should make clear that: (1) Verizon is required to provide access to new and converted EELs unencumbered by additional processes or requirements not specified in the *Triennial Review Order*; (2) competitive carriers must self-certify compliance with the applicable service eligibility criteria for high capacity EELs, by manual or electronic request, and permit a limited annual audit by Verizon to confirm their compliance with the FCC's high capacity EEL service eligibility criteria; (3) Verizon's performance relative to EEL facilities must be subject to standard provisioning intervals and performance measures; and (4) Verizon will not impose charges for conversion from wholesale service to UNEs or Combinations, other than a records change charge. In addition, the Department should permit competitive carriers to re-certify prior conversions in a single batch, and to certify requests for future conversions in one batch, rather than to certify individual requests on a circuit-by-circuit basis.

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?

The Amendment should require that competitive carriers comply with the service eligibility requirements established by the *Triennial Review Order* and section 51.318 of the FCC's rules. Specifically, to obtain a new or converted EEL under the *Triennial Review Order*

and section 51.318 of the FCC's rules, the Amendment should require that a competitive carrier supply self-certification to Verizon of the following information: (1) state certification to provide local voice service, or proof of registration, tariff and compliance filings; (2) that at least one local number is assigned to each DS1 circuit prior to provision of service over that circuit; (3) that each circuit has 911/E911 capability prior to the provision of service over that circuit; (4) that the circuit terminates to a collocation or reverse collocation; (5) that each circuit is served by an interconnection trunk in the same LATA over which calling party number ("CPN") will be transmitted; (6) that one DS1 interconnection trunk (over which CPN will be passed) is maintained for every 24 DS1 EELs; and (7) that the circuit is served by a Class 5 switch or other switch capable of providing local voice traffic.

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?

Yes. The Amendment to the parties' interconnection agreements should state that, when existing circuits or services employed by a competitive carrier are converted to an EEL, Verizon shall not physically disconnect, separate, alter or change in any fashion equipment and facilities employed to provide the wholesale service, except at the request of the competitive carrier.

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

The Amendment should expressly preclude Verizon from imposing additional charges on any competitive carrier in the absence of a CLEC request for conversion of existing access circuits or services to UNE loops and transport.

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

No. Any EEL provided by Verizon to a competitive carrier prior to October 2, 2003 should not be required to meet the service eligibility criteria set forth in the *Triennial Review Order* and section 51.318 of the FCC's rules.

(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)?

Yes. The Amendment should expressly state that conversion requests issued by a competitive carrier after the effective date of the *Triennial Review Order* and before the effective date of the Amendment shall be deemed to have been completed on the effective date of the Amendment, and as such, should be subject to EELs/UNEs pricing available under the *Triennial Review Order*.

(5) When should a Conversion be deemed completed for purposes of billing?

Consistent with the *Triennial Review Order*, at ¶ 588, Verizon must immediately endeavor to establish the appropriate billing mechanism for a converted UNEs or combinations of UNEs. At a minimum, a Conversion should be deemed completed for purposes of billing no later than the next billing cycle following a competitive LEC's Conversion request.

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

The Amendment must include all requirements applicable to Verizon's right to audit CLEC compliance with the FCC's service eligibility criteria established under the *Triennial Review Order*. Under the *Triennial Review Order*, Verizon is permitted to conduct one audit of a competitive carrier to determine compliance with the FCC's service eligibility criteria for EELs, provided that Verizon demonstrates cause with respect to the particular circuits it seeks to audit,

and obtains and pays for an AICPA-compliant independent auditor to conduct such audit. The independent auditor is required to perform its evaluation of the competitive carrier in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which require that the auditor perform an "examination engagement" and issue an opinion regarding the carrier's compliance with the FCC's service eligibility criteria. The independent auditor must conclude whether the competitive carrier has complied in all material respects with the applicable service eligibility criteria. If the auditor's report concludes that the competitive carrier failed to materially comply with the service eligibility criteria in all respects, the carrier will be required to true-up any difference in payments, convert all noncompliant circuits to the appropriate service and make correct payments on a going-forward basis. In such cases, the competitive carrier also must reimburse Verizon for the costs associated with the audit. If the auditor's report concludes that the competitive carrier has complied with the FCC's service eligibility criteria, Verizon must reimburse the competitive carrier its costs (including staff time and other appropriate costs) associated with the audit.

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?**

The Competitive Carrier Group has consistently maintained that Verizon's obligation under federal law to provide routine network modifications to permit access to its network elements that are subject to unbundling under section 251 of the 1996 Act and the part 51 of the FCC's rules existed prior to the *Triennial Review Order*. Therefore, because the *Triennial Review Order* provides only clarification with respect to Verizon's obligation to provide routine network modifications, the *Triennial Review Order* does not constitute a "change

of law" under the parties' agreements for which a formal amendment is required. Nonetheless, for avoidance of doubt, the Competitive Carrier Group maintains that the Amendment must include language clarifying the scope of Verizon's obligation to provide to competitive carriers routine network modifications to permit access to its UNEs.

Consistent with the *Triennial Review Order*, the Amendment should define Routine Network Modifications as those prospective or reactive activities that Verizon regularly undertakes when establishing or maintaining network connectivity for its own retail customers. A determination of whether or not a requested modification is in fact "routine" should, under the Agreement, be based on the tasks associated with the modification, and not on the end-user service that the modification is intended to enable. The Amendment should specify that the costs for Routine Network Modifications are already included in the existing rates for the UNEs set forth in the parties' interconnection agreements, and accordingly, that Verizon may not impose additional charges in connection with its performance of routine network modifications.

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

Yes, the parties should retain their pre-Amendment rights under the agreement, and tariffs.

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 Amendment should include a process to address the potential effect on CLECs' customers' services when a section 251(c) UNE is discontinued, to ensure that loss of service to a CLECs' customers does not result from Verizon's discontinuance of that particular UNE. The Amendment should further include transition periods for discontinued section 251(c)(3) UNEs as required by the *Triennial Review Remand Order*. Those periods should be of sufficient duration to enable the CLECs to have the time to make the necessary arrangements to

obtain and build replacement facilities. The Amendment should expressly incorporate the FCC's service eligibility criteria set forth in the *Triennial Review Order* and section 51.318 of the FCC's rules for combinations and commingled facilities and service.

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?**

As discussed more fully in response to Issue 21 above, the Amendment should expressly incorporate the FCC's service eligibility criteria set forth in the *Triennial Review Order* and section 51.318 of the FCC's rules for combinations and commingled facilities and service.

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?**

No. There is no basis for the Amendment to address commercial agreements between Verizon and individual Massachusetts CLECs that may be negotiated in the future. The Competitive Carrier Group maintains, however, that commercial agreements incorporating Verizon's ongoing obligations, under section 271, are within the scope of interconnection agreements.

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

Yes. The Amendment should require Verizon to provide an access point for CLECs to engage in testing, maintenance and repair of copper loops and copper subloops. The FCC made clear in the *Triennial Review Order* that incumbent LECs are required to provide

access to physical loop test access points on a nondiscriminatory basis for the purpose of loop testing, maintenance, and repair activities.[27]

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?**

The FCC has established transition periods for the UNEs for which it found no impairment, and those transition periods should be incorporated into the Amendment. Similarly, those transition periods should apply whenever additional Verizon wire centers satisfy the criteria the FCC has established for determining when there is no impairment for high-capacity loops and dedicated transport.

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?**

Yes. As set forth in response to Issue 31 below, Verizon is subject to an ongoing independent federal unbundling obligation, under section 271 of the 1996 Act, to provide to Massachusetts CLECs those network elements and combinations of networks elements set forth in the "Competitive Checklist," including but not limited to unbundled local circuit switching, line sharing,[28] high capacity (DS1 and DS3) loops and high capacity (DS1 and DS3) dedicated interoffice transport facilities, regardless of whether the same network elements and combinations of network elements are subject to the unbundling obligations under by section

[27] *Triennial Review Order* at ¶ 252.

[28] There can be no legitimate debate that line sharing is a Checklist Item No. 4 transmission facility. Indeed, the FCC explicitly held, in the *Massachusetts 271 Order*, that "[o]n December 9, 1999 the Commission released the *Line Sharing Order* that, among other things, defined the **high-frequency portion of local loops** as a UNE that must be provided to requesting carriers on a nondiscriminatory basis pursuant to section 251(c)(3) of the Act and, thus, **checklist items 2 and 4** of section 271." *In the Matter of Application of Verizon New England Inc. et al for Authorization to Provide In-Region InterLATA Services in Massachusetts*, Memorandum Opinion and Order (rel. Apr. 16, 2001) at ¶ 164 ("*Massachusetts 271 Order*") (emphasis added).

251(c)(3).[29] Thus, even to the extent that Verizon has been granted section 251(c)(3) unbundling relief, under the *Triennial Review Order* and *Triennial Review Remand Order*, Verizon must provide to Massachusetts CLECs the same network elements and combinations of network elements, on an unbundled basis, subject to rates, terms and conditions that are "just, reasonable and nondiscriminatory." The rates, terms and conditions for such network elements provided by Verizon must be negotiated, and as necessary, arbitrated by the Department, as required by section 252 of the 1996 Act.

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?**

As discussed herein, the FCC has *required* parties to amend their interconnection agreements to incorporate the FCC's latest unbundling rules.[30]

The *Triennial Review Remand Order* thus is not self-effectuating but takes effect only after the parties have negotiated, and if necessary arbitrated, the rates, terms, and conditions necessary to implement the FCC's latest unbundling rules.

The transition plans set forth in the *Triennial Review Remand Order* also expressly apply to the interconnection agreement amendment process. The Order provides that "carriers have twelve months from the effective date of this Order *to modify their*

[29] *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.").

[30] *Triennial Review Remand Order* at ¶ 233 ("We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, *the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes.*") (footnote omitted and emphasis added).

interconnection agreements, including completing any change of law process."[31] The FCC thus established the transition period to provide the time required for Verizon and CLECs to amend their interconnection agreements, not just to transition affected UNEs to alternative facilities or arrangements. The Order also states, "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period."[32] Verizon thus may not unilaterally implement the *Triennial Review Remand Order* transition plan when that plan itself is subject to being replaced by a plan negotiated or arbitrated between the parties to a Department-approved interconnection agreement.

The Amendment, therefore, should include language implementing the requirements of the *Triennial Review Remand Order*, and except as expressly provided by the FCC, those requirements should not be effective until the Amendment has been approved by the Department.

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?

The Amendment must define competitive carriers' "embedded customer base" for which the prescribed transition plan will apply. For UNEs that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, at TELRIC rates, the Amendment should clarify that any UNE added, moved or changed by a competitive carrier, at the request of a customer served by the competitive carrier's network on or before March 11, 2005, is within the competitive carrier's "embedded customer base" for which the FCC-mandated transition plan

[31] *Id.* at ¶¶ 143, 196 (emphasis added).

[32] *Triennial Review Remand Order* at ¶¶ 145, 198.

applies. Consistent with the *Triennial Review Remand Order*, the Department should not permit Verizon to block "new adds" by competitive carriers, under section 251(c)(3), until time as the *Triennial Review Remand Order* is properly incorporated into the parties' agreements through the change of law processes set forth therein, as contemplated by section 252 of the 1996 Act.

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?

Yes. Notwithstanding the legal conclusions set forth in the *Triennial Review Order* and the *Triennial Review Remand Order*, Verizon remains obligated, under existing federal law, to provide to Massachusetts CLECs those network elements set forth in section 271(c)(2)(B) of the 1996 Act, including without limitation, local circuit switching, line sharing, high capacity loops and high capacity dedicated transport facilities. The FCC repeatedly has emphasized that section 271 of the 1996 Act imposes on the 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).[33] Indeed, the nature of unbundling obligations imposed on Verizon by section 271 of the 1996 Act is clearly stated in the *Triennial Review Order*:

> [W]e continue to believe that the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.
>
> Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance market that are unique to the BOCs. As such, BOC obligations under section 271

[33] *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.").

> are not necessarily relieved based on any determination we make under section 251 unbundling analysis.[34]

The Amendment to the parties' interconnection agreements must expressly incorporate Verizon's ongoing obligation to provide to Massachusetts CLECs those network elements and combinations of network elements that remain available, on an unbundled basis, pursuant to section 271 of the 1996 Act. Moreover, the Amendment should establish that network elements and combinations of network elements provided by Verizon, under section 271 of the 1996 Act, be priced 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?

The additional non-recurring charges for Routine Network Modifications set forth in Exhibit A to Verizon's proposed Amendment 2 no longer are before the Department in this proceeding. In its December 15, 2004 Procedural Order,[35] the Department noted that the costs incurred by Verizon for performing routine network modifications generally are reflected in the recurring rates that competitive LECs pay for unbundled access to Verizon's local loops. Thus, to avoid double-recovery of such costs by Verizon, the Department ordered that Verizon submit, in this proceeding, the appropriate cost studies to support: (1) that the non-recurring charges for routine network modifications proposed by Verizon are just and reasonable; and (2) that the

[34] *Id.* at ¶ 655.

[35] *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), Procedural Order (rel. Dec. 15, 2004).

proposed non-recurring 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.

By letter dated March 1, 2005, Verizon stated to the Department that it would not provide the required data to support the non-recurring charges for routine network modifications proposed by its Amendment 2, Exhibit A, but instead would address such charges in its next TELRIC study, when both the recurring and non-recurring charges for the particular UNEs are examined in a comprehensive manner.[36] Importantly, Verizon also stated that it would provide to Massachusetts CLECs routine network modifications, without additional charge, upon amendment its existing interconnection agreements to reflect the FCC's directives under the *Triennial Review Order*.[37]

Under the *Triennial Review Order*, the FCC expressly modified its unbundling rules to "affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g., switched and special access services offered pursuant to tariff)," and to require that incumbent LECs perform, upon request, "the functions necessary to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under section 251(c)(3) of the Act."[38] The *Triennial Review Order* does not permit Verizon to impose additional non-recurring charges for performing the network modifications necessary to abide by the "commingling" obligations established by the FCC. Thus, for the reasons set forth above, the Department also should reject the additional non-recurring charges for routine network

[36] Letter from Bruce P. Beausejour, Vice President and General Counsel – New England, Verizon to Mary L. Cottrell, Secretary, Massachusetts Department of Telecommunication and Energy (Mar. 1, 2005) at 2.

[37] *Id.*

[38] *Triennial Review Order* at ¶ 579.

modifications associated with the commingling of UNEs and UNE combinations with Verizon's wholesale services.

SUPPLEMENTAL ISSUES

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?

Yes. As required by the *Triennial Review Remand Order*, at ¶ 233, the parties must include in the Amendment to existing interconnection agreements the complete unbundling framework ordered by the FCC for high capacity (DS1 and DS3) loops that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including a comprehensive list of Verizon wire centers that satisfy the FCC's requirements for unbundling relief. Consistent with the mandate of the FCC, under the *Triennial Review Remand Order*, the FCC's unbundling determinations must be implemented through changes to the parties' existing interconnection agreements, which necessarily includes a Schedule or other exhibit identifying the Verizon wire centers for which unbundling relief has been granted.

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?

Yes. As required by the *Triennial Review Remand Order*, at ¶ 233, the parties must include in the Amendment to existing interconnection agreements the complete unbundling framework ordered by the FCC for high capacity (DS1 and DS3) dedicated transport facilities that Verizon no longer is obligated to provide under section 251(c)(3) of the 1996 Act, including a comprehensive list of Verizon wire centers that satisfy the FCC's Tier 1, Tier 2 and Tier 3 criteria for unbundling relief. Consistent with the mandate of the FCC, under the *Triennial Review Remand Order*, the FCC's unbundling determinations must be implemented through changes to the parties' existing interconnection agreements, which necessarily includes a

Schedule or other exhibit identifying the Verizon routes for which unbundling relief has been granted.

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?

Yes. Under the *Triennial Review Remand Order*, the parties must implement the FCC's unbundling determinations applicable to high capacity (DS1 and DS3) loops and dedicated transport facilities through the interconnection agreement amendment process, and in accordance with section 252 of the 1996 Act. Accordingly, to properly implement the unbundling framework set forth in the *Triennial Review Remand Order*, the Department must have authority to determine whether a wire center or route designated by Verizon to satisfy the FCC's criteria for unbundling relief, in fact, satisfies that criteria on the basis on the data provided by Verizon, including without limitation: the number of Business Lines and Fiber-Based Collocators existing in each Verizon service wire center; the definition of "wire center" used by Verizon; the names of the fiber-based collocators counted in each wire center; line counts identified by line type; date of each count of lines relied on by Verizon; all business rules and definitions used by Verizon; and any documents, orders, records or reports relied upon by Verizon for the assertions made. In addition, the Amendment must include a provision for dispute resolution by the Commission, to ensure that the information relied on by Verizon is adequate under the FCC's rules.

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?

The Competitive Carrier Group consistently has maintained that Verizon is not permitted to unilaterally implement any aspect of the *Triennial Review Remand Order* without first executing an amendment to its existing interconnection agreements with Massachusetts

carriers, including members of the Competitive Carrier Group. The unbundling relief granted to Verizon under the *Triennial Review Remand Order*, for UNE-P arrangements using unbundled access to local circuit switching under section 251(c)(3) of the 1996 Act, is without force and effect until such time as Verizon executes an amendment to its existing interconnection agreements with Massachusetts carriers whereby the availability of unbundled local switching is eliminated as a section 251(c)(3) network element. Thus, a customer may be added to the network of a competitive LEC, using UNE-P arrangements, prior to the effective date of a formal, written amendment implementing the *Triennial Review Remand Order*. The rates that Verizon may charge such customer are the section 251(c)(3) UNE rates for the combination of network elements that comprise UNE-P.

Once such amendment is executed, Verizon must provide UNE-P, under section 251(c)(3), to competitive LECs' "embedded customer base." At that time, Verizon may charge competitive LECs the transition rates established by the *Triennial Review Remand Order*, which are the higher of (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004 plus one dollar; or (2) the rate the state public utility commission established, if any, between June 16, 2004 and March 11, 2005, for UNE-P, plus one dollar. (¶ 228)

The *Triennial Review Remand Order*, at ¶ 227, states that the transition plan provided for section 251(c)(3) UNE-P arrangements applies to each carrier's "embedded customer base," and not merely embedded UNE-P lines or arrangements. Therefore, FCC's language implies that competitive LECs are entitled to add new lines, and make modifications or rearrangements, as necessary, to accommodate the business needs of their existing customers during the transition period established by the FCC. In setting forth a detailed transition plan for local circuit switching that Verizon no longer is obligated to provide under section 251(c)(3) of

the 1996 Act, the FCC also recognized that "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers…". (¶ 226) Therefore, a contrary reading of the *Triennial Review Remand Order* would severely limit the ability of competitive LECs' customers to receive telecommunications services without disruption during the transition period, and thus is contrary to the objectives of the transition plan for UNE-P arrangements established by the FCC.

CONCLUSION

Consistent with the foregoing, A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Broadview Networks Inc. and Broadview NP Acquisition Corp., 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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