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May 1, 2006

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

060365-TP

Re: **XO COMMUNICATIONS SERVICES, INC.'S COMPLAINT AND REQUEST FOR RELIEF REGARDING VERIZON'S DETERMINATION OF NON-IMPAIRED WIRE CENTERS UNDER THE TRRO**

Dear Ms. Bayó:

Enclosed for filing on behalf of XO Communications Services, Inc. (XO) are the original and fifteen copies of XO's Complaint and Request for Relief Regarding Verizon's Determination of Non-Impaired Wire Centers Under the TRRO.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,

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Enclosures

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)	
Complaint of XO Communications Services,)	Docket No. 060365-TP
Inc.'s Complaint and Request for)	Filed: May 1, 2006
Relief regarding Verizon Florida, Inc.'s)	
Determination of Non-Impaired Wire)	
Centers under the Triennial Review Remand)	
Order)	

XO COMMUNICATIONS SERVICES, INC.'S COMPLAINT AND REQUEST FOR RELIEF REGARDING VERIZON'S DETERMINATION OF NON-IMPAIRED WIRE CENTERS UNDER THE TRRO

Pursuant to Rule 25-22.036(2), Florida Administrative Code, XO Communications Services, Inc. (hereinafter "XO"), by and through the undersigned counsel, hereby files this Complaint and Request for Relief regarding Verizon Florida, Inc.'s ("Verizon") failure to continue to provide the existing, embedded base of high capacity facilities as unbundled network elements (UNEs) in wire centers where XO has submitted self-certification of impairment. In wire centers where XO has submitted self-certification and where Verizon disputes impairment, Verizon will provision only new orders at UNE cost-based rates. In such situations, Verizon has threatened to convert high capacity loops and transport facilities serving XO's embedded customer base to Verizon's tariffed month-to-month access rates (unless XO, in conflict with its self-certification requests the conversion) even though XO already subscribes to a term and volume special access discount plan. This posture is clearly at odds with the standard set forth in the Federal Communication Commission's ("FCC") Triennial Review Remand Order ("TRRO")[1]

[1] *In the Matter of Unbundled Access to Network Elements,* WC Docket No. 04-313, and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338. (Triennial Review Remand Order or TRRO), rel'd February 4, 2005.

and the FCC's associated rules, 47 C.F.R. §§ 51.319 *et seq,* as well as contrary to the Florida Public Service Commission's ("the Commission") determinations in Order No. PSC-05-1200-FOF-TP.[2] Furthermore, Verizon has misapplied the FCC's definition of the term "fiber-based collocators." Consequently, it has overstated the number of fiber-based collocators and, therefore, may have also overstated the number of wire centers in its Florida territory that meet the non-impairment standard. Likewise, in spite of reasonable and diligent inquiry by XO, Verizon has failed to provide sufficient information to allow XO to sufficiently verify Verizon's designation of wire centers as non-impaired. Finally, Verizon has not properly implemented the self-certification dispute process set forth at ¶234 of the TRRO, as recognized by the Commission in Order No. PSC-05-1200-FOF-TP, and as implemented in Section 3.6.2 of Amendment No. 2 to the parties' interconnection agreement. Verizon's actions are in clear violation of the TRRO and the FCC's implementing rules, 47 C.F.R. §§ 51.319 *et seq*, as well as the Commission's intent as set forth Order No. PSC-05-1200-FOF-TP.

XO respectfully requests that the full Commission hear this case, as the issues have a broad impact on competition and the CLEC community as a whole, and issue an Order requiring Verizon to provision all high capacity facilities, including the embedded base of high capacity facilities provisioned for XO's customers, at UNE cost-based rates in wire centers where XO has submitted self-certification of impairment. XO also requests that the Commission require Verizon to: (1) revisit and re-do its impaired/non-impaired wire center list using the appropriate definition of "fiber-based collocator;" (2) file all of its data, subject to the terms of an appropriate protective order, along with supporting methodology and assumptions used (which would include the names of each fiber-based collocator it has identified and the rationale for

[2] Order No. PSC-05-1200-FOF-TP, issued in Docket No. 040156-TP, at p. 29, stating, "Verizon is obligated **to continue to provide** such loops until the non-impairment requirements of the TRRO are met." [emphasis added].

designating it as one), for each wire center that Verizon alleges is non-impaired for either high capacity loops and/or dedicated transport; and (3) properly implement the self-certification dispute process by submitting to a Commission review of its wire centers to resolve current disputes and by bringing future disputes to the Commission for resolution.

In support of this Complaint, XO states as follows:

1. XO Communications Services, Inc. is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

   XO Communications Services, Inc.
   1111 Sunset Hills Road
   Reston, VA 20190-5339

2. The Petitioner's representatives' name, address, and telephone number is:

   Karen M. Potkul, Vice President/Regulatory
   XO Communications, Inc.
   1601 Trapelo Road, Suite 397
   Waltham, MA 02541

   and

   Beth Keating, Esquire
   Akerman Senterfitt
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I. JURISDICTION

3. The Florida Commission is authorized to act in this matter based upon its continuing authority to enforce its own Order and its authority to enforce Amendment No. 2 to the parties' interconnection agreement filed March 17, 2006, in Docket No. 040156-TL ("amended interconnection agreement"), as well as its statutory authority to address and remedy these issues pursuant to Sections 364.01(4)(c), (d), and (g), 364.012(2), 364.162(1), and 364.3381(3), Florida Statutes.

II. BACKGROUND

4. On February 4, 2005, the FCC issued the *TRRO*, which established, among other things, non-impairment threshold tests for identifying the wire centers in which ILECs were not required to provision DS-1 and DS-3 loops and dedicated interoffice transport and dark fiber dedicated transport to CLECs on an unbundled basis pursuant to section 251(c)(3). With respect to DS-1 dedicated transport, the FCC held that ILECs were not required to provision such facilities on routes connecting a pair of wire centers where each has four (4) or more fiber-based collocators *or* 38,000 or more business access lines ("Tier 1 wire center").[3] As to DS-3 and dark fiber dedicated transport, the FCC held that ILECs were not required to provision such facilities on routes connecting wire centers where each has three (3) or more fiber-based collocators *or* 24,000 or more business access lines ("Tier 2 wire center").[4] All ILEC wire centers that do not meet the criteria above are "Tier 3" wire centers. The FCC found that CLECs are not impaired without access to DS-1, DS-3, and dark fiber transport between Tier 1 wire centers and that CLECs are not impaired

[3] *See TRRO*, ¶ 66.

[4] *See TRRO*, ¶ 66.

without access to DS-3 and dark fiber transport between Tier 2 or between Tier 2 and Tier 1 wire centers.

III. FAILURE TO PROVISION EXISTING, PROVISIONED ORDERS FOR FACILITIES IN SELF-CERTIFIED "IMPAIRED" WIRE CENTERS AT UNE COST-BASED RATES

5. Verizon incorrectly contends that ¶ 234 does not apply to the existing circuits, nor should it, because CLECs have had sufficient time to raise and address the accuracy of Verizon's list of non-impaired wire centers.[5] Verizon also contends that the ¶ 234 of the TRRO only applies when a carrier actually submits a new order to obtain a high-capacity loop or transport UNE in wire centers where XO has self-certified impairment

6. Verizon's argument is not only entirely counter-intuitive, it is also completely wrong. First of all, by submitting its self-certification of impairment in a wire center, XO is following the steps specifically set forth by the FCC (and recognized by the Commission) for addressing concerns regarding the accuracy of the ILECs' impaired wire center lists. As such, it is unclear what else Verizon would have XO do.

7. Second, it is incomprehensible that new orders for high-capacity loops and transport in a wire center where a CLEC has self-certified impairment would be provided as UNEs, while the rest of the embedded base of provisioned high-capacity loops and transport, in the very same wire center, would be forced to convert to month-to-month special access rates. Logically, either a wire center is impaired or it is not impaired – it cannot be both. If it is impaired then a CLEC is entitled to UNEs both existing and new in that wire center.

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[5] Verizon's claim that CLECs have had sufficient time to address the accuracy of its wire center list is incorrect. Each time the CLECs have asked for a neutral third party review of Verizon's wire center list Verizon has opposed it. In addition, as explained herein, Verizon has refused to bring the matter to dispute resolution.

8. Verizon can point to nothing in the TRRO that would indicate that the FCC would not permit CLECs to self-certify existing circuits by letter and new circuits through the ordering process. The orders for the existing circuits have already been submitted. Consequently, these circuits were appropriately self-certified via letter. For new orders, the self-certification is provided as part of the order. This is consistent with the process that the Commission adopted for recertification of existing and new EELs. Existing EELs were recertified by letter and new EELs are self-certified through the ordering process.
9. Anticipating Verizon's argument that the last sentence of ¶ 234 indicates that the FCC contemplated that the self-certification dispute process only applies to new orders, XO emphasizes that the phrase "to submit an order," heretofore relied upon by Verizon, does not limit the self-certification process to new orders. As XO interprets that sentence, the FCC's focus was on making sure that CLECs do not use the self-certification process inappropriately to delay having to pay the higher access rates. Certainly, had the FCC intended to limit the application of the self-certification process to only new orders, it would have been more specific and indicated that a new order is required in order to use the self-certification process, or they would have specifically stated that this process does not apply to the embedded base. However, the FCC did not include such language, and to apply Verizon's torturous interpretation only leads to an absurd result.
10. As such, XO requests that the Commission find that Verizon has mis-applied the requirements of ¶ 234 with regard to XO's embedded base of high-capacity loops and transport in wire centers where XO has or does self-certify impairment, and require that Verizon continue to provide the embedded base at UNE rates pending resolution of any

dispute Verizon may have regarding XO's self-certification of impairment of the subject wire centers.[6]

IV. IMPROPER ACCOUNTING OF FIBER-BASED COLLOCATORS

11. With respect to DS-1 loops, the FCC held that ILECs are not required to provision such facilities when they serve any building within the service area of an ILEC's wire center that has 60,000 or more business lines *and* 4 or more fiber-based collocators.[7] The FCC further held ILECs are not required to provision Section 251(c)(3) DS-3 loops to buildings within the service area of a wire center with 38,000 business lines *and* 4 or more fiber-based collocators.[8] The FCC established these non-impairment threshold tests because they demonstrate where sufficient competitive alternative fiber facilities are available and when revenue opportunities are sufficient to justify potential deployment of facilities by competitors.[9]

12. In establishing these threshold tests, the FCC defined a "fiber-based collocator" as follows:

> 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

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[6] Verizon has stated that it intends to engage in self-help as opposed to bringing the matter to dispute resolution by converting XO's UNE circuits to month-to-month special access rates if XO does not withdraw its self-certification and submit a request to Verizon to convert these circuits. If XO submits this request then Verizon will convert these circuits to the rates that XO is entitled to under the special access discount plan to which XO is subscribed. See attached, Letter from Anthony M. Black, Assistant General Counsel, Verizon, to Karen M. Potkul, XO Communications, Inc., dated April 14, 2006, attached hereto as Exhibit 1. The difference in the rate is substantial -- $115.00 under the discount plan versus $297.93 for the month-to-month rate.

[7] *See TRRO*, ¶¶ 146, 178-181, Appendix B at 147 (setting forth the new FCC implementing regulations for DS1 loops, 47 C.F.R. § 51.319(a)(4)).

[8] *See TRRO*, ¶¶ 146, 174-177, Appendix B at 147-48 (setting forth the new FCC implementing regulations for DS3 loops, 47 C.F.R. § 51.319(a)(5)).

[9] *TRRO*, ¶¶ 126-27, 129-30, 174-75, 178-80.

premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. 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 paragraph, the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.[10]

13. On February 18, 2005, Verizon filed with the FCC its initial list of wire centers, which included Florida wire centers, that it claimed satisfied the *TRRO's* non-impairment threshold tests referenced above. Verizon subsequently issued updates to its wire center list as of April 15, 2005, October 12, 2005, and November 17, 2005.

14. On February 3, 2006, to comply with the conditions imposed by the FCC in connection with the FCC's approval of Verizon's acquisition of MCI,[11] Verizon amended the list to exclude fiber-based collocation arrangements established by MCI or its affiliates. That list (which is the most current), took effect immediately and identifies 12 wire centers in Florida that Verizon claims it is no longer obligated to offer certain high capacity facilities.[12] In particular, Verizon designates eight (8) wire centers as Tier 1 wire centers and four (4) as Tier 2.

15. On March 10, 2006, the New Hampshire Public Utilities Commission ("PUC")[13] released its decision that investigated and rejected many aspects of Verizon's approach in

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[10] *See TRRO*, ¶¶ 102, 105, Appendix B at 145 (defining fiber-based collocator in the FCC's new implementing regulations, 47 C.F.R. § 51.5).

[11] *See Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, FCC 05-184, Verizon/MCI Merger Order, Appendix G Unbundled Network Element Condition 2 (Nov. 17, 2005) ("*Verizon/MCI Merger Order*").

[12] On February 22, 2006, Verizon issued a clarification (which is attached hereto as Exhibit 2 to this Petition) regarding the February 3, 2006 notice, but did not change the February 3, 2006, list of qualifying wire centers, which also included in Exhibit 2.

[13] *In the Matter of Wire Center Investigation, Revisions to Tariff 84—Order Classifying Wire Centers and Addressing Related Matters*, New Hampshire PUC Docket Nos. 05-083 and 06-012, Order No. 24,598 (N.H. P.U.C. Mar. 10, 2006) ("*NH Wire Center Investigation Decision*") (attached hereto as Exhibit 3 to the Petition).

applying the FCC's non-impairment threshold tests and the wire centers Verizon identified as satisfying those tests in New Hampshire. For instance, the New Hampshire PUC rejected Verizon's interpretation of the FCC's definition of a "fiber-based collocator" and found that "only fiber-optic cables, not fiber strands or lit fiber-optic facilities, should be counted toward fiber-based collocation."[14] Therefore, the sub-components of the cable facility do not qualify a cable more than once. Therefore, the New Hampshire PUC found that Verizon improperly counted CLECs that are collocated in a Verizon wire center as fiber-based collocators when they have individual fiber strands in a cable that had already been counted to qualify another CLEC as a fiber-based collocator.[15] The New Hampshire PUC also rejected Verizon's attempt to count CLECs that obtain Verizon's Dedicated Cable Support (DCS) and Dedicated Transit Service (DTS) services as fiber-based collocators.[16] It concluded that because these services facilitate connections between two collocation arrangements and because any fiber-optic cable qualifying a CLEC as a fiber-based collocator must run from its termination in a collocation and exit the wire center, DCS or DTS arrangements do not count.[17] In the final analysis, the New Hampshire PUC found that in order "to operate" a cable, a CLEC "must be able to control not only the lighting of the fiber within it, but a broader range of functions such as the placement, capacity and configuration of the cable itself."[18]

16. Based on its decision and its investigation of the New Hampshire wire centers Verizon claimed were non-impaired, the New Hampshire PUC found material errors in Verizon's

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[14] *Id.*

[15] *NH Wire Center Investigation Decision* at 37.

[16] *NH Wire Center Investigation Decision* at 38.

[17] *NH Wire Center Investigation Decision* at 38.

[18] *Id.* at 37.

methodology, data and analysis, errors that changed the status of certain wire centers. In the end, the New Hampshire PUC rejected Verizon's designations of certain wire centers as being non-impaired.

17. In each state where Verizon operates as an ILEC, it is XO's understanding that Verizon took the same approach that it did in New Hampshire in identifying fiber-based collocators and the wire centers Verizon claims satisfy the FCC's non-impairment threshold tests for loops and transport. Because of this, the same problems that the New Hampshire PUC found with Verizon-New Hampshire's approach almost certainly exist in Florida.

18. It is also XO's understanding that, in other states, Verizon has included as fiber-based collocators those carriers that are merely cross-connected in a central office (CO) with another fiber-based collocator on Verizon's list, even though the cross-connected carrier does not have fiber facilities that enter or leave the CO, and does not have an indefeasible right-of-use arrangement regarding the fiber facilities.

19. In its September 20, 2005, decision on the issue, the Michigan Public Service Commission determined that this practice results in inappropriate double counting, and excluded those carriers from AT&T's (formerly SBC) listing of fiber-based collocators. XO also understands that Verizon implements such policies throughout its territories.[19] Consequently, based on the limited information available, XO believes it likely that Verizon has implemented the same practice of double counting in Florida.

20. In addition and in other states, Verizon has separately counted both XO and XO's wholly owned affiliate, Allegiance Telecom, as fiber-based collocators, thereby overstating the

[19] *In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon*, MPSC Case No. U-14447, Order Sept. 20, 2005, attached hereto as Petition Exhibit 4.

number of fiber-based collocators.[20] Under the FCC's definition of "fiber-based collocator," two or more affiliated fiber-based collocators in a single wire center collectively are to be counted as a *single* fiber-based collocator. If Verizon has made this error for the affiliates of XO in other states, XO believes that Verizon may have done likewise with other affiliated companies collocating in the same wire center in Florida. This may have a substantial effect on Verizon's non-impaired wire center list, especially in combination with the improper counting of a collocator who merely cross-connects with a fiber-based collocator as the New Hampshire PUC held.

21. XO requests that the Commission require Verizon to revisit its wire center list and demonstrate that it has not improperly counted affiliated companies and companies that are merely cross-connected with fiber-based collocators for purposes of meeting the non-impairment threshold.

V. INSUFFICIENT INFORMATION TO DETERMINE ACCURACY OF DESIGNATION

22. There are likely many more errors associated with the list of wire centers that Verizon contends surpass the FCC's non-impairment threshold tests; however, CLECs are unable to uncover them because Verizon does not provide any CLEC with detailed information as to other CLECs. Verizon claims that the information of other CLECs is confidential.[21] As a result, a CLEC can only determine definitively that a wire center designation is inaccurate in the limited number of cases where the data specifically concerns the CLEC itself (which is the only data that Verizon is willing to divulge to that CLEC). It cannot

[20] XO took over management control of Allegiance in April 2004, and merged effective January 1, 2005, which was before Verizon issued its first wire center list.

[21] Any concerns over the confidential nature of the names of collocators is exaggerated. If a CLEC has a collocation, or otherwise gains access to a wire center, it would likely find the names of the other collocators visible on their collocation cage.

determine other inaccuracies in the wire center designation that may pertain to other CLECs.

23. The *TRRO* specifically requires that prior to ordering a high-capacity loop or transport UNE, a CLEC must undertake a reasonably diligent inquiry, and, based on that inquiry, self-certify that its request is consistent with the FCC's requirements and that it is entitled to unbundled access to the particular network element.[22] If the data is not available because Verizon masks it on the grounds that it is confidential, a CLEC's ability to undertake a reasonably diligent inquiry is severely hampered. This is exactly the situation that is occurring. Verizon provides information regarding carriers in a wire center, but fails to provide information that would enable other CLECs to determine whether the identified carriers are, indeed, fiber-based collocators in the identified wire center. Verizon claims the information is customer proprietary information, and will only provide the required level of detailed information that actually pertains to the requesting CLEC itself.

24. In stark contrast with Verizon, BellSouth Telecommunications, Inc. has addressed this issue by agreeing to an open, cooperative process with the CLECs.[23] In the nine (9) BellSouth states, BellSouth and a CLEC coalition have voluntarily established a process for the review of BellSouth's wire center classifications that is similar to XO's request. The process includes a method for ensuring protection of confidential matters under non-disclosure agreements and/or protective orders from the applicable state commission, a process not unlike other broad protective orders and confidential protections used in

[22] *TRRO*, ¶ 234.

[23] Attached hereto as Petition Exhibit 5, are portions of the BST/XOCS interconnection amendment for Florida, representing the agreed upon process as implemented in Florida, Docket No. 060334.

cooperative processes in Florida. The agreed process sets forth certain time frames, and requires that:

- BellSouth provide CLEC counsel with the complete set of responses to BellSouth's various discovery requests, which required each CLEC to verify its status as a fiber-based collocator in BellSouth wire centers;
- CLECs and BellSouth exchange wire center classification lists;
- CLECs and BellSouth meet by telephone to identify a list of disputed wire centers by State based on differences in the number of fiber-based collocators;
- CLECs and BellSouth file jointly with each Commission the list of disputed wire centers, including a statement explaining each dispute;
- CLECs and BellSouth request that the appropriate State Commission decide whether to hold a mini-hearing and/or delegate to staff mediation the resolution of each wire center dispute. (BellSouth has further agreed that, where necessary, it will permit visual inspection by one CLEC representative and one staff member); and
- for purposes of resolving fiber-based collocator-related issues in the pending generic dockets, CLECs, upon request from BellSouth, provide information to BellSouth to verify the accuracy of BellSouth's listed wire centers, including identification of those wire centers, not identified by BellSouth, in which the CLEC qualifies as a fiber-based collocator.

25. While XO believes that the cooperative process BellSouth has agreed to is preferable, at a minimum, Verizon should be required to file all of its data, along with supporting methodology and assumptions used (which would include the names of each fiber-based collocators it has identified and the rationale for designating it as one), for each wire center that Verizon alleges is non-impaired for either high capacity loops and/or dedicated transport, subject to the terms of an appropriate protective order.[24] Such information is abundantly necessary because the only information Verizon currently provides as its basis for listing a wire center as being non-impaired are the total line counts and the number of fiber-based collocators it has identified (which, as the New Hampshire PUC found, is based on a faulty counting methodology).

26. The consequences to XO of having insufficient information to conduct a reasonable inquiry is two-fold: (1) XO is unable to determine which wire centers are legitimately impaired; and (2) XO may self-certify in wire centers that are not truly impaired, and as a result, be forced to pay the much higher month-to-month access rates retroactive to the date of its self-certification. XO will be caught in the proverbial "Catch-22" situation -- forced to gamble by self-certifying in wire centers based on limited information at the risk of having to pay retroactive month-to-month access rates if the gamble is a bad one; or decline entirely to self-certify in any wire centers, in spite of the fact that XO is aware that in other states, Verizon has incorrectly applied the definition of "fiber-based collocator."

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[24] *See Post Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification, Docket No. 31303, Proposed Order Approving Methodology to Determine AT&T Texas Wire Centers which are Non-Impaired*, at 25, 45 (Tex. P.U.C. Mar. 30, 2006) (ordering that such detailed information be provided to CLECs), *available at* http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=31303&TXT_ITEM_NO=121

27. Verizon's refusal to provide sufficient information is contrary to the FCC's intent in establishing the self-certification/dispute process in ¶ 234 of the TRRO, and the Florida Commission's apparent understanding of the information Verizon would provide. As the Florida Commission recognized, the FCC chose to use the number of fiber-based collocators and/or business line counts because that data should be available and verifiable. The Commission even noted that, ". . . Verizon has made available the data that underlie its wire center designations to any CLECs willing to sign a NDA." Order No. PSC-05-1200-FOF-TP at pp 36 and 37. In the months following the Commission's decision, however, this has not been the case.

VI. FAILURE TO PRESENT DISPUTED CLEC SELF-CERTIFICATIONS TO PSC FOR RESOLUTION

28. Verizon has also failed to properly implement the self-certification process as set forth in ¶ 234 of the TRRO and memorialized in Section 3.6.2 of the parties' interconnection amended interconnection agreement. Section 3.6.2.1 requires that, "If Verizon wishes to challenge XOCS's right to obtain unbundled access to the subject element pursuant to 47 U.S.C.§ 251(c)(3), Verizon must provision the subject element as a UNE and then seek resolution of the dispute by the Commission or the FCC, or through any dispute resolution process set forth in the Agreement that Verizon elects to invoke in the alternative."

29. Verizon, however, is not providing UNEs in wire centers where XO has self-certified. Instead, Verizon is engaging in self-help and is threatening to unilaterally convert XO's circuits to month-to-month special access rates. Verizon is not seeking resolution of the issue with the Commission or FCC as required. Instead, Verizon merely has sent a letter

to XO chastising XO for ordering UNEs out of a non-impaired wire center. Verizon has not then escalated the dispute as required.

30. As a result, Verizon forces XO into a Hobson's Choice;[25] XO must decide whether: (1) it will continue to risk ordering UNEs out of the subject wire center at the risk that the information it has based its self-certification on is wrong and that it will ultimately have to make retroactive payments based on the month-to-month access rate for a more extended period; or (2) it will simply cease self-certifying any wire center because the downside risk is too great; thereby, stripping XO of its right to self-certify. Because XO has been unable to obtain information that would enable it to better verify the accuracy of Verizon's wire center classifications, XO has, to date, generally chosen to cease ordering out of wire centers that Verizon contests, which is contrary to XO's right to self-certify per the TRRO.

VII. CONCLUSION

31. This Complaint and Request for Relief does not suggest any particularly novel issues; as noted herein, other states have conducted investigations of these very same issues or are in the process of doing so.

32. For instance, the Michigan Public Service Commission ("MPSC")[26] rejected efforts to count CLECs as fiber-based collocators that do not have fiber facilities that enter and exit their collocations. In the Dearborn/Freeborn wire center, the MPSC specifically rejected

[25] "The origin of the term *Hobson's choice* is said to be in the name of one Thomas Hobson (ca. 1544-1631), at Cambridge, England, who kept a livery stable and required every customer to take either the horse nearest the stable door or none at all." Dictionary.Com, www. dictionary.reference.com/wordoftheday/archive/2000/01/31.html. Likewise, Verizon forces CLECs to take necessary facilities at the higher access rate, or not at all.

[26] *In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon*, MPSC Case No. U-14447, Order Sept. 20, 2005, attached hereto as Petition Exhibit 4.

AT&T's efforts to count a CLEC that did not have its own separate fiber as a fiber-based collocator. Instead, this CLEC was cross-connected with another CLEC, which AT&T had already included in its fiber-based collocator count. As a result, the MPSC specifically rejected AT&T's effort to count this CLEC as a fiber-based collocator. (MPSC Order at pages 9-11.) The Texas commission also has a proceeding underway that AT&T initiated and recently rejected certain aspects of AT&T's approach in counting fiber based collocators.[27]

33. In addition, the Texas Public Utilities Commission found in a decision dated April 6, 2006, that in order for a carrier to qualify as a "fiber-based collocator," a collocator must have its collocated fiber-optic transmission equipment connected *directly* to the fiber-optic cable or comparable transmission facility that leaves the central office. Conversely, the Texas PUC found that a collocator that is routed through (*e.g.*, cross-connected to) another unaffiliated CLEC's fiber-optic transmission equipment that connects to the fiber-optic cable or comparable transmission facility that leaves the wire center should not be counted as a fiber-based collocator.[28] The Texas PUC thus rejected AT&T's efforts to count separately as a fiber-based collocator any CLECs that cross-connects to another collocated CLEC whose fiber facilities leave the central office.

34. In addition, other state commissions (to name a few) in Colorado, Illinois, Maine, Utah, and Washington recently opened investigations to examine the methodologies employed

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[27] *See SBC Texas Complaint for Post-Interconnection Agreement Dispute Resolution Regarding UNE Declassification by Wire Center*, Docket No. 31303.

[28] Public Utility Commission of Texas, Docket No. 31303, Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification, Order Approving Methodology to Determine AT&T Texas Wire Centers Which are Non-Impaired at 13.

by the ILECs in preparing their lists of wire centers that they have classified as non-impaired pursuant to the FCC's criteria.[29]

35. XO asks only that the Florida Commission accept this complaint and remedy the specific items identified herein as it may deem appropriate. Verizon's inappropriate actions are ongoing, and are impeding XO's ability to survive, much less compete, in Verizon's territory. Thus, XO respectfully seeks the Commission's assistance in resolving this complaint.

36. To the extent that mediation conducted by the Florida Commission staff may be a feasible option for resolving some, or perhaps all of these issues, XO is amenable.

REQUEST FOR RELIEF

For all of the foregoing reasons and on the bases set forth herein, XO respectfully requests that the Commission take the following actions:

1) Set this matter for a Section 120.57(1), Florida Statutes, formal proceeding;

2) Find that Verizon has mis-applied the requirements of ¶ 234 of the TRRO with regard to XO's embedded base of high-capacity loops and transport in wire centers where XO has or does self-certify impairment, prohibit Verizon from converting XO's UNE circuits in wire centers where XO is disputing Verizon's designation as non-impaired, and require Verizon to continue to provide the embedded base at UNE rates pending resolution of any dispute Verizon may have regarding the impairment of the subject wire center;

[29] *See* Colorado Public Utilities Commission, Docket No. 06M-080T; Illinois Commerce Commission, Docket No. 06-0029; Maine Public Utilities Commission, Docket No. 2002-682; Oregon Public Utility Commission, Docket No. UM 1251; Utah Public Service Commission, Docket No. 06-049-40; Washington Utilities and Transportation Commission, Docket UT-053025.

3) Require Verizon to revisit its wire center list and demonstrate that it has not improperly counted affiliated companies and companies that are merely cross-connected with fiber-based collocators for purposes of meeting the non-impairment threshold;

4) Require that Verizon file all of its data, along with supporting methodology and assumptions used (which would include the names of each fiber-based collocators it has identified and the rationale for designating it as one), for each wire center that Verizon alleges is non-impaired for either high capacity loops and/or dedicated transport, subject to the terms of an appropriate protective order;

5) Require Verizon to fully implement the provisions of Section 3.6.2.1 of the parties' amended interconnection agreement by bringing disputes regarding XO's self-certification in Florida wire centers to the Florida PSC's or FCC's immediate attention instead of engaging in self-help; and

6) Provide any and all such other relief as the Commission may deem appropriate.

Respectfully submitted this 1st day of May, 2006.

XO COMMUNICATIONS SERVICES, INC.

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Counsel to
XO Communications Services, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail First Class this 1st day of May, 2006, to the persons listed below:

Leigh A. Hyer, Esquire Verizon Florida, Inc. P.O. Box 110, FLTC 0007 Tampa, FL 33601-0110 Leigh.a.hyer@verizon.com	David Christian Verizon Florida, Inc. 106 East College Ave. Tallahassee, FL 32301-7748 David.christian@verizon.com
Patrick Wiggins, Supervising Attorney Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 pwiggins@psc.state.fl.us	Beth Salak, Director/Competitive Markets and Enforcement 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 bsalak@psc.state.fl.us

By: 

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April 14, 2006

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Karen M. Potkul, Esq.
XO Communications
1601 Trapelo Road, Suite 397
Waltham, MA 02451

RE: Compliance with Triennial Review Order on Remand

Dear Ms. Potkul:

I am writing in response to your letter to me, dated March 17, 2006, by which you responded to my letter of March 10, 2006 to Gary Case of XO, regarding XO's embedded base of unbundled loop and transport circuits that XO, effective as of March 11, 2006 (or, in the case of dark fiber, September 11, 2006), may no longer obtain as unbundled network elements under the FCC's Order on Remand in WC Docket No. 04-313 and CC Docket No. 01-338, released on February 4, 2005 (the "*TRRO*").[1] Your March 17 letter largely repeats arguments that I already addressed in my March 10 letter to you. I address below only the new issues you raised in your March 17 letter.

First, in your letter you purport to have invoked paragraph 234 of the TRRO (including the ILEC provision-then-dispute obligation) by characterizing XO's March 3 letter as a "request" for the Discontinued Embedded Base under paragraph 234. In an attempt to support this argument, you quote certain language from paragraph 234 but omit the following sentence that is dispositive as to the FCC's intent: "We therefore hold that **to submit an order** to obtain a high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI above and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3)."[2] Had the FCC intended for the provision-then-dispute requirements of paragraph 234 to apply to the embedded base (and not only to new orders), it could have said so, but it did not. Nor would it make sense to apply such a requirement to the embedded base, as the one-year transition period allowed exceedingly ample time for CLECs to raise and resolve any concerns they might have had regarding the accuracy of an ILEC's list of non-impaired wire centers. Indeed, as stated in my March 10

[1] Such embedded base of discontinued UNEs may be referred to herein as the "Discontinued Embedded Base."

[2] *TRRO* ¶ 234 (emphasis added, footnote omitted).

letter, Verizon, on October 31, 2005, revised its wire center list to account for the two verifiable changes that XO identified.[3]

Although not pertinent to the subject Discontinued Embedded Base (because, as stated above, the provision-then-dispute requirement under paragraph 234 does not apply to such circuits), you suggest in your letter that *any* purported certification under paragraph 234 – even one that clearly is factually and legally "unsubstantiated" – entitles XO to continue to obtain, at UNE rates, circuits out of wire centers that Verizon has identified as non-impaired. That is incorrect. Under XO's interpretation, a CLEC could submit farcical "certifications" in an attempt to delay its obligation to pay access rates for circuits that the CLEC is not entitled to obtain at UNE rates. The FCC did not intend for CLECs to use paragraph 234 for gamesmanship and arbitrage.[4]

In that regard, Verizon rejects, once again, XO's argument that Verizon's wire center list inaccurately counts XO as a fiber-based collocator in cases where XO admits that it leases fiber from a third party but where the leases (purportedly) do not provide XO an indefeasible right of use. As Verizon has explained previously, the indefeasible right of use component of the FCC's definition of a fiber-based collocator applies only when the fiber is obtained from Verizon. *See* 47 C.F.R. § 51.5.[5] Verizon's examination of the circuit lists and related documentation provided by XO indicates that XO, based solely on its invalid IRU argument or unsubstantiated suspicion, has refused to convert to access the Discontinued Embedded Base circuits listed in the attached spreadsheet entitled "XO Circuits Out Of Listed Disputed Wire Centers".[6]

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[3] You also suggest that, because XO purports to have certified under paragraph 234 as to certain new orders at certain wire centers, Verizon must continued to provision as UNEs any embedded circuits at those wire centers until such time as the new order disputes may be resolved. But, for reasons stated above, the pendency of any disputes regarding new orders does not operate to apply the provision-then-dispute requirement of paragraph 234 to the embedded base, nor does not it entitle XO to obtain at UNE rates its discontinued embedded base of circuits beyond the end of the mandatory one-year transition period established by the *TRRO*.

[4] You also state that Verizon is "at fault" for not completing, within the one-year transition period, amendments to implement the *TRRO* in certain states. But, again, the subject interconnection agreements (in particular, the provisions I cited in my March 10 letter), already authorize Verizon, without first amending the agreements, to cease providing UNEs upon the cessation of Verizon's unbundling obligation. Moreover, even if XO's interconnection agreements required an amendment (which they do not), any such requirement could not change the FCC's mandatory transition deadline. As noted in my March 10 letter, Verizon went to great lengths during the past year to provide XO with notices, multiple reminders, training, and other assistance to facilitate XO's transition to alternative arrangements for these remaining circuits, but XO has ignored or frustrated those efforts at every turn.

[5] Although XO's argument that certain leases with third parties (purportedly) do not provide XO an indefeasible right of use is irrelevant for the reasons stated above, in my March 10 letter I also pointed out that XO had not met its November 2005 commitment to provide Verizon with a copy of the subject leases. In your March 17 letter you state that "XO never agreed to provide the confidential lease agreement, absent permission to do so." To eliminate any potential for XO to claim that it is excused from substantiating its (invalid) legal argument, Verizon agrees that if XO provides any such lease agreements to Verizon, the agreement(s) will be deemed and treated as "Confidential Information" under the non-disclosure agreement that the parties executed in relation to the wire center back-up data. With XO's confidentiality concern thus eliminated, Verizon requests again that XO, within five days of the date of this letter, provide Verizon with a copy of the subject lease(s). For the avoidance of any doubt, Verizon will proceed as indicated in the text above regardless of whether XO continues to refuse to provide a copy of the leases, as XO's underlying legal argument is invalid.

[6] Verizon reserves its rights with respect to any circuits that it may have unintentionally omitted from any spreadsheet referenced herein. Any such omission shall not be deemed to bar Verizon from exercising any rights that Verizon may have under this notice, other notices, the *TRRO*, XO's interconnection agreements, a Verizon tariff, or otherwise.

Verizon similarly rejects, for reasons explained previously, XO's argument that it disputes the non-impaired wire centers identified in Verizon's November 17, 2005 notice on the grounds that Verizon has not provided XO with 2003 data for those wire centers. You acknowledge in your letter, and do not dispute, that the November 17 list is based on 2004 data that Verizon has provided to XO. Thus, data from 2003 (or any other year) is irrelevant. However, to eliminate any potential for XO to attempt to continue to rely on this invalid argument, Verizon hereby provides, in the attached spreadsheet labeled ["NAME"], the 2003 backup data for the wire centers identified as non-impaired in the states where XO has refused to convert its discontinued circuits. **This data is confidential and proprietary under the parties' existing NDA and must be treated as such.** The identities of fiber-based collocators are masked (in the manner used for the back-up data Verizon has previously provided); XO's (including Allegiance) identifier code is: 189. This data is for informational purposes only, without waiver of any rights or arguments that Verizon may have as to the relevancy or admissibility of such data. This data was not used, and should not be used, as the basis for evaluating the impairment status of the wire centers identified in Verizon's November 17, 2005 notice. Verizon trusts that this back-up data eliminates any dispute XO had as to the non-impaired wire centers identified in Verizon's November 17, 2005 notice; if XO disagrees, please respond in writing within five days of the date of this letter to identify any good faith dispute that remains. Because XO's argument regarding the 2003 data is irrelevant in any event, Verizon shall continue to implement, as scheduled, its previous notices as to XO's Discontinued Embedded Base circuits at the wire centers identified in the November 17, 2005 notice (these circuits are listed in the attached spreadsheet entitled "XO Circuits Out Of Wire Centers on Supplemental List").[7]

Finally, XO has inappropriately failed to request conversion of its Discontinued Embedded Base circuits listed in the attached spreadsheet entitled "XO Circuits Out Of Non-disputed Wire Centers." XO has not offered any reason for its failure to convert such circuits. If these circuits were inadvertently omitted from previous conversion requests, then Verizon requests that XO submit immediately a request for conversion of these circuits.

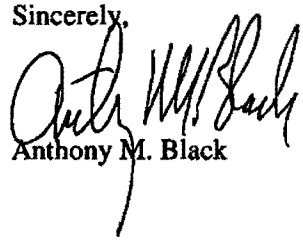
As set forth in Verizon's previous notices to XO, Verizon shall bill, and XO shall be obligated to pay, month-to-month access rates for all of the above-referenced Discontinued Embedded Base circuits (and any applicable circuits that Verizon may have unintentionally omitted) effective as of March 11, 2006 until such time as XO submits an appropriate request to convert those circuits to an alternative arrangement. Verizon also reserves all other rights and remedies that may be available to it with respect to these circuits and otherwise, including, but not limited to, Verizon's right to recover late payment charges if XO should fail to pay the month-to-month access rates as billed, and/or to disconnect (after issuing a further notice that would satisfy with any applicable notice requirements for disconnection under applicable regulations or otherwise) the subject circuits.

Without responding specifically to any remaining statements in your letter (while rejecting, all the same, any to which I do not specifically respond), any statements in your letter regarding rates and charges associated with the *TRRO* transition, statements regarding XO's having submitted certain circuits for conversion because of "coercion" by Verizon, and other inaccurate statements do not alter any right or remedy Verizon may have as to XO's Discontinued Embedded Base or otherwise. Also, in regard to your

[7] This list omits XO's embedded base of circuits out of the non-impaired wire centers in New York that were listed in Verizon's November 17, 2005 notice. However, pursuant to the New York Public Service Commission's order dated March 27, 2006 in Case 0-C-1627 and the tariff changes approved by that order, the transition period for XO's discontinued embedded base of circuits at those wire centers ends on June 12, 2006. Also, pursuant to tariff revisions that the NYPSC approved on April 11, 2006 in Case 06-C-0280, Verizon, effective as of April 13, 2006, may reject new orders for elements that are no longer available as UNEs at those wire centers.

statement that XO "expects Verizon to re-rate [certain] circuits to the appropriate rate under XO's volume commitment plan," Verizon reserves any rights and remedies it may have as to XO's failure to submit an appropriate request to have the subject circuits converted to any such volume commitment plans that may exist.

Sincerely,



Anthony M. Black

Attachments

ACCTNBR	CKTID	CLSVC	CKT SED	A-LOC
212M400004603	32.HCFU.117138..NY	XYH1X	4/5/2005	NYCMNY13
212M400004603	32.HCFU.136351..NY	XYH1X	5/6/2005	NYCMNY37
212M400004603	32.HCFU.139422..NY	XYH1X	5/27/2005	NYCMNY37
212M400004603	32.HCFU.953132..NY	XYH1X	6/6/2005	GRCYNYGC
212M400004603	32.HCGS.677714..NY	XYH1X	12/1/2002	NYCMNY37
212M400004603	32.HCGS.699494..NY	XYH1X	12/1/2002	NYCMNY37
212M400004603	32.HCGS.934010..NY	XYH1X	5/1/2004	NYCMNY56
617M400007354	95.HCGS.667562..NE	XYH1X	5/14/2003	FRMNMAUN
617M400007354	95.HCGS.927598..NE	XYH1X	3/1/2004	WLHMMASP
617M400010761	95.HCFU.811472..NE	XYH1X	8/7/2002	WLHMMASP
617M400010761	95.HCFU.811473..NE	XYH1X	8/12/2002	WLHMMASP
617M400010761	95.HCGS.640294..NE	XYH1X	12/1/2002	CMBRMAWA
617M400010761	95.HCGS.649126..NE	XYH1X	12/1/2002	WLHMMASP
617M400010761	95.HCGS.668424..NE	XYH1X	12/1/2002	WLHMMASP
617M400010761	95.HCGS.675324..NE	XYH1X	12/1/2002	WLHMMASP
617M400010761	95.HCGS.678739..NE	XYH1X	12/1/2002	BSTNMABO
617M400010761	95.HCGS.680614..NE	XYH1X	12/1/2002	BSTNMABO
617M400010761	95.HCGS.680732..NE	XYH1X	12/1/2002	CMBRMABE
617M400010761	95.HCGS.819398..NE	XYH1X	3/1/2003	CMBRMAWA
617M400010761	95.HCGS.849549..NE	XYH1X	5/1/2003	CMBRMAWA
617M400010761	95.HCFU.889429..NE	XYH1X	5/6/2003	WLHMMASP
617M400010761	95.HCGS.849547..NE	XYH1X	8/1/2003	CMBRMAWA
617M400010761	95.HCGS.849548..NE	XYH1X	8/1/2003	CMBRMAWA
617M400010761	95.HCFU.939882..NE	XYH1X	11/3/2003	BSTNMABE
617M400010761	95.HCFU.943181..NE	XYH1X	11/5/2003	WLHMMASP
617M400010761	95.HCFU.958338..NE	XYH1X	1/5/2004	CMBRMAWA
617M400010761	95.HCFU.969335..NE	XYH1X	1/30/2004	WLHMMASP
617M400010761	95.HCFU.981757..NE	XYH1X	3/19/2004	WLHMMASP
617M400010761	95.HCFU.989701..NE	XYH1X	4/7/2004	WLHMMASP
617M400010761	95.HCFU.001977..NE	XYH1X	4/30/2004	CMBRMAWA
617M400010761	95.HCFU.044463..NE	XYH1X	8/9/2004	WRCSMACE
617M400010761	95.HCFU.047890..NE	XYH1X	8/17/2004	WRCSMACE
617M400010761	95.HCFU.048031..NE	XYH1X	8/18/2004	FRMNMAUN
617M400010761	95.HCFU.048292..NE	XYH1X	8/18/2004	FRMNMAUN
617M400010761	95.HCFU.052030..NE	XYH1X	8/27/2004	BSTNMABO
617M400010761	95.HCFU.054756..NE	XYH1X	9/3/2004	BSTNMABE
617M400010761	95.HCFU.057687..NE	XYH1X	9/14/2004	FRMNMAUN
617M400010761	95.HCFU.057689..NE	XYH1X	9/14/2004	FRMNMAUN
617M400010761	95.HCFU.076493..NE	XYH1X	11/3/2004	FRMNMAUN
617M400010761	95.HCFU.097078..NE	XYH1X	1/7/2005	CMBRMAWA
617M400010761	95.HCFU.100280..NE	XYH1X	1/18/2005	WLHMMASP
617M400010761	95.HCFU.100281..NE	XYH1X	1/18/2005	WLHMMASP
617M400010761	95.HCFU.100450..NE	XYH1X	1/18/2005	BSTNMABO
215M400072074	11.HCFU.275977..PA	XYH1X	5/16/2001	HTBOPAHB
215M400072074	11.HCFU.280391..PA	XYH1X	7/10/2001	PHLAPALO
215M400072074	11.HCFU.280392..PA	XYH1X	7/10/2001	PHLAPALO
215M400072074	11.HCFU.280393..PA	XYH1X	7/10/2001	PHLAPALO
215M400072074	11.HCFU.280973..PA	XYH1X	7/27/2001	PHLAPAMK
215M400072074	11.HCFU.286038..PA	XYH1X	#########	PAOLPAPA
215M400072074	11.HCFU.286039..PA	XYH1X	#########	PAOLPAPA
215M400072074	11.HCFU.287966..PA	XYH1X	12/3/2001	PAOLPAPA

215M400072074	11.HCFU.297916..PA	XYH1X	4/25/2002	PAOLPAPA
215M400072074	11.HCFU.319556..PA	XYH1X	5/8/2003	KGPRPAKP
215M400072074	11.HCFU.320127..PA	XYH1X	5/19/2003	KGPRPAKP
215M400072074	11.HCFU.320128..PA	XYH1X	5/19/2003	KGPRPAKP
215M400072074	11.HCFU.320129..PA	XYH1X	5/19/2003	KGPRPAKP
215M400072074	11.HCFU.320130..PA	XYH1X	5/19/2003	KGPRPAKP
215M400072074	11.HCFU.321069..PA	XYH1X	5/27/2003	PHLAPALO
215M400072074	11.HCFU.322861..PA	XYH1X	7/9/2003	PHLAPALO
717M400051090	13.HCFU.520399..PA	XYH1X	8/27/2003	HRBGPAHA
215M400072074	11.HCFU.327219..PA	XYH1X	9/30/2003	KGPRPAKP
215M400072074	11.HCFU.329905..PA	XYH1X	########	WAYNPAWY
717M400051090	13.HCFU.521175..PA	XYH1X	12/9/2003	HRBGPAHA
215M400072074	11.HCFU.331749..PA	XYH1X	########	WAYNPAWY
215M400072074	11.HCFU.334145..PA	XYH1X	2/9/2004	PHLAPALO
215M400072074	11.HCFU.334146..PA	XYH1X	2/9/2004	PHLAPALO
215M400072074	11.HCFU.334147..PA	XYH1X	2/9/2004	PHLAPALO
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215M400072074	11.HCGS.327456..PA	XYH1X	4/1/2004	KGPRPAKP
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215M400072074	11.HCFU.341654..PA	XYH1X	6/30/2004	PAOLPAPA
215M400072074	11.HCFU.344533..PA	XYH1X	8/20/2004	WAYNPAWY
215M400072074	11.HCFU.344174..PA	XYH1X	8/26/2004	WAYNPAWY
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215M400072074	11.HCFU.351895..PA	XYH1X	1/19/2005	PHLAPALO
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F11UQA1048104	69.HCFU.327057..GTES	RBXAX	20040625	CLWRFLXA
F11UQA1048104	69.HCFU.327085..GTES	RBXAX	20040608	CLWRFLXA
F11UQA1048104	69.HCFU.337187..GTES	RBXAX	20050415	BHPKFLXA
F11UM11000105	69.HCFU.310329..GTES	RBXAX	20021018	WSSDFLXA
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F11UM11000105	69.HCFU.318697..GTES	RBXAX	20030923	BHPKFLXA
F11UM11000105	69.HCFU.328381..GTES	RBXAX	20040708	TAMPFLXA
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F11UM11000105	69.HCFU.340636..GTES	RBXAX	20050705	TAMPFLXA
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F11UM11000105	69.HCFU.343347..GTES	RBXAX	20050921	TAMPFLXA
C11UQA1094105	81.HCFU.455433..GTEW	RBXAX	20020415	WMNSCAXF
C11UQA1094105	81.HCFU.757845..GTEW	RBXAX	20040615	WMNSCAXF

MUX LOC	Z-LOC
NYCKNYWM	NYCQNYJA
NYCMNY37	NYCQNYJA
NYCMNY37	NYCQNYJA
GRCYNYGC	NYCQNYJA
NYCMNY37	NYCQNYJA
NYCMNY37	NYCQNYJA
NYCMNY56	NYCQNYJA
FRMNMAUN	MRBOMAMA
WLHMMASP	MRBOMAMA
WLHMMASP	LWLLMAAP
WLHMMASP	LWLLMAAP
CMBRMAWA	MRBOMAMA
WLHMMASP	SOVLMACE
WLHMMASP	MRBOMAMA
WLHMMASP	LWLLMAAP
BSTNMABO	DNVSMAHI
BSTNMABO	DNVSMAHI
CMBRMABE	SALMMANO
CMBRMAWA	SOVLMACE
CMBRMAWA	MRBOMAMA
MRBOMAMA	MRBOMAMA
CMBRMAWA	MRBOMAMA
CMBRMAWA	MRBOMAMA
BSTNMABE	SOVLMACE
MRBOMAMA	NWTNMAWA
CMBRMAWA	SOVLMACE
MRBOMAMA	WLHMMAWE
MRBOMAMA	WRCSMACE
MRBOMAMA	WRCSMACE
CMBRMAWA	SOVLMACE
WRCSMACE	MRBOMAMA
WRCSMACE	MRBOMAMA
FRMNMAUN	MRBOMAMA
FRMNMAUN	MRBOMAMA
BSTNMABO	MRBOMAMA
BSTNMABE	FRMNMAUN
FRMNMAUN	WRCSMACE
FRMNMAUN	WRCSMACE
FRMNMAUN	WRCSMACE
CMBRMAWA	SOVLMACE
WLHMMASP	MRBOMAMA
WLHMMASP	MRBOMAMA
BSTNMABO	SALMMANO
HTBOPAHB	BCYNPABC
PHLAPALO	BCYNPABC
PHLAPALO	BCYNPABC
PHLAPALO	BCYNPABC
PHLAPAMK	BCYNPABC
PAOLPAPA	WAYNPAWY
PAOLPAPA	WAYNPAWY
PAOLPAPA	WAYNPAWY

PAOLPAPA	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
PHLAPALO	BCYNPABC
PHLAPALO	BCYNPABC
HRBGPAHA	CPHLPACH
KGPRPAKP	WAYNPAWY
WAYNPAWY	KGPRPAKP
HRBGPAHA	CPHLPACH
WAYNPAWY	PAOLPAPA
PHLAPALO	BCYNPABC
PHLAPALO	BCYNPABC
PHLAPALO	BCYNPABC
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
KGPRPAKP	WAYNPAWY
PHLAPALO	BCYNPABC
PHLAPAPE	BCYNPABC
HRBGPAHA	CPHLPACH
HRBGPAHA	CPHLPACH
HRBGPAHA	CPHLPACH
PAOLPAPA	BCYNPABC
WAYNPAWY	PAOLPAPA
WAYNPAWY	PAOLPAPA
PHLAPALO	BCYNPABC
WAYNPAWY	PAOLPAPA
PHLAPALO	BCYNPABC
CNSHPACN	ARMRPAAR
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	SPBGFLXA
	TAMPFLXX
	BHPKFLXA
	TAMPFLXE
	TAMPFLXE
	TAMPFLXE
	LNBHCAXF
	LNBHCAXF

Re: Clarification Regarding February 3, 2006 Notice Regarding Changes to Wire Center Classifications

February 22, 2006

Subject: Clarification Regarding February 3, 2006 Notice Regarding Changes to Wire Center Classifications

This In accordance with voluntary commitments made by Verizon Communications Inc. ("Verizon") in connection with the FCC's approval of the Verizon-MCI Merger, within thirty days after the Merger Closing Date, Verizon agreed to issue an update to its initial non-impaired wire center list (i.e., the list that took effect on 3/11/05) that, in applying the criteria established by the FCC in the TRO Remand Order, would exclude from consideration fiber-based collocation arrangements established by MCI or its affiliates in any of Verizon's wire centers. The Verizon-MCI Merger closed on January 6, 2006, and Verizon made its compliance filing of a revised wire center list in fulfillment of this commitment on February 3, 2006.

On February 3, 2006, Verizon sent notices of these changes to the wire center list directly to CLECs, posted this information on its Wholesale website, and advised CLECs that effective on that date, the revised wire center list attached as Exhibit A to that notice replaced Verizon's initial wire center list that had taken effect on March 11, 2005. See Industry Notice Regarding Changes to Wire Center Classifications (February 3, 2006).

It has come to Verizon's attention that some CLECs were confused about the effect of the changes Verizon announced on February 3, 2006 -in particular, whether those changes were "retroactive" to the March 11, 2005 effective date of Verizon's initial wire center list. To eliminate any doubt, consistent with the above-described merger commitment, the changes in wire center classifications that took effect on February 3, 2006 were prospective only, and had no retroactive effect. Therefore, circuits that CLECs obtained prior to February 3, 2006 will continue to be subject to the wire center classifications detailed in Verizon's initial wire center list, published on March 2, 2005 (as amended April 15, 2005) for the time period covering March 11, 2005 through February 2, 2006. See Industry Letter - Publication of Verizon Wire Center Information (March 2, 2005). Attached please find a corrected revised wire center list that supersedes the one distributed on February 3, 2006 to further clarify that the effective date of the revisions to the wire center classifications contained in that list are effective on and after February 3, 2006.

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[1] *See* Letter from Susanne A. Guyer, Verizon, to Jeffrey J. Carlisle, FCC, WC Docket No. 04-313 and CC Docket No. 01-338 (filed Feb. 18, 2005); Letter from Edwin J. Shimizu, Verizon, to Marlene H. Dortch, FCC, WC Docket No.

04-313 and CC Docket No. 01-338 (filed Mar. 4, 2005); Letter from Edwin J. Shimizu, Verizon, to Michelle Carey, FCC, WC Docket No. 04-313 and CC Docket No. 01-338 (filed Apr. 15, 2005).

[2] Order on Remand in WC Docket No. 04-313 and CC Docket No. 01-338 released on February 4, 2005 (the "*TRO Remand Order*").

[3] In those states such as New York and Rhode Island, which require that changes to wire center classifications be implemented pursuant to a state tariff, the changes reflected in Exhibit A will take effect upon the effective date of tariff revisions reflecting those changes. Verizon has already filed tariff revisions to reflect these changes in New York and Rhode Island.

[4] As detailed in the Verizon November 17, 2005 Notice of Updates to Verizon Wire Center Classifications and the January 26, 2006 Industry Letter reminder, Verizon has identified additional wire centers, based on updated data, that meet the FCC's non-impairment criteria (the "November 17 Additional Wire Centers"). Such updates will take effect on February 15, 2006. Because, as described in the November 17, 2005 notice, the fiber-based collocator counts used to determine the November 17 Additional Wire Centers already reflected Verizon's affiliation with MCI, the February 3, 2006 revision did not affect the November 17 Additional Wire Centers.

[5] This confusion arose in part from a header on the list of non-impaired wire centers attached to the February 3, 2006 Notice which read "Effective March 11, 2005 -Last updated (2/3/06) to reflect status as of 3/11/05." The header has been corrected, and a corrected version of the February 3, 2006 revised wire center list is attached as Exhibit A. No other revisions have been made to the attached list.

[6] For example, if prior to February 3, 2006, a CLEC had an embedded base of dedicated DS3 transport circuits between wire centers that were initially classified as Tier 2 wire centers, but that as of February 3, 2006 are classified as Tier 3 wire centers, those circuits are subject to the 15% transition surcharge provided by the FCC in 47 C.F.R § 15.319(e)(2)(iii)(C) for the period covering March 11, 2005 through February 2, 2006, but not thereafter. In addition, if a CLEC obtained, for example, a dedicated DS3 transport circuit ordered pursuant to an interstate or intrastate access tariff after March 11, 2005 between two wire centers that were initially classified as Tier 2 wire centers, but that as of February 3, 2006 are classified as Tier 3 wire centers, that circuit would not be entitled to unbundled network element rates for any portion of the period covering March 11, 2005 through February 2, 2006. On and after February 3, 2006, any circuits that have changed status from "non-impaired" to "impaired" by reason of the February 3, 2006 wire center reclassifications may, at the carrier's written request and subject to the terms of any term or volume plans, contract tariff, or other tariffed arrangement, or conversion charges (including without limitation, termination liability, shortfall penalties, and other charges set forth in an access tariff or an interconnection agreement) applicable to those circuits, be converted to unbundled network elements. Circuits ordered with provisioning dates on or after February 3, 2006 in wire centers classified as "impaired" by reason of the February 3, 2006 wire center reclassifications may be ordered as unbundled network elements or as special access services at the carrier's option. Please note that any illustrative examples or other discussion set forth herein should not be interpreted to expand Verizon's obligations or CLECs' rights as to matters beyond the scope of this notice (e.g., any conversion of a dedicated transport circuit to UNE under the example set forth above would be subject to the cap on the number of UNE dedicated transport circuits that CLECs may obtain on a given route under the *TRO Remand Order*, any EEL circuits remain subject to certification requirements, etc.).

http://www22.verizon.com/wholesale/library/local/industryletters/1,,east-wholesale-resources-2006_industry_letters-clecs-02_22,00.html

Exhibit A

Verizon's Wire Centers Exempt from UNE Hi-Cap Loop and Dedicated Transport Ordering

Effective on and after 2/3/06, this list supersedes the list that was effective from 3/11/05 through 2/2/06

Pursuant to a notice regarding the status of certain Verizon wire center classifications in Massachusetts and Pennsylvania following the Verizon/MCI merger, submitted to CLECs on 2/2/06 via an Industry Letter, two Wire Centers, BRYMPABM in PA and NWTNMAWA in MA, that were removed from the filing made at the FCC in compliance with Verizon's merger commitments, have been reinstated on this list since those wire centers qualify for Tier 2 status based on updated information.

Transport (Unbundled Dedicated Transport + Unbundled Dedicated Transport portion of a Loop-Transport combination)

DS1 Unbundled Transport will not be offered between Wire Center CLLIs marked "Yes" in the Tier 1 column.

DS3 Unbundled Transport and Dark Fiber will not be offered between Wire Center CLLIs marked "Yes" in ***either*** the Tier 1 or Tier 2 columns.

Loop (Unbundled Loop + Unbundled Loop portion of a Loop-Transport combination)

DS1 Unbundled Loop Services will not be offered from Wire Centers marked "Yes" in the DS1 Loop column. DS3 Unbundled Loop Services will not be offered from Wire Centers marked "Yes" in the DS3 Loop column.

Wire Center Qualified w/o MCI - Yes or No - 02/03/06					
Operated State	**Wire Center**	**Tier 1**	**Tier 2**	**DS1 Loop**	**DS3 Loop**
CA	BLPKCAXF	No	Yes	No	No
	CCMNCAXF	No	Yes	No	No
	LNBHCAXF	Yes	No	No	No
	LNBHCAXS	No	Yes	No	No
	SNBBCAXF	No	Yes	No	No
	SNMNCAXG	No	Yes	No	No
	SNMNCAXP	No	Yes	No	No
	THOKCAXF	No	Yes	No	No
	WLANCAXF	No	Yes	No	No
	WLANCAXH	No	Yes	No	No
	WMNSCAXF	Yes	No	No	No
CT	GNWCCTGN	Yes	No	No	No
DC	WASHDCDN	Yes	No	Yes	Yes
	WASHDCDP	Yes	No	No	No
	WASHDCMO	Yes	No	Yes	Yes
	WASHDCMT	Yes	No	Yes	Yes
	WASHDCSW	Yes	No	Yes	Yes
	WASHDCWL	No	Yes	No	No
DE	DOVRDEDV	No	Yes	No	No
	NWRKDENB	Yes	No	No	No
	WLMGDEWL	Yes	No	No	No
FL	BHPKFLXA	Yes	No	No	No
	CLWRFLXA	Yes	No	No	No

	CNSDFLXA	No	Yes	No	No
	PNLSFLXA	No	Yes	No	No
	SPBGFLXA	Yes	No	No	No
	SRSTFLXA	No	Yes	No	No
	SWTHFLXA	Yes	No	No	No
	TAMPFLXA	Yes	No	No	No
	TAMPFLXE	Yes	No	No	No
	TAMPFLXX	Yes	No	No	No
	WSSDFLXA	Yes	No	No	No
	YBCTFLXA	No	Yes	No	No
HI	HNLLHIMN	Yes	No	No	No
IN	FTWYINXA	No	Yes	No	No
MA	BKLIMAMA	No	Yes	No	No
	BRNTMAWA	No	Yes	No	No
	BRTNMACR	Yes	No	No	No
	BSTNMABE	Yes	No	Yes	Yes
	BSTNMABO	Yes	No	No	Yes
	BSTNMAFR	Yes	No	No	No
	BSTNMAHA	Yes	No	No	Yes
	BURLMABE	No	Yes	No	No
	CMBRMABE	Yes	No	No	No
	CMBRMAWA	Yes	No	Yes	Yes
	DNVSMAHI	Yes	No	No	No
	FRMNMAUN	Yes	No	No	No
	HLYKMAMA	No	Yes	No	No
	LWLLMAAP	Yes	No	No	No
	LWRNMACA	Yes	No	No	No
	LXTNMAWA	No	Yes	No	No
	MLDNMAEL	No	Yes	No	No
	MRBOMAMA	Yes	No	No	No
	NATNMAMA	No	Yes	No	No
	NWTNMAWA	No	Yes	No	No
	QNCYMAHA	Yes	No	No	No
	SALMMANO	Yes	No	No	No
	SOVLMACE	Yes	No	No	No
	SPFDMAWO	Yes	No	No	Yes
	WLHMMASP	Yes	No	No	No
	WLHMMAWE	Yes	No	No	No
	WRCSMACE	Yes	No	No	Yes
MD	BLTMMDCH	Yes	No	Yes	Yes
	BLTMMDWL	Yes	No	No	No
	BTHSMDRP	Yes	No	No	No
	CHCHMDBE	Yes	No	No	Yes
	CLMAMDCB	No	Yes	No	No
	FPATMDFR	No	Yes	No	No
	FRDRMDFR	Yes	No	No	No
	GMTWMDGN	No	Yes	No	No
	GTBGMDGB	Yes	No	No	No
	HGTWMDHG	No	Yes	No	No
	LARLMDLR	No	Yes	No	No

	RKVLMDMR	Yes	No	No	No
	RKVLMDRV	Yes	No	No	No
	SLBRMDSB	Yes	No	No	No
	SLSPMDSS	Yes	No	No	Yes
	TWSNMDTW	No	Yes	No	No
	WHTNMDWT	No	Yes	No	No
ME	BNGRMEPA	No	Yes	No	No
	LSTNMEAS	No	Yes	No	No
	PTLDMEFO	Yes	No	No	Yes
NC	DRHMNCXE	Yes	No	No	No
	DRHMNCXM	Yes	No	No	No
NH	DOVRNHTH	No	Yes	No	No
	KEENNHWA	Yes	No	No	No
	MNCHNHCO	Yes	No	No	Yes
	NASHNHWP	Yes	No	No	No
	PTMONHIS	Yes	No	No	No
NJ	ATCYNJAC	No	Yes	No	No
	CMDNNJCE	Yes	No	No	No
	ELZBNJEL	Yes	No	No	No
	ENWDNJEN	No	Yes	No	No
	EORNNJEO	No	Yes	No	No
	FRFDNJFA	No	Yes	No	No
	HCKNNJHK	Yes	No	No	Yes
	HOLMNJHO	No	Yes	No	No
	JRCYNJBR	Yes	No	No	No
	JRCYNJJO	Yes	No	No	Yes
	MRTWNJMR	Yes	No	No	Yes
	MSTWNJMO	No	Yes	No	No
	NBRGNJNB	No	Yes	No	No
	NBWKNJNB	Yes	No	No	Yes
	NWPVNJMH	No	Yes	No	No
	NWRKNJ02	Yes	No	Yes	Yes
	NWRKNJIR	No	Yes	No	No
	PLFDNJPF	No	Yes	No	No
	PNNKNJPN	No	Yes	No	No
	PSSCNJPS	Yes	No	No	No
	PSVLNJPL	No	Yes	No	No
	PSWYNJPI	No	Yes	No	No
	PTSNNJAR	No	Yes	No	No
	RCPKNJ02	Yes	No	No	No
	RDBKNJRB	No	Yes	No	No
	RTFRNJRU	Yes	No	No	No
	SOVLNJSM	No	Yes	No	No
	TMRVNJTR	No	Yes	No	No
	TRENNJTE	Yes	No	No	No
	UNCYNJ02	Yes	No	No	Yes
	WHIPNJWH	No	Yes	No	No
NY	ALBYNYSS	Yes	No	No	No
	AMHRNYMP	Yes	No	No	No
	BFLONYEL	No	Yes	No	No

	BFLONYFR	Yes	No	No	Yes
	BFLONYHE	Yes	No	No	No
	BFLONYMA	No	Yes	No	No
	BRWDNYBW	Yes	No	No	Yes
	FLPKNYFP	No	Yes	No	No
	FRDLNYFM	No	Yes	No	No
	GRCYNYGC	Yes	No	Yes	Yes
	HCVLNYHV	No	Yes	No	No
	LYBRNYLB	Yes	No	No	No
	MINLNYMI	Yes	No	No	Yes
	NYCKNY77	No	Yes	No	No
	NYCKNYBR	Yes	No	Yes	Yes
	NYCKNYWM	Yes	No	No	No
	NYCMNY13	Yes	No	Yes	Yes
	NYCMNY18	Yes	No	Yes	Yes
	NYCMNY30	Yes	No	Yes	Yes
	NYCMNY36	Yes	No	Yes	Yes
	NYCMNY37	Yes	No	Yes	Yes
	NYCMNY42	Yes	No	Yes	Yes
	NYCMNY50	Yes	No	Yes	Yes
	NYCMNY56	Yes	No	Yes	Yes
	NYCMNY73	Yes	No	No	No
	NYCMNY79	Yes	No	No	Yes
	NYCMNY97	Yes	No	No	No
	NYCMNYBS	Yes	No	Yes	Yes
	NYCMNYVS	Yes	No	No	Yes
	NYCMNYWS	Yes	No	Yes	Yes
	NYCQNYFL	No	Yes	No	No
	NYCQNYJA	Yes	No	No	No
	NYCQNYLI	Yes	No	No	No
	NYCQNYNW	No	Yes	No	No
	NYCRNYNS	No	Yes	No	No
	NYCXNYTR	No	Yes	No	No
	SCHNNYSC	No	Yes	No	No
	SYRCNYSU	Yes	No	No	Yes
	WHPLNYWP	Yes	No	No	Yes
	WSNCNYUN	No	Yes	No	No
	WSVLNYNC	Yes	No	No	No
OR	BVTNORXB	Yes	No	No	No
	SMRWORXA	No	Yes	No	No
	TGRDORXA	Yes	No	No	No
PA	ALTWPAAL	Yes	No	No	No
	AMBLPAAM	No	Yes	No	No
	ARMRPAAR	Yes	No	No	No
	BCYNPABC	Yes	No	No	No
	BHLHPABE	Yes	No	No	No
	BLLVPABE	No	Yes	No	No
	BRYMPABM	No	Yes	No	No
	CARNPACA	Yes	No	No	No
	CNSHPACN	Yes	No	No	No

	CPHLPACH	Yes	No	No	No
	CRAFPACR	Yes	No	No	No
	CRPLPACO	Yes	No	No	No
	DRMTPADO	Yes	No	No	No
	GLNSPAGL	No	Yes	No	No
	GNBGPAGR	No	Yes	No	No
	HRBGPAHA	Yes	No	No	No
	HTBOPAHB	Yes	No	No	No
	KGPRPAKP	Yes	No	No	No
	LNCSPALA	Yes	No	No	No
	MBRGPAME	No	Yes	No	No
	MOVLPAMO	Yes	No	No	No
	NRTWPANR	Yes	No	No	No
	OKMTPAOA	No	Yes	No	No
	PAOLPAPA	Yes	No	No	No
	PEHLPAPH	No	Yes	No	No
	PHLAPAEV	Yes	No	No	Yes
	PHLAPALO	Yes	No	Yes	Yes
	PHLAPAMK	Yes	No	Yes	Yes
	PHLAPAPE	Yes	No	No	No
	PHLAPAPI	No	Yes	No	No
	PHLAPATR	Yes	No	No	No
	PITBPAAL	Yes	No	No	No
	PITBPACA	No	Yes	No	No
	PITBPADT	Yes	No	Yes	Yes
	PITBPAEL	No	Yes	No	No
	PITBPANS	Yes	No	No	No
	PITBPAOK	Yes	No	No	No
	PYVLPAPE	Yes	No	No	No
	RBTPPART	Yes	No	No	No
	RDNGPARE	No	Yes	No	No
	SCTNPASC	Yes	No	No	No
	SHSAPASH	Yes	No	No	No
	STCGPAES	Yes	No	No	No
	SWKYPASE	No	Yes	No	No
	TRCKPATC	Yes	No	No	No
	WAYNPAWY	Yes	No	No	No
	WCHSPAWC	No	Yes	No	No
	WKBGPAWK	Yes	No	No	No
	WLBRPAWB	No	Yes	No	No
	WLPTPAWI	No	Yes	No	No
RI	CNTNRIPH	No	Yes	No	No
	PRVDRIBR	Yes	No	No	No
	PRVDRIWA	Yes	No	No	Yes
	WNSCRICL	Yes	No	No	No
	WRWKRIWS	Yes	No	No	No
TX	CLSTTXXA	No	Yes	No	No
	DNTNTXXA	No	Yes	No	No
	IRNGTXXA	Yes	No	No	No
	IRNGTXXC	No	Yes	No	No

	IRNGTXXD	No	Yes	No	No
	IRNGTXXG	Yes	No	No	No
	PLANTXXA	Yes	No	No	No
	PLANTXXB	No	Yes	No	No
	PLANTXXD	No	Yes	No	No
VA	ALXNVAAX	No	Yes	No	No
	ALXNVABA	Yes	No	No	No
	ARTNVAAR	Yes	No	No	Yes
	ARTNVACY	No	Yes	No	No
	CNVIVACT	Yes	No	No	No
	FLCHVAMF	No	Yes	No	No
	FRFXVAFF	Yes	No	No	Yes
	HRNDVAHE	Yes	No	Yes	Yes
	MCLNVALV	Yes	No	Yes	Yes
	MNSSVAXA	No	Yes	No	No
	NRFLVABS	Yes	No	No	No
	PNTGVADF	No	Yes	No	No
	RCMDVAGR	Yes	No	No	No
	RCMDVAPE	No	Yes	No	No
	RCMDVASR	No	Yes	No	No
	RONKVALK	No	Yes	No	No
	VINNVAVN	Yes	No	No	No
	VRBHVACC	Yes	No	No	No
VT	BURLVTMA	No	Yes	No	No
WA	BOTHWAXB	No	Yes	No	No
	RDMDWAXA	Yes	No	No	No
WV	CHTNWVLE	Yes	No	No	No
Total Qualified WCs		152	98	25	49

DT 05-083
DT 06-012

VERIZON NEW HAMPSHIRE
WIRE CENTER INVESTIGATION

VERIZON NEW HAMPSHIRE
REVISIONS TO TARIFF 84

Order Classifying Wire Centers and Addressing Related Matters

ORDER NO. 24,598

March 10, 2006

I. INTRODUCTION

These consolidated proceedings before the New Hampshire Public Utilities Commission (Commission) concern the extent to which incumbent local exchange carrier (ILEC) Verizon New Hampshire (Verizon) remains obligated under section 251 of the Telecommunications Act of 1996, Pub. L 104-104, 110 Stat. 56 (1996) and subsequent amendments, codified as 47 U.S.C. § 151 *et seq.* (Telecommunications Act), to make certain network elements available on an unbundled basis, and at cost-based rates, to competitive local exchange carriers (CLECs) in New Hampshire. Section 251(d)(2) authorizes the Federal Communications Commission (FCC) to require such unbundled access when the failure to provide it would "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

The extent to which the lack of such impairment relieves Verizon's unbundling obligations has been in a state of flux, in part because of industry changes and in part because of appellate challenges to FCC impairment determinations. The FCC's most recent determinations

with respect to impairment are contained in an order formally entitled *In the Matter of Unbundled Access to Network Elements*, 20 F.C.C.R. 2533 (Feb. 4, 2005), commonly referred to as the *Triennial Review Remand Order (TRRO).*[1]

In the *TRRO*, the FCC determined that the continuing obligation of Verizon and other ILECs to provision CLECs with certain unbundled network elements (UNEs), *i.e.*, high capacity transport, dark fiber transport and high capacity loops, would vary by wire center,[2] according to the extent to which "requesting carriers have undertaken their own facilities-based investments and will be using UNEs in conjunction with self-provisioned facilities." *See TRRO* ¶ 3. The FCC's determinations are not based, however, on the extent to which real alternatives to the ILEC may exist, but to whether "entry is economic by a hypothetical carrier acting reasonably efficiently." *See TRRO* ¶¶ 26, 43 and 96. Thus the analysis is one of market strength and the economics of self-deployment by competitors of transport and loop facilities. To that end, the FCC established formulae to determine when CLECs are no longer impaired without access to dedicated transport and high-capacity loops in an ILEC wire center if the ILEC were to be relieved of its obligation to provision those UNEs. Those formulae were codified at Part 51 of Title 47 of the Code of Federal Regulations.

For high-capacity loops, two thresholds establish when impairment no longer exists. Impairment will not exist with regard to DS-3 loops to any customer served by a wire center with at least 38,000 business lines and four fiber-based collocators. Impairment will not

[1] In 2003, the FCC issued its *Triennial Review Order, In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 F.C.C.R. 16,978 (2003) *(TRO).* The *TRO* was vacated in part, remanded in part and affirmed in part by *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), prompting the issuance of the *TRRO.*

[2] A "wire center" is "the location of [an ILEC] local switching facility containing one or more central offices." 47 CFR § 51.5.

exist with regard to DS-1 loops to any customer served by a wire center with at least 60,000 business lines and four fiber-based collocators.

For dedicated transport, the FCC identified tiers of wire centers, between which competitors are deemed to be not impaired in certain circumstances. A "tier 1" wire center is one that has at least 38,000 business lines or at least four fiber-based collocators. A "tier 2" wire center is one that has at least 24,000 business lines or at least three fiber-based collocators. All ILEC wire centers that do not meet the criteria above are "tier 3" wire centers. The FCC found that CLECs are not impaired without access to DS-1, DS-3 and dark fiber transport between tier 1 wire centers, and that CLECs are not impaired without access to DS-3 and dark fiber transport between tier 2, or between tier 2 and tier 1, wire centers. According to the *TRRO*, once a wire center is determined to be a tier 1 wire center it is not subject to later reclassification as a tier 2 or tier 3 wire center, and, similarly, once a wire center is determined to be a tier 2 wire center it is not subject to later reclassification as a tier 3 wire center.

A key element in the classification process is the identification of fiber-based collocators in a wire center. The FCC promulgated certain final rules that appear as Appendix B to the *TRRO*. The definition of fiber-based collocator is codified at 47 C.F.R. § 51.5 Terms and Definitions (Rule 51.5):

> Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement with 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 in this paragraph. 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 paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

Also at issue in the classification process is the count of business lines in a wire center. The definition of business lines is codified at 47 C.F.R. § 51.5 Terms and Definitions:

> Business line. 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 (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."

The *TRRO* requires CLECs to self-certify, after undertaking a "reasonably diligent inquiry," that their requests for high-capacity loops or dedicated transport UNEs are consistent with the requirements of the *TRRO*, and that they are therefore entitled to unbundled access to the particular network elements sought pursuant to section 251 of the Telecommunications Act. In those wire centers where CLECs self-certify that they are no longer impaired without access to those UNEs, the *TRRO* directs carriers to negotiate applicable changes through their interconnection agreements. In New Hampshire, however, Verizon has a wholesale tariff, NHPUC Tariff No. 84 (Tariff 84), that sets out the rates, terms and conditions of services to be provided to CLECs. In Docket No. DT 05-083, we seek to verify whether Verizon's classifications of its wire centers for the purpose of inclusion in its wholesale tariff pursuant to the *TRRO*, FCC rules and RSA 378:5 are reasonable and to clarify the appropriate

guidelines and procedures for determination of any future changes in wire center impairment classifications.

Also in this order, we address revisions to Tariff 84 proposed by Verizon and docketed in Docket No. DT 06-012. Tariff 84 currently provides for the disconnection at the end of the defined transition period of any "delisted" high-capacity loop or transport unbundled network elements (UNEs) (*i.e.*, UNEs which are no longer required to be unbundled) under certain circumstances. As an alternative to disconnecting delisted loops or transport, the proposed revisions would grant Verizon the sole discretion to determine what replacement circuits are analogous to the delisted UNE transport and loops, and to re-price the transport and loop circuits accordingly, based on FCC-tariffed interstate special access rates. In Docket No. DT 06-012, we seek to verify whether the proposed revisions are just and reasonable pursuant to RSA 374:2 and 378:5.

II. PROCEDURAL HISTORY

Docket No. DT 05-083 originated out of Docket No. DT 05-034, in which Verizon submitted tariff revisions on February 22, 2005, to implement changes in its offerings of dedicated transport and high capacity loops that, in accordance with the *TRRO*, would be affected if wire centers in New Hampshire meet the FCC's non-impairment thresholds. Verizon did not submit a list of wire centers for inclusion in its proposed tariff. On February 22, 2005, Verizon notified Staff and the CLEC industry of its wire center classifications. The Commission accepted in part and rejected in part Verizon's tariff revisions by Secretarial Letter dated April 22, 2005.

Also on April 22, 2005, the Commission opened Docket No. DT 05-083, issuing an Order of Notice and scheduling a prehearing conference and technical session. The Commission invoked its investigative authority under RSA 365:5 and 374:4, to determine whether Verizon's classifications are appropriate and what procedures should govern any future wire center classification determinations undertaken by Verizon.[3] The Commission additionally reserved the right, if necessary, to determine whether, notwithstanding the requirements of section 251, Verizon remains obligated to provision the affected UNEs at any New Hampshire wire centers by virtue of Verizon's status as a regional Bell operating company (RBOC) that has obtained authority under section 271 of the Telecommunications Act to provide interLATA long-distance service in New Hampshire.

The Commission designated Verizon a mandatory party to the proceeding. The prehearing conference was duly held on May 25, 2005. Thereafter, Staff and the parties worked in technical sessions held on June 15, 2005, and July 13, 2005, and through discovery to fully understand the configuration of the wire centers, the identity of the competitors with facilities located therein, and the ways in which their connections were engineered. There was concern on the part of Parties and non-party CLECs regarding the confidentiality of such competitively-charged information. As a compromise, it was agreed that Staff would review the information under seal and file a report of its conclusions, without identifying the name of any competitor.

On August 19, 2005, the Commission issued Order No. 24,503, setting a procedural schedule and granting intervention to the following Parties: BayRing

[3]In addition, on November 17, 2005, Verizon notified CLECs of classification changes to wire centers in Concord, Dover and Salem, New Hampshire. The matter was docketed as DT 06-020 and is not addressed herein.

Communications, LLC (BayRing); Biddeford Internet Corporation d/b/a Great Works Internet; Broadview Networks, Inc. (Broadview); Conversent Communications of New Hampshire, LLC (Conversent); CTC Communications, Inc. and Lightship Telecom, LLC, filing jointly; DIECA Communications, Inc. d/b/a Covad Communications Company; MCI, Inc. (MCI); and segTEL, Inc. (segTEL). The Office of Consumer Advocate (OCA) also participated on behalf of residential ratepayers. A revision to Order No. 24,503 was issued on August 30, 2005, and the Commission amended the procedural schedule by Secretarial Letter on November 3, 2005. On January 18, 2006, Staff filed a memorandum to the Commission, recommending that the Commission determine whether the dedicated transport and high capacity loop elements at issue in this docket are required by section 271 of the Telecommunications Act.

On January 11, 2006, Verizon filed proposed revisions to Tariff 84, which were docketed as Docket No. DT 06-012. That filing raises, *inter alia*, the following issues: (1) whether it is appropriate for Verizon to determine, at its sole discretion, to disconnect a service or convert that service to a special access arrangement; (2) whether it is appropriate for Verizon to determine what the analogous replacement circuit shall be; and (3) whether the proposed revisions are reasonable. *See* RSA 374:2 and 378:5.

An Order of Notice was issued for Docket No. DT 06-012 on January 23, 2006, scheduling a prehearing conference, which was duly held on January 31, 2006. Intervention was granted to BayRing and segTEL. At the January 31, 2006 technical session following the prehearing conference the Parties agreed Staff would request consolidation of dockets DT 05-083 and DT 06-012 and ask the Commission to render a decision applicable to both by March 11, 2006. On February 2, 2006, Staff filed a report of the technical session, placing the Parties'

requests before the Commission. The Commission granted the requests by Secretarial Letter dated February 3, 2006. Participants further agreed that OCA Analyst Stephen Merrill would verify a factual affidavit prepared by Staff, which would then be distributed to the Parties no later than February 8, 2006, and that Staff would provide a suggested outline of legal issues to be briefed by the Parties no later than February 17, 2006. Parties and Staff agreed that the issues could advance to a decision in both dockets without the need for further technical sessions, reply briefs, or a hearing on the merits.

On February 8, 2006, Stephen Merrill of the OCA filed his third-party verification of Staff's analysis of the wire centers, together with the Factual Affidavit of Kath Mullholand of Staff (Staff's Affidavit). Staff's Affidavit includes a summary of facts and five wire center diagrams. BayRing and segTEL, filing jointly, submitted a brief on February 17, 2006 (BayRing and segTEL Brief), as did Conversent (Conversent Brief). Verizon filed comments on February 17, 2006 (Verizon Comments). On February 24, 2006, Broadview filed a letter concurring with the Conversent Brief.

On February 22, 2006, Verizon filed a letter taking issue with certain assertions of BayRing and segTEL regarding the merger between Verizon and MCI, and provided a copy of Verizon's Industry Notice to CLECs dated February 21, 2006 (February 21 Industry Notice). BayRing and segTEL responded to Verizon's letter on February 27, 2006. On March 1, 2006, Verizon filed a copy with this Commission of its February 24, 2006 FCC filing of the February 21 Industry Notice.

On March 7, Staff filed new versions of the five wire center diagrams that accompany Staff's Affidavit, correcting typographical errors on the diagrams representing

Keene, Manchester, Nashua and Portsmouth, and updating the diagram for Manchester to reflect Staff's confirmation of the status of CLEC 3's deployment of fiber. On March 9, the Commission issued a Secretarial Letter and post-hearing data request to Staff pertaining to MCI's collocation arrangements in Manchester and Nashua as obtained through discovery. On March 9, Staff provided the requested information in a Supplemental Affidavit.

III. POSITIONS OF THE PARTIES AND STAFF

A. Verizon's List of Wire Centers

Verizon asserts that competitors in Manchester are not impaired without access to DS-3 loops because, according to Verizon, Manchester has at least four fiber-based collocators and 38,000 business lines. Verizon also asserts that Keene, Manchester, Nashua and Portsmouth are tier 1 wire centers, and that Dover is a tier 2 wire center.

Verizon provided Staff with a list of the CLECs it believes meet the FCC's criteria for fiber-based collocators pursuant to Rule 51.5 in each of the five identified wire centers. In Dover, Verizon asserted three fiber-based collocators. The number of business lines in Dover is not at issue at this time. In Keene, Verizon asserted four fiber-based collocators. The number of business lines in Keene is not at issue at this time. In Manchester, Verizon asserted seven fiber-based collocators (including MCI)[4], and asserted that Manchester had more than 38,000 business lines. In Nashua, Verizon asserted seven fiber-based collocators (including MCI). The number of business lines in Nashua is not at issue at this time. In Portsmouth,

[4]Although the wire centers in which MCI is collocated were initially provided to Staff by Verizon under confidential seal, Verizon listed the wire centers in which it deemed MCI to be a fiber-based collocator in its comments, without an assertion of confidentiality.

Verizon asserted six fiber-based collocators. The number of business lines in Portsmouth is not at issue at this time.

B. Verizon's DT 06-012 Tariff Filing

In its filing in Docket No. DT 06-012, Verizon explained that Tariff 84 currently provides for the disconnection at the end of the transition period defined in the tariff for those delisted UNEs for which a CLEC does not submit an order for disconnection or conversion to alternative arrangements pursuant to existing tariffs or agreement with Verizon. Verizon represents that its filing revises the tariff to add an alternative to disconnection, giving Verizon the option to convert the delisted circuits to special access arrangements pursuant to federally tariffed rates, terms and conditions. Verizon's filing would amend Part B, Section 2 "Unbundled IOF Transport" and Part B, Section 5.3 "Links (Local Loops): High Capacity Links" by adding language that would allow Verizon, at its sole discretion, to elect to convert delisted UNE high capacity transport and loops to non-UNE arrangements, in this case, federally tariffed interstate special access. The proposed revisions would also grant Verizon the sole discretion to determine what replacement circuits are analogous to the delisted UNE transport and loops, and to re-price the transport and loop circuits accordingly.

C. Staff's Factual Affidavit

Verizon identified a total of twelve different CLECs as fiber-based collocators; six of those CLECs voluntarily intervened in this docket. In order to honor the confidential treatment requested by the non-party CLECs identified by Verizon, Staff analyzed the available information and created a factual summary of the conditions in each wire center. Staff's Affidavit included a summary and diagrams that depict the various collocation configurations in

each wire center at issue here. Individual collocators were identified anonymously as CLEC 1, CLEC 2, etc. Stephen Merrill of the OCA reviewed the source documents and Staff's summary and diagrams to ensure that they were correct and complete. BayRing and segTEL accepted, for purposes of this proceeding only, the information reflected in the wire center diagrams appended to Staff's Affidavit. Verizon accepted Staff's Affidavit as well, except for Staff's decision not to include MCI collocation arrangements in Manchester and Nashua.

D. Implementation of Wire Center Impairment Determinations

1. Effective Date of Impairment Determinations

a. Verizon

Verizon asserts that the effective date for the wire center impairment determinations in this proceeding should be March 11, 2005, and that as of that effective date, CLECs can no longer order as UNEs high capacity loops in wire centers that meet the FCC's thresholds, or dedicated transport between certain tiers of wire centers. Verizon claims that the FCC specifically chose objective criteria such as the number of fiber-based collocators and business lines as reported in ILEC-provided ARMIS data to establish its non-impairment criteria in order to avoid complex and lengthy proceedings. In arguing its position, Verizon cites to paragraph 100 of the *TRRO*, which states that "...incumbent LEC counts of fiber-based collocations can be verified by competitive LECs, which will also be able to challenge the incumbent's estimates in the context of section 252 interconnection agreement disputes."

Consistent with that view, according to Verizon, the FCC did not provide for state commission review of ILEC wire center determinations, except where a CLEC specifically challenges an ILEC wire center classification. Verizon insists that disputes regarding the validity

of any wire center classification asserted by the ILEC were intended to be addressed through dispute settlement procedures between ILECs and CLECs. Verizon notes that it filed its initial wire center list with the FCC on February 13, 2005, in response to the FCC's request that it do so, and provided the same to CLECs on March 2, 2005. While the FCC did not authorize state commissions to review wire center classifications in the absence of a specific CLEC complaint, says Verizon, when a state commission such as this one undertakes to do so, it must do so in accordance with the *TRRO*. Therefore, the effective date of the instant determinations must be March 11, 2005, Verizon claims.

b. BayRing/segTEL

BayRing and segTEL contend that the question at issue in this proceeding is exactly when Verizon is relieved of its section 251 obligation to provide the UNEs at issue in this docket at TELRIC rates. BayRing and segTEL argue that Verizon must provision UNE orders made by requesting carriers until this Commission determines otherwise. Since this Commission is authorized by the *TRRO* to resolve impairment disputes in these wire centers, the date of the Commission's order should be the effective date on which UNEs are no longer available.

c. Conversent

Conversent asserts that a wire center impairment determination is effective on the date this Commission approves or allows the relevant amendment to Tariff 84 to go into effect. In Conversent's view, the tariff process provides an efficient mechanism for the Commission to oversee this and future amendments to the wire center list. It is a desirable goal, claims Conversent for there to be a unitary list of wire centers to which all interested persons have

access. Conversent further notes that this docket will set ground rules for future determinations, ensuring that the process to amend the tariff in the future can be limited to thirty days.

2. Effect of one CLEC's self certification of non-impairment on other CLECs

a. Verizon

Verizon contends that it has made its identification of non-impaired wire centers as well as back-up information available to CLECs and that any reasonably diligent inquiry would include review of such information. According to Verizon, if a CLEC confirms a Verizon wire center classification it should not order UNEs from that wire center. Finally, Verizon avers that where the Commission has verified Verizon's classification of a particular wire center, no CLECs would be permitted to order UNEs from that wire center in the future.

b. BayRing/segTEL

BayRing and segTEL argue that the FCC's requirement for self certification provides for each CLEC to conduct its own reasonably diligent inquiry to determine if impairment exists before ordering section 251 UNEs. BayRing and segTEL suggest that an anti-competitive CLEC could make a bogus self-determination that might block other CLECs from ordering section 251 UNEs in the wire center and thus hinder competition. Accordingly, say BayRing and segTEL, one CLEC's determination that it is not impaired without access to UNEs in a wire center should have no effect on other CLECs.

c. Conversent

Conversent notes that it is unlikely that a CLEC will find non-impairment with respect to a particular wire center where Verizon does not. According to Conversent, Verizon has all the relevant line count data and, since a CLEC cannot establish fiber connections without Verizon knowing it, Verizon is in the best position to know when there are new fiber-based

collocators in a wire center. Conversent argues that even if a CLEC determines it is non-impaired in a particular wire center, that particular CLEC's determination cannot be binding on other CLECs as other CLECs may not be aware of the determination.

3. Effect of a merger of two CLECs on future determinations

a. Verizon

In Verizon's view, once a wire center has been properly classified through the application of the FCC's non-impairment criteria as a tier 1 or tier 2 wire center, it cannot be subsequently reclassified into a lower tier even if CLECs counted individually subsequently merge, leaving fewer fiber-based collocators than required for an initial tier 1 or tier 2 classification. Verizon goes on to say, however, that if CLECs are counted individually as two separate fiber-based collocators resulting in a tier 2 classification and those two CLECs later merge, they should be counted as a single fiber-based collocator for a subsequent tier 1 determination. Verizon encourages the Commission to clarify that affiliate relationships that existed at the time Verizon identified its initial wire center classifications are controlling for the purpose of determining the count of fiber-based collocators underlying those classifications.

b. BayRing/segTEL

According to BayRing and segTEL, fiber-based collocators should be counted as they exist at the time the Commission makes its determination of any wire center's classification. BayRing and segTEL argue that if carriers have merged since March 11, 2005, when Verizon claims its initial filing should be effective, they should not be counted as separate fiber-based collocators because the Commission has not yet made its determination. BayRing and segTEL add that mergers cannot change past determinations, but merging CLECs should be counted as a single fiber-based collocator for future or upgrade determinations.

c. Conversent

Conversent takes the position that the FCC rule is clear and, consequently, while a merger of CLECs cannot change past determinations, the affected CLECs should be counted as a single fiber-based collocator for future or upgrade determinations.

4. Effect of the Verizon-MCI merger

a. Verizon

With respect to the Verizon-MCI merger, Verizon argues that the Commission should clarify that since MCI had not merged with Verizon when Verizon first notified the CLEC industry of its initial wire center classifications, MCI should count as a fiber-based collocator. Verizon adds that its merger commitment to the FCC was to update its non-impaired wire center lists within 30 days of merger closing to remove MCI fiber-based collocation arrangements from the threshold counts on a prospective basis as of February 3, 2006. MCI, claims Verizon, was properly counted as a fiber-based collocator in Manchester and Nashua for the period of March 11, 2005, through February 2, 2006. In response to BayRing and segTEL's assertion to the contrary, Verizon issued and submitted to this Commission its February 21 Industry Notice, which included an updated list of wire centers (with MCI removed) and which stated, "effective on and after 2/3/06, this list supersedes the list that was effective from 3/11/05 through 2/2/06."

b. BayRing/segTEL

BayRing and segTEL contend that MCI should not be counted as an unaffiliated fiber-based collocator in the initial classification of wire centers because of Verizon's commitment to the FCC not to count MCI. BayRing and segTEL claim that the merger commitment required Verizon to recalculate its wire center determinations as of March 11, 2005,

and to exclude MCI from the count from that point forward. In support of their contention, BayRing and segTEL cite to the document Verizon filed at the FCC, which states that its new list is "effective March 11, 2005: last updated 02/03/06 to reflect status as of 3/11/05." In response to Verizon's revised industry notice, BayRing and segTEL contend that Verizon's clarification to the CLEC industry does not represent an update to its filing at the FCC, and that Verizon has filed no update with the FCC since its filing of February 6, 2006, that indicated its list was effective March 11, 2005.[5]

c. Conversent

At the prehearing conference, Conversent pointed out that MCI and Verizon's merger was pending, and contended that MCI should not be counted as a fiber-based collocator in any of the five wire centers, because to be a fiber-based collocator, a company must not be affiliated with the ILEC.

E. Definition and Scope of Fiber-Based Collocation

1. Interpretation of the term "operate" as used in Rule 51.5

a. Verizon

Verizon offers the definition "to put or keep in operation" from *Merriam Webster's Collegiate Dictionary* (10th ed. 1999). According to Verizon, when a CLEC puts or keeps a fiber-optic cable, whether lit or dark, in operation within a collocation arrangement, it should be counted as a fiber-based collocator.

[5] Subsequently, on March 1, 2006, Verizon notified the Commission that it had filed the February 21 Industry Notice with the FCC on February 26, 2006.

b. BayRing/segTEL

Since the FCC did not undertake to define "operate," according to BayRing and segTEL, well-established principles of statutory construction require that the word be given its plain and ordinary meaning. Therefore, say BayRing and segTEL, resort to the dictionary is appropriate, and they cite to *Webster's Third New International Dictionary* (1986) to define "operate" as meaning "to perform a work of labor: exert power or influence." Thus, according to BayRing and segTEL, a CLEC must have the ability to control and do physical work on a cable, including having physical access to perform repairs and alterations at any point along its route. BayRing and segTEL contend that leasing fiber, and having the ability to attach "optronics"[6] to each end of a fiber strand does not constitute operational control of a cable.

BayRing and segTEL also note that the term "cable" is not defined in the FCC rule. BayRing and segTEL provide the definition of telegraphic cable as "several conducting wires enclosed by an insulating and protecting material so as to bring the wires into compact compass for use on poles... ." *Id.* Thus, in BayRing and segTEL's view, individual strands of fiber are not a "cable." BayRing and segTEL contend that the same exterior sheath with the same internal strand count must exist at the termination point in the wire center as outside to constitute a "cable" under the FCC rule. According to BayRing and segTEL, such a definition is consistent with the FCC's intent that calculation of fiber-based collocators be simple and use readily-available information.

[6] Optronics refers to the variety of devices that can be used to convert electrical signals into light waves for transmission over fiber optics.

c. Conversent

Conversent argues that the relevant dictionary definition of operate is "to run or control the functioning of," taken from *The American Heritage Dictionary of the English Language*. Conversent also cites the definition "to cause to function: work, to put or keep in operation," taken from *Merriam-Webster Online available at* http://www.m-w.com. According to Conversent, merely owning or installing a cable does not constitute operating it; further, the fact that a carrier's telecommunications traffic is transmitted over a fiber-optic cable does not, in and of itself, constitute operating it.

2. Elements of an indefeasible right of use (IRU) contract

a. Verizon

Verizon contends that an IRU involves the exclusive right to use a specified amount of dark fiber or dedicated transmission capacity for a specified time period. Verizon cites the *Newton's Telecom Dictionary* 426 (15th ed. 1999), definition of an IRU: "An IRU is to a submarine or fiber optic cable what a lease is to a building." Similar to a building lease, claims Verizon, the term of an IRU may be as short as month-to-month, or it may cover multiple years.

b. BayRing/segTEL

BayRing and segTEL cite a 1992 FCC order regarding calculation of depreciation which states that "[a]n IRU interest in a communications facility is a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use the facility and to include its capital contribution in its rate base, but not the right to control the facility or ... any right to

salvage... ."[7] BayRing and segTEL add that the FCC definition implies explicit economic facets -- an IRU agreement must be accounted for as an asset by the purchaser and an asset sale by the seller and not as recurring revenue or a lease. According to BayRing and segTEL, the FCC's test for an IRU must be applied irrespective of what contracting parties call their agreement. BayRing and segTEL further note that an IRU is relevant only as to an agreement between Verizon and a CLEC for the lease of dark fiber, or between two CLECs for the lease of an entire cable.

c. Conversent

Conversent cites the same definition as Verizon from *Newton's Telecom Dictionary*. In addition, says Conversent, in a 1998 FCC order relating to transfer of control of assets between carriers,[8] the FCC states that an IRU is "essentially a perpetual leasehold in a circuit of capacity." Finally, Conversent cites the same 1992 FCC order as BayRing and segTEL.

3. Dark fiber obtained on an IRU basis from an ILEC

a. Verizon

Verizon takes the position that under Rule 51.5, when a carrier obtains dark fiber on an IRU basis from an ILEC, that carrier should be counted as a fiber-based collocator.

[7]BayRing and segTEL Brief at 18, citing *In re Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers,* CC Docket No. 87-45, Report and Order, 7 FCC Rcd. 4561, 4561 n.1 (1992).
[8]Conversent Brief at 5, citing *In re Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.,* CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, ¶ 86 (Sept. 14, 1998).

b. BayRing/segTEL

BayRing and segTEL contend that when a CLEC obtains dark fiber on an IRU basis from an ILEC, the ILEC, *i.e.*, Verizon, would be counted as a fiber-based collocator (as opposed to the CLEC obtaining the IRU fiber) because Verizon is then acting as a competitive fiber provider. In support of its position, BayRing and segTEL point out that section (3) of the fiber-based collocator definition relates to the ownership characteristics of a fiber-optic cable. Accordingly, BayRing and segTEL claim, in order to count as a fiber-based collocator a CLEC must either own the cable or have an IRU to fully operate a cable that belongs to a carrier unaffiliated with Verizon. But when Verizon provides dark fiber on an IRU basis, BayRing and segTEL assert that Verizon's cable should then be counted as non-incumbent LEC fiber-optic cable.

c. Conversent

Conversent submits that when a CLEC obtains dark fiber on an IRU basis from an ILEC, that CLEC should be counted as a fiber-based collocator, assuming that all other criteria in the FCC definition of a "fiber-based collocator" are met.

4. Dark fiber obtained on an IRU basis from another CLEC

a. Verizon

Verizon argues that when a carrier obtains dark fiber on an IRU basis from a CLEC, that carrier should be counted as a fiber-based collocator. Verizon adds, however, that the rules do not require fiber obtained from a CLEC to be obtained on an IRU basis in order for the carrier to be counted as a fiber-based collocator.

b. BayRing/segTEL

BayRing and segTEL argue that a carrier obtaining dark fiber on an IRU basis from another CLEC should not be counted as a fiber-based collocator. BayRing and segTEL take the position that an IRU is relevant only when it is obtained from Verizon. According to BayRing and segTEL, any contrary interpretation would count the same cable multiple times based solely on the number of CLECs using the same cable.

c. Conversent

According to Conversent, when a collocator meets all other elements of the definition of fiber-based collocator and obtains dark fiber from a CLEC that is not an ILEC affiliate, it does not appear to matter whether the fiber is obtained on an IRU basis.

5. Dark fiber obtained from a CLEC on a non-IRU basis

a. Verizon

According to Verizon, when a carrier obtains dark fiber from a CLEC without an IRU, that CLEC should be counted as a fiber-based collocator. Verizon adds that the FCC rule requires an IRU for purposes of counting fiber-based collocators only with respect to obtaining cable from an ILEC.

b. BayRing/segTEL

BayRing and segTEL argue that when a carrier obtains dark fiber from a CLEC without an IRU, the acquiring CLEC should not be considered a fiber-based collocator for two reasons: 1) absent a long term IRU agreement, a CLEC cannot operate the cable in question, and 2) dark fiber counts as a fiber-optic cable only if provided by Verizon on an IRU basis.

c. Conversent

As in item 4, above, Conversent contends that when a collocator meets all other elements of the definition of fiber-based collocator and obtains dark fiber from a CLEC that is not an ILEC affiliate, it does not appear to matter whether the fiber is obtained on an IRU basis.

6. Lit fiber terminating at a CLEC collocation and leaving the wire center

a. Verizon

Verizon takes the position that a CLEC collocator that obtains lit fiber from another CLEC should count as a fiber-based collocator because the FCC rules do not specify that fiber optic cable obtained from a non-ILEC must be unlit, or dark. Verizon argues that the plain language of the rule in this case does not exclude lit fiber; it could have if that had been the intent of the FCC. Counting lit fiber, according to Verizon, is consistent with the FCC's stated objective of eliminating unbundling where competitive alternatives to the ILEC network exist, and that it cannot be disputed that lit fiber obtained from a CLEC constitutes a competitive alternative to the ILEC's network. Verizon points out that both lit and dark fiber obtained from a competitor are depicted in the same basic manner on the diagrams which accompany Staff's Affidavit, and that the same market opportunities exist for the CLEC whether it purchases lit or dark fiber.

b. BayRing/segTEL

BayRing and segTEL contend that lit fiber does not constitute a cable and, furthermore, does not meet any of the tests established in the rule. According to BayRing and segTEL, the FCC expressly stated in *TRO* footnote 1265 that "consideration of transport facilities transferred on an IRU basis is limited to dark fiber and does not include 'lit' fiber IRUs."

c. Conversent

In Conversent's view, a CLEC utilizing lit transport provided by another carrier is not a fiber-based collocator, because it is not operating the fiber facility.

7. Stand-alone competitive alternate transport terminals (CATT) without power

a. Verizon

Verizon explains that a CATT is an interstate tariffed arrangement that provides a shared alternate splice point within a central office at which a competitive fiber provider can terminate its facilities. According to Verizon, a CATT is designed for wholesale providers of high-capacity transport who supply, install and maintain the cable between the cable vault and the CATT area in the wire center. Although a stand-alone CATT itself may not have its own separate power supply, admits Verizon, each of the fiber facilities connected to the CATT makes use of an active power supply to light the fiber.

Verizon calls the Commission's attention to paragraph 102 of the *TRRO* in support of its claim that when the FCC adopted its non-impairment tests, it specifically included less traditional collocation arrangements such as Verizon's CATT. Furthermore, the existence of a CATT indicates an ability to deploy facilities, which, according to Verizon, is consistent with the FCC's stated intention to account for potential as well as actual deployment of fiber-based collocation facilities. To find that a stand-alone CATT should not be counted would be inconsistent, Verizon avers, with this Commission's stated intention not to ignore the FCC's specific findings on a matter when applying the requirements of the Telecommunications Act.[9]

[9]Verizon Comments at 18 citing, *e.g.*, Order No. 24,442 in Dockets No. DT 03-201 and DT 04-176 (March 11, 2005), slip op. at 48-49.

b. BayRing/segTEL

BayRing and segTEL argue that a stand-alone CATT without power does not count. According to BayRing and segTEL, the test under Rule 51.5 for a fiber-based collocation requires power. BayRing and segTEL add that a CATT could meet the test without having an additional collocation arrangement if there were active power, but in the absence of power, the CATT is not a valid collocation arrangement under the rule.

c. Conversent

Conversent contends that the FCC definition is clear, and that to qualify as fiber-based, a collocation arrangement must have "active electrical power."

8. ILEC-provisioned Dedicated Transit Service (DTS) and Dedicated Cable Support (DCS) dark fiber connections between two CLECs

a. Verizon

Verizon avers that fiber facilities that make use of DTS and DCS dark fiber connections should be considered when identifying fiber-based collocators. Verizon explains that DTS is a part of the terms and conditions of collocation and DCS, although no longer offered, has been grandfathered for existing users. According to Verizon, fiber facilities with DTS and DCS dark fiber connections should figure into fiber-based collocator counts because they foster competition by enabling CLECs who collocate to use wholesale fiber from other CLECs to compete against Verizon. To find otherwise, claims Verizon, would penalize Verizon for making available the most direct and efficient way for a carrier to access another carrier's transport facilities. Verizon notes that it did not include DTS-enabled connections between CLECs when making its initial wire center classifications.

b. BayRing/segTEL

BayRing and segTEL argue that a fiber-based facility which includes Verizon's DCS and DTS dark fiber connections between two CLECs should not count as a fiber-based collocation. BayRing and segTEL contend that DCS and DTS are ILEC-tariffed services and therefore are disqualified from a count of fiber-based collocators. Since the rule states a fiber-optic cable must leave the wire center, contend BayRing and segTEL, DCS and DTS arrangements connecting two collocation nodes are not relevant.

c. Conversent

Conversent takes no position on this issue.

F. Telecommunications Act of 1996 – Section 271 Implications

1. High-capacity loops and high-capacity transport under section 271

a. Verizon

While the high-capacity loops and dedicated transport at issue in this investigation fall within the scope of the section 271 checklist, says Verizon, this Commission cannot lawfully require delisted section 251 UNEs to be made available under Verizon's state tariff or at rates, terms and conditions set by the Commission. Verizon has contested the Commission's assertion in its unbundling orders[10] that it has the authority to enforce or regulate section 271 elements, and restates its primary claims in that matter. Furthermore, Verizon adds, there is no need for the states to regulate section 271 elements, even if such regulation were lawful. Verizon contends that interstate special access is available for DS-3 and DS-1 loop and transport at just and reasonable rates, thus satisfying Verizon's obligations under section 271.

[10]Verizon Comments at 23, citing Order No. 24,442; Secretarial Letter dated April 22, 2005 in Docket No. DT 05-034; and Order of Notice dated April 22, 2005 in Docket No. DT 05-083.

b. BayRing/segTEL

BayRing and segTEL assert that high-capacity loops and transport are required elements under the section 271 (c)(2)(B)(iv and v) of the Telecommunications Act, and cites paragraph 653 of the *TRO* in support of its view. Further, BayRing and segTEL say that such a finding would be consistent with this Commission's Order No. 24,564 in Docket No. DT 05-041 (December 15, 2005), slip op. at 11. Finally, BayRing and segTEL assert that Verizon has conceded that these elements are section 271 elements in its recently-filed memorandum of law.[11]

BayRing and segTEL also urge the Commission to make a determination that dark fiber transport is a section 271 element, as it did with dark fiber loops in its April 22, 2005 Secretarial Letter. The carriers call to the Commission's attention that the 18-month transition period for dark fiber will expire September 11, 2006.

c. Conversent

Conversent asserts that section 271 requires that ILECs unbundle local transport and local loop transmission, and that section 271 does not distinguish either transport or loops on the basis of capacity.

G. Transitioning from UNEs to Alternative Facilities

1. ILEC disconnection of circuits pursuant to current Tariff 84 provisions

a. Verizon

Verizon argues that the Commission lacks authority to impose an injunction

[11]BayRing and segTEL Brief at 26, citing *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment* at 8, *Verizon New England, Inc. v. New Hampshire Public Utilities Commission et al,* United States District Court for the District of New Hampshire, Civil No. 05-CV-94-PB.

preventing Verizon from disconnecting circuits it is no longer obligated to provide and, further, such an injunction is unnecessary. According to Verizon, while Tariff 84 authorizes Verizon to disconnect facilities where a CLEC fails to make a timely transition from a delisted UNE arrangement, Verizon has filed proposed tariff revisions in DT 06-012 which would allow Verizon to re-price the delisted UNE services rather than disconnect them. Verizon encourages the Commission to approve its tariff submission in DT 06-012 to provide for the uninterrupted use by CLECs of existing DS-1 and DS-3 facilities beyond the mandatory transition period.

b. BayRing/segTEL

BayRing and segTEL argue that the Commission should declare the existing tariff provisions allowing disconnection to be invalid and unenforceable. Tariff provisions providing for disconnection, contend BayRing and segTEL, are inconsistent with Verizon's responsibility to provide these UNEs at just and reasonable rates under section 271.

c. Conversent

Conversent reiterates its position that a wire center impairment determination should be effective when Tariff 84 is amended. Therefore, according to Conversent, transition periods should begin to run at that time, and no disconnection may occur until the applicable transition period ends.

2. Length of transition period for future newly-identified wire centers

a. Verizon

Verizon argues for a 90-day transition period. Verizon notes that the initial transition periods of 12 months for high-capacity loops and transport and 18 months for dark fiber transport were set by the FCC in recognition of the resulting need for negotiation of transition plans in numerous interconnection agreements. Verizon claims that for wire centers

that are newly identified as meeting the impairment criteria, or that meet a higher tier threshold, such as those identified by Verizon in its November 17, 2005 Industry Notice to CLECs [*See* Docket No. DT 06-020], the effective date should be 90 days from the date of Verizon's notice to the industry. Verizon asserts that 90 days is also consistent with transition time frames established in existing interconnection agreements.

b. BayRing/segTEL

Going forward, according to BayRing and segTEL, future determinations should follow the process outlined in the *TRRO*, such that any wire center not classified as unimpaired in this proceeding will be considered to be unimpaired until Verizon disputes a CLEC order in that wire center and files a complaint with the Commission. BayRing and segTEL add that, after notice and opportunity for comment the Commission would render a determination, and further, that the Commission could maintain a list of classified wire centers on the Commission website.

BayRing and segTEL argue that if an element were delisted under section 251 and were not required by section 271, then the transition should be the same as *TRRO* – 12 months for loops and transport and 18 months for dark fiber. BayRing and segTEL cite recent decisions of the Illinois, Indiana and Ohio state commissions[12] in support of their position.

c. Conversent

Conversent urges the Commission to adopt a rolling transition plan as wire

[12]BayRing and segTEL Brief at 31, citing: (1) *Access One, Inc. et al, Petition for Arbitration, etc.*, Illinois Commerce Commission, Arbitration Decision in Docket 05-0442 at 114-115 (November 2, 2005); (2) *In the Matter of the Indiana Utility Commission's Investigation of Issues Related to The Implementation of the Federal Communication Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Cause No. 42857, at 64-65 (Approved January 11, 2006); and (3) *In the Matter of the Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant to the Federal Communications Commission's Triennial Review Order and its Order on Remand*, Public Utilities Commission of Ohio, Case No. 05-887-TP-UNC at 65 (November 9, 2005).

centers are identified. Subsequent transition periods should be the same as the periods set forth in the *TRRO*, *i.e.*, 12 months for DS-1 and DS-3 loops and transport, and 18 months for dark fiber transport. According to Conversent, the FCC established transition periods to allow for orderly transfers from UNEs to alternative facilities or arrangements, determining that such a period would provide adequate time for carriers to perform the tasks necessary to an orderly transition. Conversent further notes that the tasks required in such transitions include decisions on where to deploy, purchase or lease facilities. In Conversent's view, such decisions will require no less of a transition period going forward.

Conversent adds that transition times become even more important when a wire center determination is based on business line counts. In such a case, Conversent asserts, there may be no alternative fiber provider and Verizon does not offer dark fiber products in its special access tariff. Conversent points to certain decisions by the Ohio and Illinois state commissions, as did BayRing and segTEL, as well as the District of Columbia commission,[13] that support 12- and 18-month transition periods for future wire center determinations. Conversent also cited a Michigan commission decision[14] that supports nine and twelve-month transition periods.

3. ILEC conversion of delisted high-capacity circuits to special access rates in the federal tariff (DT 06-012 tariff filing)

a. Verizon

Verizon contends that it should be permitted to convert delisted high-capacity circuits to special access services pursuant to its federal tariff. Verizon adds that the FCC, in

[13]Conversent Brief at 12, citing *In re Petition of Verizon Washington, DC Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. TAC-19, Recommended Decision at 16, 18 (Sept. 6, 2005).
[14]Conversent Brief at 12, citing *In the Matter, on the Commission's Own Motion, to Commence a Collaborative Proceeding to Monitor and Facilitate Implementation of Accessible Letters Issued by SBC Michigan and Verizon*, Case No. U-14447, Order at 31 (Mich. PSC Sept. 20, 2005).

TRRO paragraph 51, has already held that the interstate special access tariff is just and reasonable. In Verizon's view, whether the special access rate satisfies the just and reasonable pricing standard of sections 201 and 202 of the Telecommunications Act is a fact-specific inquiry for the FCC in an enforcement proceeding pursuant to section 271(d)(6). Verizon claims that Tariff 84 reasonably provides for the disconnection by Verizon, at the end of a transition period, of delisted DS-1 and DS-3 high-capacity loop or dedicated transport UNEs for which a CLEC does not submit disconnection or conversion orders during the transition.

b. BayRing/segTEL

BayRing and segTEL claim that Verizon should not be permitted to convert delisted high-capacity circuits to special access. According to BayRing and segTEL, Verizon is responsible for continuing to provision high-capacity loops and transport under section 271. BayRing and segTEL claim that section 271 rates must be made available in a tariff approved by the Commission, in accordance with Verizon's section 271 commitment to the Commission. BayRing and segTEL insist that it would represent a material change in Verizon's commitment to allow it the unilateral authority to determine when and whether to convert delisted UNEs to federally-tariffed special access. BayRing and segTEL contend that transition rates in Tariff 84 should apply until Verizon files and obtains approval for new rates. BayRing and segTEL point out that when it applied to the FCC for section 271 authority to provide interLATA service, Verizon did not claim it was satisfying its section 271 checklist obligations by allowing CLECs to purchase retail special access from a tariff which predated the Telecommunications Act by nearly a decade.

c. Conversent

Conversent takes no position on this issue.

H. Other Issues

1. BayRing/segTEL

a. The section 271 elements in this docket must be made available in a tariff approved by this Commission.

BayRing and segTEL note that this Commission has previously recognized Verizon's commitment to making its wholesale offerings available to CLECs through its tariff, and that the UNEs in this docket that may no longer be section 251 elements must be made available in Tariff 84 as section 271 elements. BayRing and segTEL claim that this point of view has been upheld by the US District Court for the District of Maine, which determined that a state Commission has rate-setting authority over section 271 elements.[15] According to BayRing and segTEL, section 271 rates must be just and reasonable. Since TELRIC rates have been found to be just and reasonable by the FCC and the Commission, say BayRing and segTEL, the transition rates of TELRIC plus 15% currently provided in Tariff 84 not only meet the legal standard, but allow Verizon an increase over the section 251 rates that is more than equivalent to Verizon's currently authorized rate of return. Since the FCC itself established TELRIC plus 15% as a fair rate, it is entirely appropriate to use these rates for the section 271 UNEs in this docket.

[15]BayRing and segTEL Brief at 27, citing *Verizon New England, Inc. d/b/a Verizon Maine v. Maine Public Utilities Commission et al.*, 403 F. Supp.2d 96, 102 (Nov. 30, 2005).

b. Verizon's proposal to increase the price of delisted section 251 elements to special access rates is inconsistent with the commitments Verizon made to the FCC regarding its merger with MCI.

BayRing and segTEL contend that Verizon's proposal to increase the price of delisted section 251 elements to special access rates is inconsistent with the commitment Verizon made to the FCC as a condition of its merger with MCI. In its commitment letter to the FCC, according to BayRing and segTEL, Verizon agreed that it would not seek an increase for two years following the merger closing date in state-approved UNE rates that were in effect at the time of the merger.

c. Verizon should be required to refund any difference between the transition rate and TELRIC if any of Verizon's classifications of its wire centers are incorrect.

BayRing and segTEL state that Verizon has been charging the transition rates of TELRIC plus 15% for UNEs that Verizon believes should be delisted in the wire centers that it has identified as unimpaired. BayRing and segTEL further argue, that if this Commission determines that any of Verizon's wire center classifications were incorrect, the Commission should order Verizon to immediately refund to the CLECs the difference between the transition rates and the TELRIC rates that otherwise would have applied.

2. Conversent

a. Business line counts.

At the prehearing conference, Conversent commented that the business line counts must be calculated using the FCC's detailed criteria, such as: the lines must be business lines; they must all be for switched services; special access cannot be counted; and high-capacity facilities must be used as loops and not as transport or entrance facilities. In the case of high-capacity facilities, Conversent says, it is critical that the circuits really are being used for

switched service loops, since the quantity of lines represented by one high-capacity facility might be sufficient on its own to push the count in a wire center over the threshold. Since Verizon is uniquely in possession of this information, in Conversent's view, Conversent urges the Commission to require that Verizon make a disclosure regarding business line counts when submitting wire center classifications for determination. *See* Transcript of Prehearing Conference, May 25, 2005, at 18-20.

3. Staff

a. Future tariff filings.

At the prehearing conference, Staff asserted that, to effectively meet the filing and transparency requirements of RSA 378:1 and Puc Rule 402.5[2], Verizon's tariff must include the identification of those wire centers whose rates may be affected by the *TRRO*. *Id.* at 24, lines 13-17.

IV. COMMISSION ANALYSIS

The FCC's *TRRO* calls for several distinct determinations regarding Verizon's wire centers that affect Verizon's obligations to provision certain UNEs and, as a result, the application of Verizon's tariffed rates in New Hampshire. The FCC premises its analysis and rulemaking in the *TRRO* on the understanding that ILECs and CLECs affected by the *TRRO* will implement any resulting rate changes through good faith negotiation of interconnection agreements pursuant to section 252 of the Telecommunications Act. *See TRRO* ¶¶ 233-235. The FCC further expects that any disputes arising from such negotiations would, in turn, be submitted to the relevant state commission for arbitration. *Id.* ¶ 234 and fn. 660.

As noted above, however, the applicable rates in New Hampshire are set forth in Verizon's Tariff 84, which is filed with and approved by the Commission pursuant to RSA 378. CLECs that purchase from the tariff do not have interconnection agreements for these UNEs, and are under no obligation to establish or renegotiate interconnection agreements when changes are made in the availability of UNEs. Any rate changes stemming from the *TRRO* must be filed with this Commission for inclusion in the tariff. In accordance with RSAs 365:5, 374:4, and 378:5, we will undertake, as appropriate, to investigate the reasonableness of any such changes. It has been our objective in this investigation to verify the reasonableness of Verizon's determinations with respect to wire center classifications pursuant to the *TRRO* and FCC rules and, where feasible, to clarify the appropriate guidelines and procedures for determining any future changes in wire center impairment classifications that may arise under the terms of the *TRRO*.

The continuance or discontinuance of Verizon's obligations to provision high capacity loops and dedicated transport UNEs in a particular wire center and their applicable rates are based on the number of "fiber-based collocators" present in that wire center and/or the number of business lines served by that wire center. To guide determinations regarding the number of fiber-based collocators in a wire center, the FCC promulgated rules that appear in Appendix B to the *TRRO*. Included in the "definitions" section of these rules and codified at Rule 51.5, is a specific definition of "fiber-based collocator:"

> A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement with 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 in this paragraph. 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 paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

The first paragraph of the definition sets out a requirement that a fiber-based collocator maintain a collocation with active power, and that the collocator operate a fiber-optic cable or comparable transmission facility. Sub-part one of the rule then sets a requirement that the fiber optic cable must terminate at a collocation within the wire center. Sub-part two requires that the cable leave the wire center premises, and, finally, sub-part three establishes ownership requirements for the cable under consideration.

In order to establish whether the fiber-based collocators identified by Verizon meet the requirements of this definition, Staff undertook an extended discovery process which culminated in Staff's Affidavit. The Parties have concurred with the essential facts laid out in Staff's Affidavit and, therefore, we employ it as the basis for the factual determinations made in this docket.

Analogous to the FCC's conclusion that fiber-based collocation stands out as one of the most objective indicia of competitive deployment available (*see TRRO* ¶ 99), we employ an interpretive approach that focuses on an objective view of the text of the FCC's rule. In support of Rule 51.5 as promulgated pursuant to the *TRRO*, the FCC wrote that it "define[s] fiber-based collocation simply." We seek to act accordingly. Thus, when determining which collocators to count for purposes of the various thresholds established in the *TRRO*, we first

consider how many competitive fiber-optic cables leave the wire center.[16] We then determine whether those cables terminate at a qualifying collocation arrangement and, finally, whether they meet the ownership requirements set forth in the rule.

Certain key terms such as "operate," "fiber-optic cable" and "active electrical power supply" are not defined in the FCC's rules. As has been noted by the Parties briefing the matter, terms that are undefined should be given their plain and ordinary meaning and resort to a dictionary for clarification is appropriate. *See* Verizon Comments at 10; BayRing and segTEL Brief at 16.

We consulted *Webster's II New College Dictionary* 786 (3rd ed. 2005) for a definition of "operate." Rule 51.5 uses "operate" in a transitive sense when it requires that a fiber-based collocator "operate a cable." The first definition for "operate" as a transitive verb seems to be most appropriate: "to control or direct the functioning of."[17] This definition indicates some active control of the cable; not merely its existence or some use of its functions. BayRing and segTEL would have us employ "to perform a work of labor: exert power or influence," a definition taken from the intransitive meaning of the verb. BayRing and segTEL Brief at 16. Conversent, on the other hand, would support, "to run or control the functioning of" or, alternatively, "to cause to function: work; to put or keep in operation." Conversent Brief at 5. Verizon also suggests "to put or keep in operation" (Verizon Comments at 10), a definition which, while transitive, suggests a more passive relationship to the cable than we find the rule

[16]We interpret "comparable transmission facility" to be a form of transmission that employs technology that does not involve fiber-optics, such as microwave transmission facilities or other technology used by fixed-wireless collocators.

[17]*Webster's II New College Dictionary* also provides the synonyms of operate: "OPERATE, HANDLE, RUN, USE, WORK, *v. core meaning* 'to control or direct the functioning of.'" Further, the second definition for operate as a transitive verb is "to conduct the affairs of: MANAGE."

requires. Indeed, the definitions BayRing, segTEL and Verizon selected stand apart from those supplied by Conversent's and our sources for the transitive use of the verb, which include "to bring about, effect" and "to cause to function, work." In our view, the plain meaning of "operate" in the context of Rule 51.5 requires the transitive sense of the verb, as well as a definition that indicates some level of control over the functioning of the property in question. We find that to operate a cable, a CLEC must be able to control not only the lighting of the fiber within it, but a broader range of functions, such as the placement, capacity and configuration of the cable itself.

As to the term "fiber-optic cable," BayRing and segTEL argue that a cable comprises fiber strands within a sheath, and that, to be considered under Rule 51.5, the essential structure of a fiber-optic cable must be unchanged from its termination in the collocation arrangement to its exit from the wire center. Alternatively, Verizon would have us include individual "fiber-optic strands," thus including as fiber-based collocators those CLECs who lease high capacity services that make use of a fiber-optic facility. The FCC could easily have specified "fiber-optic strands" or "fiber-optic facilities" in its rule, but it did not. While we find BayRing and segTEL's interpretation too constrained (in that it may exclude spliced cables or other configurations that, in fact, meet the requirements of the rule), we find Verizon's too loose (such that it may include CLEC collocators that do not, in fact, rise to the level of self-deployed facilities-based competitors).

Thus, based on the plain meaning of the term and a fair interpretation of the rule, we find that only fiber-optic cables, not fiber strands or lit fiber-optic facilities, should be counted toward fiber-based collocation. The rule provides for one exception: when a

collocation arrangement involves dark fiber obtained by a CLEC from an incumbent LEC on an indefeasible right of use (IRU) basis. However, according to Staff's Affidavit, this situation does not exist in any of the wire centers at issue. Further, Staff's Affidavit does not indicate the existence of CLECs operating fiber-optic cable obtained under an IRU basis from another CLEC except in one limited circumstance where it is immaterial to the count of fiber-based collocators.[18] The Parties do not assert differently. We need not address, therefore, how IRUs between the ILEC and CLECs or between CLECs are to be evaluated. As a result, we consider only those collocators that employ CLEC-operated, self-deployed fiber-optic cables in our analysis.

Parties also commented on how DCS and DTS arrangements should be considered. BayRing and segTEL point out that DCS and DTS are services that facilitate connections between two collocation arrangements. Since any fiber-optic cable qualifying a CLEC as a fiber-based collocator must run from its termination in a collocation and exit the wire center, we find, based on Staff's Affidavit and our conclusions above, no instance where consideration of a DCS or DTS arrangement is necessary to evaluate the fiber-based collocators in these five wire centers.

Based on Staff's March 9, 2006, Supplemental Affidavit, we find that MCI had a fiber-optic cable terminating in its collocations and leaving the wire center as asserted by Verizon. We note, as will be discussed below, that MCI was a fiber-based collocator from March 11, 2005, to February 3, 2006, but will not be counted as such after February 3, 2006.

[18]We note only one such circumstance is identified in Staff's Affidavit: CLEC 2 in Dover obtains dark fiber on an IRU basis from CLEC 1, but because CLEC 2 also operates its own self-deployed fiber-optic cable, the dark fiber it has obtained under an IRU is redundant to this analysis and is not relevant here.

Consulting Staff's Affidavit we can identify six additional instances where a CLEC has fiber-optic cable that terminates in its collocation and leaves the wire center: CLEC 2 in Dover; CLEC 3 in Manchester; CLECs 3 and 4 in Nashua; and CLECs 1 and 2 in Portsmouth. Staff's Affidavit indicates that each of these CLECs owns the fiber-optic cable in question. Therefore, the requirements of Rule 51.5 are met. Accordingly, we find that CLEC 2 in Dover, CLEC 3 in Manchester, CLECs 3 and 4 in Nashua, and CLECs 1 and 2 in Portsmouth are fiber-based collocators.

Next we consider the status of those fiber-optic cables that terminate in a CATT collocation arrangement. The Parties agree that while a CATT contains no power source of its own, when a CLEC maintains both a CATT and a traditional collocation that is actively powered in the same wire center, and has a fiber-optic cable terminating in either the traditional collocation or the CATT, or both, that CLEC is a fiber-based collocator. According to Staff's Affidavit, CLEC 1 in Dover, CLEC 1 in Keene, CLEC 1 in Manchester, and CLEC 1 in Nashua each has fiber-optic cable, which it owns, terminating in a CATT. Each of these carriers also maintains a separate collocation arrangement with active electrical power. We find no requirement that the collocation at which the fiber-optic cable terminates must be the same as the collocation with active electrical power maintained by the CLEC. Therefore, CLEC 1 in Dover, CLEC 1 in Keene, CLEC 1 in Manchester, and CLEC 1 in Nashua are fiber-based collocators.

When the CATT is the only collocation arrangement maintained by a CLEC, however, as is the case in Staff's Affidavit for CLEC 3 in Portsmouth, the Parties diverge in their opinions. The CLECs urge us to find that a stand-alone CATT does not constitute a fiber-based collocator, even if there is a fiber-optic cable terminated in the CATT collocation

that leaves the wire center, because it lacks an active electrical power source at the CATT. Verizon contends, on the other hand, that the FCC specifically included CATT collocation in its discussion of relevant collocations, and asks that we look beyond the plain meaning of the rule to the FCC's supporting language in the *TRRO*.

A CATT does not include an active power supply *per se* because one is not needed for the proper functioning of the CATT, which serves as a termination and splice case for the CLEC operating a fiber optic cable leaving the wire center. As Verizon notes in its comments, CATT collocation is an FCC-tariffed arrangement that "provides a shared, alternative splice point within a Telephone Company central office at which a third party competitive fiber provider (CFP) can terminate its facilities" and then cross connect to its own collocation facilities or to those of other CLECs.[19]

Staff's Affidavit indicates that CLEC 3 in Portsmouth maintains only an unpowered CATT collocation in which CLEC 3 terminates a fiber optic cable that leaves the wire center. The collocation arrangement maintained by CLEC 3 includes the right to cross-connect to other CLEC collocations with active electrical power. Such cross-connection permits other CLECs, such as CLECs 4 and 6 in Portsmouth, to utilize UNEs in conjunction with services supported by access to CLEC 3's self-deployed facilities-based investment. We find that arrangements such as that of CLEC 3 in Portsmouth meet the requirements for a fiber-based collocator because the overall collocation arrangement maintained by the CLEC operating the fiber-optic cable includes access to active electrical power supply within the wire center to enable the provision of fiber-based services to other CLECs. To exclude stand-alone CATT

[19]Verizon Comments at 14, citing Verizon FCC Tariff No. 11, Section 28.11.1(B).

collocations, that in and of themselves do not have an active power supply, but that facilitate cross-connections with other CLECs that use active power from within the wire center would be an unfairly restrictive interpretation of the rule in light of the passive technology specific to a CATT arrangement. Therefore, we will include CATT arrangements that have access to and make use of an active electrical power supply within a wire center in our qualification of fiber-based collocators under the FCC definition. Accordingly, CLEC 3 in Portsmouth is a fiber-based collocator.

We do not find that the other CLECs identified on the diagrams operate fiber-optic cable. Therefore, the CLECs we have identified represent all of the fiber-based collocators in these wire centers.

Next, we consider the matter of the Verizon-MCI merger, which closed on January 6, 2006. Verizon has indicated that we should treat its merger with MCI in the same manner as any other merger under the FCC *TRRO* and rules – *i.e.*, that carriers should be counted separately as individual and unaffiliated fiber-based collocators until any proposed merger is completed, and that thereafter the merged entity would be counted as a single entity for purposes of any future wire center determinations. For the purposes of determining the status of wire centers in the future, normally that will be the case. For the five wire centers under consideration here, we look first to the terms of the Verizon/MCI merger, and then to Verizon's February 24, 2006 filing with the FCC.

The FCC approved the Verizon/MCI merger on October 31, 2005. *See* Verizon *Communications Inc. and MCI, Inc. Applications for Transfer of Control,* WC Docket No. 05-75, FCC 05-184, (*rel.* Nov. 17, 2005) (*FCC Verizon/MCI Merger Order).* In that order the FCC

states, "...the Applicants commit to exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers in which Verizon claims there is no impairment pursuant to section 51.319(a) [pertaining to local loops] and (e) [pertaining to dedicated transport] of the [FCC's] rules." *FCC Verizon/MCI Merger Order* ¶ 51. Appendix G of the *FCC Verizon/MCI Merger Order* further provides that "[w]ithin 30 days after the Merger Closing Date, Verizon/MCI shall exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers ... [and] ... shall file with the [FCC], within 30 days of the Merger Closing Date, revised data or lists that reflect the exclusion of MCI collocation arrangements, as required by this condition." *Id.* at Appendix G. In accordance with the *FCC Verizon/MCI Merger Order*, Verizon initially filed its revised list with the FCC on February 3, 2006, and corrected that list in the February 21 Industry Notice that it filed with the FCC on February 24, 2006.

The practical effect of the revised list of wire centers is explained by Verizon in footnote 6 of its February 21 Industry Notice, which states:

> [6] For example, if prior to February 3, 2006, a CLEC had an embedded base of dedicated DS3 transport circuits between wire centers that were initially classified as Tier 2 wire centers, but that as of February 3, 2006 are classified as Tier 3 wire centers, those circuits are subject to the 15% transition surcharge provided by the FCC in 47 C.F.R § 15.319(e)(2)(iii)(C) for the period covering March 11, 2005 through February 2, 2006, but not thereafter. In addition, if a CLEC obtained, for example, a dedicated DS3 transport circuit ordered pursuant to an interstate or intrastate access tariff after March 11, 2005 between two wire centers that were initially classified as Tier 2 wire centers, but that as of February 3, 2006 are classified as Tier 3 wire centers, that circuit would not be entitled to unbundled network element rates for any portion of the period covering March 11, 2005 through February 2, 2006. On and after February 3, 2006, any circuits that have changed status from "non-impaired" to "impaired" by reason of the February 3, 2006 wire center reclassifications may, at the carrier's wirtten [sic] request and subject to the terms of any term or volume plans, contract tariff, or other tariffed arrangement, or conversion charges (including without limitation, termination liability, shortfall penalties, and other charges set forth in an access tariff or an interconnection agreement) applicable to those circuits, be converted to unbundled network elements. Circuits ordered with provisioning dates on or after February 3, 2006 in wire centers classified as "impaired" by reason of the February 3, 2006 wire center reclassifications may be ordered as unbundled network elements or as special access services at the carrier's option. Please note that any illustrative examples or other discussion set forth herein

> should not be interpreted to expand Verizon's obligations or CLECs' rights as to matters beyond the scope of this notice (e.g., any conversion of a dedicated transport circuit to UNE under the example set forth above would be subject to the cap on the number of UNE dedicated transport circuits that CLECs may obtain on a given route under the *TRO* Remand Order, any EEL circuits remain subject to certification requirements, etc.).

According to the above footnote, Verizon itself agrees, based on the merger commitments made to the FCC, that as of February 3, 2006, it must, if asked, convert affected elements back to UNEs where, by not counting MCI as a fiber-based collocator, a wire center would be considered impaired. In other words, Verizon's post-merger exclusion of MCI and the revision of its wire center classifications may entitle CLECs to request a conversion back to UNE arrangements, as appropriate. The footnote also asserts Verizon's position that it is entitled to any transition rates that it may have collected from CLECs due to MCI being counted from March 11, 2005, when the original list was filed, through February 3, 2006, when Verizon updated the list of wire centers to exclude MCI.

We find that Verizon's merger commitments to the FCC included a commitment to revise its list of wire centers for the purpose of identifying changes in impairment status due to the merger. For those wire centers where MCI was the deciding fiber-based collocator in Verizon's initial list, effective as of March 11, 2005, the February 3, 2006 revision effectively (1) reclassifies tier identifications that would otherwise not be subject to reclassification under the FCC's rules, and (2) allows CLECs to obtain high capacity loops once again. Accordingly, as of February 3, 2006, the Nashua wire center will be reclassified at tier 2, notwithstanding the *TRRO* prohibition on reclassification of tier levels.

We further find that Verizon has billed CLECs in accordance with the Tariff 84 rates we approved by Secretarial Letter on April 22, 2005, which reflect the transitional rates permitted by the *TRRO*. We also find that Verizon, in good faith adherence to the *TRRO* and

Rule 51.5, counted MCI as an unaffiliated carrier between March 11, 2005, the effective date of the *TRRO*, and February 3, 2006, when Verizon filed its revised list of wire centers with the FCC. Accordingly, we conclude that Verizon is entitled to any transition rates that it may have collected from CLECs due to MCI being counted between March 11, 2005, and February 3, 2006. We note that this finding applies only to Nashua, which would have been classified as tier 1 if MCI were counted as an unaffiliated fiber-based collocator, but which we classify herein as tier 2.

As to mergers in general, BayRing and segTEL have suggested that we count as one any CLECs that may merge after Verizon places a wire center on its list, but prior to our verification of that list, rather than counting such CLECs individually. We decline to adopt the CLECs' suggestion, and find that our determination of the status of these initial wire centers will be based on the circumstances as they existed on March 11, 2005, when Verizon first filed its list, except as otherwise indicated in this order. Going forward, in the event that CLECs counted as separate entities in these initial five determinations later merge, any later reclassifications occurring after such merger normally will count the merged entity only once based on the CLECs' status at the time a proposed tariff is filed with this Commission asserting the reclassification of wire centers.

Finally, we consider the number of business lines in Manchester. Verizon has asserted that its ARMIS data support classifying Manchester as a tier 1 wire center for transport because there are more than 38,000 business lines in Manchester. The CLECs did not raise the issues of business lines in their briefs. Although at the prehearing conference Conversent enumerated its concerns regarding how business lines are counted in general, we have no

information on the record other than Verizon's assertion concerning Manchester, which supports our determination that Manchester is a tier 1 wire center for transport.

Applying these determinations to the five wire centers, we find as follows. For those wire centers that Verizon identified as no long impaired for dedicated transport: Dover is classified as tier 3, as there are two fiber-based collocators (CLECs 1 and 2 in Staff's Affidavit); Keene is classified as tier 3, as there is one fiber-based collocator (CLEC 1 in Staff's Affidavit); Manchester is classified as tier 1 because there are more than 38,000 business lines; Nashua is classified as tier 2, as there are three fiber-based collocators (CLECs 1, 3 and 4 in Staff's Affidavit); and Portsmouth is classified as tier 2, as there are three fiber-based collocators (CLECs 1, 2 and 3 in Staff's Affidavit). We also find that competitors continue to be impaired in Manchester without access to high-capacity loops as there are only two fiber-based collocators in Manchester (CLECs 1 and 3 in Staff's Affidavit) and the FCC's rules require four fiber-based collocators and 38,000 business lines.

Having determined that, at least as to some of the wire centers at issue in this docket, Verizon is no longer fully obligated under section 251 of the Telecommunications Act to offer DS-1, DS-3 and dark fiber transport to CLECs on an unbundled basis, we must address the question of whether Verizon's status as an RBOC confers an obligation to provide these elements under section 271 of the Telecommunications Act. The substance of this issue, as well as the issue of rates for those elements has been fully discussed in the Commission's decision in Order No. 24,442, which is before the U.S. District Court for the District of New Hampshire. Similar findings by the Maine Public Utilities Commission, *i.e.*, that a state commission may determine whether an element is required by section 271 and may approve rates for section 271

elements, were upheld by the U.S. District Court for the District of Maine. Consistent with the Commission's determinations in Order No. 24,442, we make the following determinations regarding the UNEs under discussion here.

The Parties are in agreement that access to the high-capacity loops and dedicated transport at issue in this docket are required by section 271, and we concur. Consistent with our decision in Order No. 24,442, Verizon may not discontinue offering dark fiber transport, and high capacity transport at DS-3 and DS-1 levels on the basis that these UNEs are no longer required to be unbundled pursuant to section 251 because of Verizon's committment to maintain a wholesale tariff in New Hampshire.

As determined in Order No. 24,442, we find that because our decision has the effect of preventing Verizon from discontinuing the provision of certain network elements to CLECs, we must address pricing issues as to those elements. In Docket No. DT 05-034, we approved Verizon's transition rates for the same DS-1, DS-3 and dark fiber transport elements at issue today. Those rates are not section 251 rates, since the elements in question are no longer required under section 251, but are transition rates, calculated using the FCC-prescribed formula of TELRIC plus 15%. Accordingly, we find that Verizon shall offer the section 271 elements at issue in this docket at the currently approved Tariff 84 transition rates, until such time as new rates are established and approved for DS-1, DS-3 and dark fiber transport.

The CLECs and Verizon have made various arguments concerning the effective date of the determination regarding the five wire centers, as well as the length of a transition period for conversion. Based on the record and on Verizon's Tariff 84, we find that Verizon is currently charging CLECs the transition rates as set out in Tariff 84, and has been since March

11, 2005. It appears that CLECs did not need to place orders and that no physical conversions were necessary to effectuate those rate changes. Accordingly, we find that a transition period for changing from TELRIC to TELRIC plus 15% need not be considered at this time.

To the extent that CLECs have placed orders and transitioned away from the circuits at issue here, we find that the FCC's initial transition period is appropriate. For wire centers not yet classified, and for those pending a determination by this Commission, we defer consideration of any future transition period until such time as there may be a need to determine one.

For those wire centers where Verizon has assessed transition rates based on its initial identification of wire centers, that is: DS-3 loops in Manchester; DS-1, DS-3 and dark fiber transport between Dover and Keene or between Dover and any other wire center or Keene and any other wire center; and for DS-3 and dark fiber transport between Portsmouth and any other wire center; Verizon must revert back to section 251 rates for those elements and refund any over-billing back to March 11, 2005.

Finally, as to Verizon's tariff filing in Docket No. DT 06-012, we find that the filing is deficient as it makes no reference to Verizon's obligation as an RBOC to provide the elements in question pursuant to section 271. Further, the proposed revisions reserve to Verizon the unilateral discretion for selection of alternative facilities provided to CLECs. Accordingly, Verizon's tariff filing is rejected pursuant to RSA 378:6,IV.

In compliance with this order, Verizon shall file revised tariff pages within thirty days. The tariff pages filed shall: (1) include a list of wire centers with an effective date of March 11, 2005, identifying Portsmouth as a tier 2 wire center and Manchester and Nashua as

tier 1 wire centers; (2) remove any reference to the end of the so-called "transition periods" for the delisted section 251 elements affected by the classification of these wire centers; (3) remove references to the length of the transition plan period; (4) include a list of wire centers with an effective date of February 3, 2006, reclassifying Nashua as a tier 2 wire center.

Going forward, we find that, for the purposes of Tariff 84, the reclassification of any wire center shall be effective on the date the Tariff 84 revisions reflecting such reclassification are approved by this Commission. Verizon may file its tariff revisions concurrently with its notices to the CLEC industry of changes to wire center classifications, and may true-up rate changes to the effective date of such future tariff revisions. In support of any future proposed revisions to Tariff 84 which seek to change wire center classifications, Verizon shall provide this Commission with a list of CLECs it deems to be fiber-based collocators in accordance with our determinations herein and/or with a copy of the ARMIS data supporting the number of asserted business lines, including information demonstrating that the business lines are used for switched services, whichever is relevant to the wire center's classification.

Based upon the foregoing, it is hereby

ORDERED, that Verizon's wire centers in Dover and Keene are determined to be tier 3 wire centers; and it is

FURTHER ORDERED, that Verizon's wire centers in Nashua and Portsmouth are determined to be tier 2 wire centers; and it is

FURTHER ORDERED, that Verizon's wire center in Manchester is determined to be a tier 1 wire center; and it is

FURTHER ORDERED, that dark fiber transport, DS-3 transport and DS-1 transport are section 271 elements; and it is

FURTHER ORDERED, that Verizon shall file a compliance tariff within thirty days pursuant to our decisions in Docket No. DT 05-083 as described herein; and it is

FURTHER ORDERED, that Verizon shall refund to CLECs monies collected by virtue of applying the transition rates in Tariff 84 to section 251 UNEs it considered delisted in Dover, Keene, and Portsmouth, retroactive to March 11, 2005, as described herein; and it is

FURTHER ORDERED, that the proposed tariff revisions to Tariff 84 submitted by Verizon in Docket No. DT 06-012 are rejected.

By order of the Public Utilities Commission of New Hampshire this tenth day of March, 2006.

Thomas B. Getz	Graham J. Morrison	Clifton C. Below
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by **SBC MICHIGAN** and **VERIZON**.	)))))	Case No. U-14447

At the April 25, 2006 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

On March 29, 2005, the Commission issued an order in this proceeding setting forth a procedure to resolve disputes between AT&T Michigan, f/k/a SBC Michigan (AT&T Michigan), and competitive local exchange carriers (CLECs). The disputes concern data underlying AT&T Michigan's classification of wire centers as unimpaired pursuant to 47 USC 251(c)(3) and the criteria established by the Federal Communications Commission (FCC) in the Triennial Review Order (*TRO)* and the Triennial Review Remand Order (*TRRO*)[1] and implementing rules. In the March 29 order, the Commission adopted a process allowing for disputes regarding self-certification to be resolved in a timely manner.

[1] *In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313 and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338, rel'd February 4, 2005.

On September 20, 2005, the Commission issued an order (the Covad Order) resolving a dispute between AT&T Michigan and Covad Communications Company (Covad), regarding whether Covad was entitled to unbundled DS1[2] loops pursuant to 47 USC 251(c)(3) at the Dearborn Fairborn wire center, a wire center that AT&T Michigan had declared unimpaired under the provisions adopted by the FCC in the *TRRO* and implementing rules. In that order, the Commission determined that AT&T Michigan had improperly declared the wire center to be unimpaired. Among other things, the Commission found that AT&T Michigan had not correctly counted the number of fiber-based collocators and the number of business lines in the wire center.

On December 20, 2005, the Commission issued an order resolving a motion for rehearing of the Covad Order. In the December 20 order, the Commission found that, to resolve the parties' differences regarding AT&T Michigan's claims of non-impaired status of wire centers, "within 60 days of AT&T Michigan's complete filing, the [Commission] Staff and interested CLECs [competitive local exchange carriers] may physically inspect the listed wire centers for accuracy of the claimed data, and compliance with the *TRRO* and the Commission's previous determinations." On March 2, 2006, AT&T Michigan filed an update to its wire center filing in compliance with the December 20 order.

On March 28, 2006, the Staff filed its findings following the site visits. In that filing, the Staff states that the CLECs raised challenges to 13 of the 34 wire centers that AT&T Michigan claimed were unimpaired. The Staff and certain CLEC representatives visited eight wire centers, which the Staff selected based on its review of the non-impairment criteria, the confidential supporting documentation submitted with AT&T Michigan's filing, and information gathered from each CLEC concerning the wire centers in which it was collocated. The Staff states that it was able to

[2]Digital Signal Level 1.

verify the fiber-based collocators and also the collocation-to-collocation providers at each of the locations visited, with the exception of the Wayne wire center. The Staff's report further notes that AT&T Michigan's updated report filed March 2, 2006, lowered the number of fiber-based collocators by one for both the Wayne Main wire center, which makes it a tier 3 wire center, and the Birmingham Main wire center, which did not affect the previous designation as unimpaired.

On April 5, 2006, Talk America, Inc., XO Communication Services, Inc., and TDS Metrocom LLC (collectively, Talk/XO/TDS) filed a joint response to AT&T Michigan's March 2 filing and the Staff's report, in which they register their objection, non-objection, and reservation of rights to future challenges. Talk/XO/TDS object to AT&T Michigan's filing of two lists, one in compliance with the Commission's findings in the Covad Order, the other pursuant to the company's interpretation of the FCC's prior orders, which conflicts with the Commission's interpretation of those orders. In particular, they object to AT&T Michigan's title for one portion of the list: "TRRO Non-Impairment Requirements Met."

Talk/XO/TDS do not object to the classification of Tier 1 and Tier 2 wire centers and loop classifications set forth on AT&T Michigan's updated Exhibit A, shown in the column entitled "September 2005 Order Requirements Met." They admit that they did not uncover any material facts that would alter the classifications for those wire centers.

Finally, Talk/XO/TDS argue that they reserve their rights to further investigate and challenge any future modifications or reclassifications by AT&T Michigan regarding its list of unimpaired wire centers.

Also on April 5, 2006, ACD Telecom, Inc., Climax Telephone Company, and JAS Networks, Inc., filed a joint statement of non-objection to AT&T Michigan's updated list of unimpaired wire centers. These parties state that they take no position as to the accuracy of the counts claimed by

AT&T Michigan, but rather, seek to reserve the right to challenge any alteration in claimed status for wire centers, particularly those that are designated as not impaired for transport but remain impaired for unbundled loops.

On April 12, 2006, AT&T Michigan filed a response to the Talk/XO/TDS filing. AT&T Michigan asserts that the requirements of the December 20 order have been met, there is no objection to the March 2, 2006 list of unimpaired wire centers, and the Commission should approve that list. It argues that there is no need for the Commission to address the CLECs' "reservation of rights" statements, because the procedure for future wire center impairment determinations was set forth in the Commission's March 29, 2005 order in this proceeding. That process has subsequently been incorporated into about 100 *TRO/TRRO* amendments to interconnection agreements, which the Commission has approved.

The Commission finds that it should approve the list of unimpaired wire centers that AT&T Michigan filed on March 2, 2006 that is consistent with the Covad Order. The Commission does not approve AT&T Michigan's interpretation of the *TRO/TRRO* requirements or the list of wire centers claimed to be unimpaired according to that erroneous interpretation. No party has raised an objection to the propriety of the list the Commission approves.

Because of the successful experience with the process described in the December 20, 2005 order, the Commission concludes that, whenever AT&T Michigan alters its list of Michigan wire centers that it contends are not impaired pursuant to 47 CFR 52.319, that list must be made consistent with the requirements in the Covad Order and any FCC orders. At that time, AT&T Michigan must supply to the Staff under seal the underlying data that the company relies upon for the change. Parties subject to the protective order in this proceeding may have access to this data, including the identification of all claimed fiber-based collocators in the affected wire centers.

Future challenges to AT&T Michigan's claim that any additional wire centers are unimpaired or that wire centers currently listed as unimpaired only for transport are also unimpaired for unbundled loops will follow the procedure outlined in the March 29, 2005 order in this proceeding.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The designation of wire centers listed on page one of the Updated Exhibit A, which AT&T Michigan filed on March 2, 2006, found under the heading "September 2005 Order Requirements Met," should be approved.

c. Whenever AT&T Michigan alters its list of Michigan wire centers that it contends are not impaired pursuant to 47 CFR 52.319, that list should be consistent with the conclusions in this order.

THEREFORE, IT IS ORDERED that:

A. The designations of wire centers listed on Updated Exhibit A, which AT&T Michigan filed on March 2, 2006, found under the heading "September 2005 Order Requirements Met," are approved.

B. Whenever AT&T Michigan alters its list of Michigan wire centers that it contends are not impaired pursuant to 47 CFR 52.319, that list shall be consistent with the conclusions in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of April 25, 2006.

/s/ Mary Jo Kunkle
Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

_____

Chairman

_____

Commissioner

_____

Commissioner

By its action of April 25, 2006.

_____

Its Executive Secretary

1.1 Conversion of Wholesale Services to Network Elements or Network Elements to Wholesale Services. Upon request, BellSouth shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element or Combination that is available to XOCS pursuant to Section 251 of the Act and under the interconnection agreement or convert a Network Element or Combination that is available to XOCS pursuant to Section 251 of the Act and under the interconnection agreement to an equivalent wholesale service or group of wholesale services offered by BellSouth (collectively "Conversion"). BellSouth shall charge the applicable nonrecurring switch-as-is rates for Conversions to Network Elements or Combinations or when converting from Network Elements or Combinations as set forth in Exhibit A. BellSouth shall also charge the same nonrecurring switch-as-is rates when converting from Network Elements or Combinations. Any rate change resulting from the Conversion will be effective as of the next billing cycle following BellSouth's receipt of a complete and accurate Conversion request from XOCS. A Converted circuit shall be considered terminated for purposes of any volume and/or term commitments and/or wholesale services in grandfathered status between XOCS and BellSouth. Any change from a wholesale service/group of wholesale services to a Network Element/Combination, or from a Network Element/Combination to a wholesale service/group of wholesale services, that requires a physical rearrangement will not be considered to be a Conversion for purposes of this Agreement. BellSouth will not require physical rearrangements if the Conversion can be completed through record changes only. In such cases, BellSouth shall not physically disconnect, separate, alter or change the equipment and facilities employed to provide the wholesale service. Orders for Conversions will be handled in accordance with the guidelines set forth in the Ordering Guidelines and Processes and CLEC Information Packages to the extent that such guidelines do not conflict with the provisions of this Agreement.

1.2 Except to the extent expressly provided otherwise in this Attachment, XOCS may not maintain unbundled network elements or combinations of unbundled network elements, that are no longer offered pursuant to this Agreement (collectively "Arrangements"). In the event BellSouth determines that XOCS has in place any Arrangements after the Effective Date of this Agreement, BellSouth will provide XOCS with thirty (30) days written notice to disconnect or convert such Arrangements. If XOCS fails to submit orders to disconnect or convert such Arrangements within such thirty (30) day period, BellSouth will transition such circuits to the equivalent tariffed BellSouth service(s). Those circuits identified and transitioned by BellSouth pursuant to this Section 1.7 shall be subject to all applicable disconnect charges as set forth in this Agreement and the full nonrecurring charges for installation of the equivalent tariffed BellSouth service as set forth in BellSouth's tariffs. The applicable recurring tariff charge shall apply to each circuit as of the Effective Date of this Agreement.

1.3 Modifications and Updates to the Wire Center List and Subsequent Transition Periods

1.3.1 BellSouth may seek to designate additional wire centers as "non-impaired" pursuant to the criteria set forth in 47 C.F.R. 51.319 based upon either (1) an increase in the business line count or (2) an increase in the number of Fiber Based Collocators ("FBCs") for such wire centers. For non-impairment designations based upon the business line count, BellSouth shall, no later than June 30 of each year, file with the Commission the proposed list of such additional "non-impaired" wire centers. For non-impairment designations based upon an increase in the number of FBCs, BellSouth has the option of filing with the Commission, at any time during the year, pursuant to Sections 1.3.1 through 1.3.5, the proposed list of such additional "non-impaired" wire centers. The list of additional "non-impaired" wire centers as designated by BellSouth shall reflect the number of business lines, as of December 31 of the previous year based upon its ARMIS 43 08 data filed with the FCC and/or shall reflect the current number of FBCs in each wire center, as applicable, and to the extent BellSouth relies upon such information to make its designation. In no event shall BellSouth make more than two such non-impairment designation filings per state in a given calendar year for non-impairment designations based upon an increase in the number of FBCs, nor shall BellSouth make more than one such non-impairment designation filing per state in a given calendar year for non-impairment decisions based on the business line count.

1.3.2 To the extent BellSouth identifies additional wire centers as non-impaired, based upon an increase in the number of FBCs, BellSouth shall identify the FBCs upon which it has relied, and shall obtain from each collocator, prior to filing, a written affirmation that it qualifies as a FBC. XOCS shall, within 20 days of a request by BellSouth, affirm or deny that it constitutes a fiber-based collocator, as defined in 47 C.F.R. 51.5. In the event that XOC is listed as a FBC and denies such status, XOCS shall provide BellSouth with all information reasonably necessary to support such position at the same time that XOCS makes such assertion.

1.3.3 In any such filing designating additional wire centers as "non-impaired," BellSouth shall, to the extent applicable, file the following documentation demonstrating that each additional wire center meets the relevant TRRO criteria. BellSouth agrees to make such documentation available to XOCS under the terms of a Commission protective order. Provided, however, to the extent a Commission requires different information to be provided in support of BellSouth's designation of an additional wire center as non-impaired, the Parties will work cooperatively to utilize such new Commission requirements, and amend the interconnection agreement accordingly, if necessary.

a. The CLLI of the wire center.
b. The number of switched business lines served by BellSouth in that wire center based upon data as reported in ARMIS 43-08 for the previous year.

c. The number of UNE-P or equivalent lines used to serve business customers (UNE-P lines serving residential customers shall not be counted as business lines in BellSouth's analysis).
d. The number of DS0 (non-high capacity) UNE-L lines in service.
e. The number of DS1 UNE-L lines in service (DS0 equivalent line count).
f. The number of DS1 UNE EELs (DS0 equivalent line count).
g. The number of DS3 UNE-L lines in service (DS0 equivalent line count).
h. The number of DS3 EELs (DS0 equivalent line count).
i. A completed worksheet that shows, in detail, any conversion of digital access lines to voice grade equivalents and any resulting adjustments.
j. The names of any carriers relied upon as a FBC, and the wire center in which each was relied upon.

1.3.4 XOCS shall have thirty (30) days from the date of BellSouth's non-impairment designation filing to file a challenge with the Commission to any such additional non-impaired wire center designated by BellSouth. Any such challenge must be specific, supported by evidence or verified statement refuting the data supplied by BellSouth and sufficient for the Commission to render a final determination.

1.3.5 Changes to the wire center designations shall become effective sixty (60) days following such filing by BellSouth with the Commission or the date such designations are approved by the Commission, whichever is earlier. The additional Non-impaired Wire Centers shall be considered "Subsequent Wire Centers." As of such effective date, BellSouth shall not be required to provide, and XOCS shall not add, new DS1 and DS3 Loops, Excess DS1 and DS3 Loops, DS1 or DS3 Dedicated Transport circuits, Excess DS1 and DS3 Dedicated Transport or Dark Fiber Transport circuits in Subsequent Wire Centers.

1.3.6 Subsequent Embedded Base shall mean those DS1 and/or DS3 Loops, DS1 and/or DS3 Dedicated Transport, or Dark Fiber Transport, as applicable, that were in service for XOCS or for which XOCS had orders pending in a Subsequent Wire Center on the effective date of the Subsequent Wire Center non-impairment designation and shall include any DS1 and/or DS3 Loops or DS1 and/or DS3 Dedicated Transport circuits in excess of the caps set forth in the interconnection agreement in such Subsequent Wire Centers as of that same date. Disconnects or, for Loops, loss of End Users resulting in disconnection or reuse by another carrier of such DS1 or DS3 Loop(s), shall be removed from the Subsequent Embedded Base.

1.3.7 Within thirty (30) days of the non-impairment designation effective date as set forth in Sections 2.1.4.13, 5.2.8.8 and 5.4.1.9 above, CLEC shall provide a preliminary spreadsheet identifying its Subsequent Embedded Base, in the form set forth on BellSouth's web site and as set forth in Exhibit C. Such spreadsheet shall identify the Subsequent Embedded Base to be disconnected or converted to other BellSouth services. The Parties shall work cooperatively to review such

spreadsheet and identify any errors, and shall, within thirty (30) days from XOCS' submission of such spreadsheet, make any necessary modifications or corrections to the spreadsheet. BellSouth will begin Conversion of such circuits no earlier than the sixtieth (60^{TH}) day following the non-impairment designation effective date. Such Conversions shall be pursuant to Section 1.1. Tariff rates, terms and conditions shall apply upon Conversion of the circuits to wholesale services. CLEC shall pay the UNE rate set forth in the interconnection agreement until such time as BellSouth converts the circuit.

1.3.8 In the event XOCS fails to submit the spreadsheet(s) described above as requested by BellSouth, and still has not provided such preliminary spreadsheet(s) within 60 days of the non-impairment designation effective date described above, BellSouth will identify XOCS's remaining Subsequent Embedded Base, if any, and may begin transition of such circuits immediately to the equivalent wholesale tariffed BellSouth service(s). Those circuits identified and transitioned by BellSouth shall be subject to the applicable disconnect charges as set forth in the interconnection agreement and the full nonrecurring charges for installation of the equivalent tariffed BellSouth service as set forth in BellSouth's tariffs upon such transition. The applicable recurring tariff rates, terms and conditions shall apply as of the date such circuit is transitioned. BellSouth shall not seek to apply such charges for circuits that are inadvertently omitted from the spreadsheet provided by XOCS as long as such spreadsheet identified at least ninety-five percent (95%) of the Embedded Base and Excess DS1 and DS3 Loops and Dedicated Transport and Dark Fiber Transport, but will work cooperatively with XOCS to correct any errors on the submitted spreadsheets.

1.3.9 In the event that (1) BellSouth designates a wire center as non-impaired, either initially or as a Subsequent Wire Center, (2) as a result of such designation, XOCS Converts existing Network Elements or Combinations to other services or orders new services as services other than Network Elements or Combinations, (3) XOCS otherwise would have been entitled to Network Elements or Combinations in such wire center at the time such alternative services were provisioned, and (4) BellSouth acknowledges, or a state or federal regulatory body with authority determines, that, at the time BellSouth designated such wire center as non-impaired, such wire center did not meet the FCC's non-impairment criteria, then upon request of XOCS, no later than sixty (60) days after BellSouth acknowledges or the State or Federal Regulatory body issues an Order making such a finding, BellSouth shall transition to Network Elements or Combinations any alternative services in such wire center that were established after such wire center was designated as non-impaired. In such instances, BellSouth shall credit XOCS the difference between the recurring and nonrecurring rate(s) paid by XOCS for such services and the applicable Network Element or Combinations rate, including but not limited to any charges associated with the resulting conversion from Network Element or Combinations to other wholesale services or group of wholesale services for the period prior to such circuit being transitioned to a Network Element or Combination. Such credit shall be calculated from June 1, 2005, for a

Non-impaired Wire Center meeting the criteria set forth in this Section. For a Subsequent Wire Center, the credit shall be calculated from the date of the Conversion of the Network Element or Combination to the other services or if a new service was ordered instead of a Network Element or Combination, the date such new service was provisioned by BellSouth. There shall be no additional charge for such transition to Network Elements or Combination services. XOCS shall only be responsible for such charges as would have applied if said Wire Center had not been designated as non-impaired. Further, BellSouth will cooperate with XOCS to allow rescission of any changes made to term or volume commitments for wholesale services in reliance on the designation of such Wire Center as non-impaired when such increase to a term or volume commitment was made after the Wire Center was designated non-impaired and where such increase was directly attributed to the conversion of Network Elements or Combination in such Wire Center to wholesale services. In no case shall the reduction in term or volume commitment be greater than the billing reduction related to the actual circuits converted to Network Elements pursuant to this Section.

1.3.10 The rates set forth in Exhibit B shall apply to the Subsequent Embedded Base during the Subsequent Transition Period.

1.4 BellSouth will perform Routine Network Modifications (RNM) in accordance with FCC 47 C.F.R. § 51.319 (a)(7) and (e)(4) for Loops and Dedicated Transport provided under this Attachment. If BellSouth has anticipated such RNM and performs them during normal operations and has recovered the costs for performing such modifications through the rates set forth in Exhibit A, then BellSouth shall perform such RNM at no additional charge. RNM shall be performed within the intervals established for the Network Element and subject to the performance measurements and associated remedies set forth in Attachment 9 of this Agreement to the extent such RNM were anticipated in the setting of such intervals. If BellSouth has not anticipated a requested network modification as being a RNM and has not recovered the costs of such RNM in the rates set forth in Exhibit A, then such request will be handled as a project on an individual case basis. BellSouth will provide a TELRIC based price quote for the request and, upon receipt of payment from XOCS, BellSouth shall perform the RNM.

1.5 Commingling of Services

1.5.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more services or facilities that XOCS has obtained at wholesale from BellSouth, or the combining of a Network Element or Combination with one or more such wholesale services or facilities. BellSouth shall permit XOCS to Commingle a Network Element or Combination, including those subject to the transition period set forth in Sections 2.1.4, 5.2 and 5.4.1 with wholesale services obtained from BellSouth. BellSouth shall, upon request of XOCS, perform the functions necessary to Commingle a Network Element or Combination with one or more BellSouth wholesale services or facilities that