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April 13, 2004

Ms. Blanca S. Bayo, Director
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Re: Response of US LEC of Florida Inc. to Verizon Florida Inc.'s Consolidated
Petition for Arbitration
Docket No.: 040156-TP

Dear Ms. Bayo:

Enclosed please find the original and fifteen copies of Response of US LEC of Florida Inc.
to Verizon Florida Inc.'s Consolidated Petition for Arbitration..

Please acknowledge receipt of these documents by date-stamping the enclosed copy of this
letter and returning it to the undersigned.

Sincerely,



Martin P. McDonnell

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04493 APR 13 04

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Petition of Verizon Florida Inc.)	
For Arbitration of an Amendment to)	
Interconnection Agreements with)	
Competitive Local Exchange Carriers)	
And Commercial Mobile Radio Service)	Docket No. 040156-TP
Providers in Florida)	
Pursuant to 47 U.S.C. 252(b) of the)	Filed: April 13, 2004
Communications Act of 1934, as amended)	
And the Triennial Review Order)	

**RESPONSE OF US LEC OF FLORIDA INC.
TO VERIZON FLORIDA INC.'S CONSOLIDATED PETITION FOR
ARBITRATION**

US LEC of Florida Inc. ("US LEC"), pursuant to Section 252(b) of the Communications Act of 1934, as amended, by the Telecommunications Act of 1996 ("Act"), hereby responds to Verizon Florida Inc.'s ("Verizon") Petition for Arbitration filed in the above-styled proceeding. Prior to the Initial Response Date, Verizon notified the Commission that due to the March 2, 2004 decision of the D.C. Circuit Court of Appeal¹, where the Court vacated certain decisions of the Federal Communications Commission ("FCC") in the *Triennial Review Order*,² it would be amending its petition. For efficiency purposes, Verizon proposed to extend the time to respond to the Petition to 25 days after the date that it filed its revisions to its Petition. Verizon filed its Update to its Petition on March 19, 2004.

¹ *United States Telecom Association v. FCC*, No. 00-1012 (D.C. Cir. Mar. 2, 2004) ("*USTA II*").

² *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *et. al.*, Report and Order and Order on Remand and Further Notice of Proposed Rule Making, 18 FCC Rcd 16978 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003) ("*Triennial Review Order*" or "*TRO*").

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

INTRODUCTION

1. On October 2, 2003, Verizon sent to US LEC (and apparently many other competitive local exchange companies (“CLECs)) an initial offer to negotiate the parties’ Commission approved Interconnection Agreement based upon the TRO. US LEC is one of the apparently handful of carriers that not only provided a redline version of the Verizon TRO amendment less than 30 days after Verizon’s initial offer to negotiate, but had begun a dialogue with the Verizon negotiators. US LEC and Verizon had discussed their differing proposed contract language and exchanged citations in support of their respective positions when Verizon essentially walked away from the table just prior to filing its consolidated arbitration petition. US LEC, unlike other carriers, does not ask that the Commission dismiss Verizon’s Petition (as updated), but rather asks the Commission to conduct an individual arbitration to resolve the issues in dispute between Verizon and US LEC.

2. Although the D.C. Circuit’s decision of March 2, 2004 has placed some aspects of the *Triennial Review Order* and the associated rules in some question, US LEC believes that certain of the rules remain in effect, and require a change of law amendment to be negotiated. Verizon has been quick to notify CLECs that it will no longer provide any UNEs that the FCC has eliminated under the *TRO*, but insists that it will not provide to a CLEC any of the additional obligations imposed on it by the *TRO* without an executed TRO Amendment, such as commingling wholesale services and UNEs. Consequently, US LEC wishes to conclude its negotiations with Verizon and, to that end, asks the Commission to arbitrate the issues on which US LEC and Verizon differ.

NEGOTIATIONS

3. On October 15, 2003, in response to Verizon's October 2, 2003 notice, US LEC provided its redlines (amendments) to the template TRO Amendment and asked to negotiate the TRO Amendment with Verizon.
4. On October 23, 2003, US LEC provided an updated redline and again asked for negotiations to be initiated.
5. On December 4, 2003, the first negotiation conference call was held between Verizon and US LEC.
6. On January 13, 2004, additional revisions to the TRO Amendment were provided to Verizon by US LEC.
7. On January 14, 2004, a second negotiation conference call was held between Verizon and US LEC. The call consisted of the parties discussing, section by section, the position of each party and agreement to take back and either provide support for the party's position or confirm agreement with the other party's position.
8. On January 20, 2004, a third negotiation conference call was held between Verizon and US LEC. The call was a continuation of the second conference call to finish the section-by-section discussion.
9. On January 29, 2004, a fourth negotiation conference call was held between Verizon and US LEC to discuss the issues, and further clarify the parties' positions.
10. On February 2, 2004, the parties exchanged citations for certain respective positions, and held a negotiation conference call.
11. A conference call was scheduled on February 19, 2004 to provide an opportunity for each party to research and provide additional positions or proposed agreements on

issues remaining in dispute. The call was rescheduled, as each party had not finished preparing their responses.

12. On February 23, 2004, US LEC provided Verizon with its responses to the various disputed issues, and learned later that day that Verizon had filed its Petition in most of the states in which US LEC and Verizon do business, including Florida.

13. After February 2, 2004, US LEC never received any of the promised responses from Verizon to the disputed issues nor, after February 19, 2004, did Verizon agree to meet with US LEC to continue negotiations.

14. On February 20, 2004, Verizon filed its Petition without acknowledging the efforts that had been made by US LEC to come to terms with Verizon.

15. Nor did Verizon, during the period from February 2, 2004 until the filing of the Verizon Petition on February 20, 2004, even give US LEC a hint that Verizon intended to file the consolidated arbitration petition rather than continue to negotiate. US LEC became aware of the filing based on an alert from its outside counsel that such pleadings had been filed in a number of Verizon states. US LEC was served by mail, and did not receive the various Petitions until days after the filings.

16. On February 27, 2004, the Verizon negotiation contact advised US LEC that she had accepted a new assignment and was no longer involved in the TRO Amendment negotiations, and her replacement was undetermined.

17. On April 7, 2004, the newly assigned Verizon negotiation contact and the US LEC negotiation contact met by phone conference. As a result of this meeting, the companies are attempting to schedule a negotiations session during the week of April 12.

18. A draft of the TRO Amendment reflecting the parties' negotiations to date is attached hereto as Exhibit A. The draft consists of Verizon's template agreement with the following revisions: agreed-upon language is shown in normal type, while deletions that US LEC proposes to make are reflected in ~~strike-through~~ text and additions that US LEC proposes to make are shown in underlined text. During the pendency of this arbitration, US LEC is happy to continue to negotiate in good faith in an effort to resolve disputed issues and will notify the Commission if and when arbitration of certain issues is no longer necessary.

19. US LEC submits that its requested revisions are reasonable and supported by the Act, the text of the TRO, or the adopted, effective FCC rules. Verizon's template is not substantially consistent with the FCC rules because Verizon: (a) either omitted wording from the FCC rules that it found unfavorable; (b) substituted words that changed the effect of the adopted FCC rule; or (c) omitted its obligations all together. US LEC asks the Commission to adopt US LEC's proposed TRO Amendment.

EFFECT OF THE *USTA II* DECISION

20. Verizon has amended the initial template TRO Amendment to incorporate portions of the Court's decision in *USTA II*. The Court's vacatur does not become effective, if at all, until May 3, 2004. US LEC requests that the Commission, for purposes of the arbitration of the amendment between US LEC and Verizon, conduct the arbitration based on the initial TRO Amendment template from which the parties have engaged in negotiations.

STATEMENT OF RESOLVED ISSUES

21. The parties have agreed to certain contract language affecting the rights and obligations of the parties under the *TRO* except for those identified below as unresolved issues. These negotiated portions of the TRO Amendment are included in Exhibit A.

STATEMENT OF UNRESOLVED ISSUES

22. Because US LEC and Verizon did not complete their negotiations and Verizon did not provide responses and support for its positions in rejecting US LEC's changes, US LEC is unable to provide the statement of issues in the form of: Issue, US LEC position, and Verizon position. In many instances, US LEC believes that with further negotiation many of the language differences can be resolved. Accordingly, US LEC asks that the Commission approve the structure of the Statement of Unresolved Issues, which generally provides a summary of the parties' negotiations and US LEC's position.

I. AMENDMENT TERMS AND CONDITIONS

Issue I-1, Section 1.6: The parties are unable to agree on the language on what would occur in the event that either the District of Columbia Circuit or the United States Supreme Court issues an order that stayed any or all of the TRO provisions or vacated such provisions. US LEC is willing to agree that in such event the terms and conditions that were stayed would be suspended for purposes of the Agreement, but the provisions of the Agreement that were revised by the execution of the TRO Amendment would go back into effect to enable US LEC continue to provision necessary services from Verizon. Further, US LEC disagrees that if provisions were vacated or reversed by the Courts, the terms and conditions are voidable at the election of the parties. US LEC is concerned that Verizon would require a flashback of UNEs and US LEC's customers'

services could be placed at risk if Verizon were to take such an action. US LEC, therefore, proposes that if such provisions were vacated, the parties should renegotiate the terms of the affected provisions of the Agreement to ensure a reasonable transition period to permit US LEC to take the necessary steps to transition services seamlessly without disruption to its customers' services.

II. GENERAL CONDITIONS

Issue II-1, Sections 1.1, 1.2, 1.3:³ Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. Verizon restricts its obligation “only to the extent required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.” US LEC seeks to modify the language to provide that Verizon’s obligations are based on its obligations under 251(c)(3) of the Act, Part 51 of the FCC’s rules, or as otherwise required by a state commission pursuant to its authority under Section 252(e)(3) of the Act.

Additionally, US LEC asserts that Verizon also has the obligation to provide access to certain network elements under Section 271(c)(2)(C)(iv) – (x), recognizing that the rates by which such elements are made available are not at the 252(d)(1) rates but rather just and reasonable commercial rates. Section 271(c)(2)(B) of the Act sets forth certain checklist items to which Bell operating companies (“RBOCs”) such as Verizon must provide access in order to obtain interLATA authority. Included in the checklist is access to “[l]ocal loop transmission from the central office to the customer’s premises unbundled from local switching or other services;”⁴ and [l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching and other

³ The disagreement on the legal authority to be cited as discussed in this issue section occurs continually throughout the document. In the following text, US LEC will cite back to this discussion.

⁴ 47 U.S.C. s.271(c)(2)(B)(iv).

services”.⁵ (Section 271(c)(2)(B)(v)). The FCC concluded in the *TRO* that the RBOCs must continue to provide access under Section 271 to checklist items (iv)-(vi) and (x), even if such access is not mandated under Section 251.⁶ The RBOCs, however, are not required to provide such elements under UNE pricing, but at just and reasonable rates.⁷ If a network element is not required to be unbundled pursuant to Section 251(c)(3) of the Act or Part 51 of the FCC’s rules, US LEC is willing to enter into negotiations with Verizon to determine just and reasonable rates for such network element (but to use the UNE rates as a proxy during the negotiations, subject to true-up, once the rate has been established). If a rate cannot be mutually agreed upon, US LEC proposes to use the dispute resolution provisions of the Agreement.

Issue II-2, Section 1.3: US LEC proposes that this language be omitted as the parties were unable to agree to language and the intent of the paragraph is covered by the current change of law provision within the Agreement.

Issue II-3, Section 1.4 and addition 1.5: US LEC seeks to make Verizon’s section 1.4 reciprocal, *i.e.*, to reserve each party’s right to argue before the FCC or the Commission on the identity of Network Elements and whether access to such elements need be provided by Verizon. US LEC would agree to leave Verizon’s section 1.4 as proposed, but add Section 1.5 to reflect US LEC’s reservation of rights to argue its position as to the identity of Network Elements and whether certain elements should be available, and the rates on which such elements must be offered. Alternatively, US LEC would agree to wording in Section 1.4 that provides reciprocal reservation of rights to each party.

⁵ 47 U.S.C. s.271(c)(2)(B)

⁶ *TRO* at ¶ 652.

⁷ *Id.*

III. TRO GLOSSARY

Issue III-1, Added Section 2.2, Dark Fiber Loop: US LEC has added a definition of “Dark Fiber Loop” because in the older versions of Verizon agreements, there was no definition of this term. US LEC agrees with Verizon that if the current approved agreement had defined “Dark Fiber Loop,” this definition could be omitted. The Agreement under which the parties currently operate in Florida does not have such a definition. Accordingly, US LEC asks that the definition be adopted in this Amendment.

Issue III-2, Section 2.3, Dedicated Transport: US LEC objects to the second sentence of the definition unless additional language is added to address and recognize the concept of “reverse collocation” as discussed in the *TRO*, footnote 1126, and the insertion of “as identified in the LERG” in the first sentence. Verizon’s proposed definitions are not consistent with those adopted by the FCC. The FCC has held that dedicated transport is within an ILEC’s network, and found that an entrance facility - -a transmission facility that was installed between an ILEC wire center or switch and the CLEC’s central office or switch - - is not within the meaning of “dedicated transport.”⁸ Nevertheless, the FCC found that when the ILEC had placed its equipment at the CLEC’s central office or switch location, or at any other non-affiliated entity’s premises, regardless of whether such equipment was in a cage, then there was so-called “reverse collocation.” By reason of the reverse collocation, the transmission facility between that location and the ILEC wire center or switch was included in the definition of “dedicated

⁸ US LEC notes that the Court in its recent decision remanded the FCC’s decision to exclude such entrance facilities from the definition of “network elements” to further develop the record for judicial review.

transport.”⁹ US LEC is requesting only that the definition be consistent with the FCC’s decision.

Issue III-3, Section 2.12, FTTH Loop: US LEC seeks to add “local” before “Loop” to conform the definition to other definitions that use the defined term “Loop” (for example, Section 2.14, Hybrid Loop. “A local Loop...”). US LEC is at a loss as to why Verizon would reject this change unless it felt that the meaning of FTTH loop was changed by the addition of “local.” US LEC is concerned that in the future Verizon may attempt to argue that US LEC agreed that an FTTH loop is not a local loop, and therefore exempted from Verizon’s obligation under the Act, the FCC’s rules, or the Commission’s rules. US LEC’s suggested revision is reasonable and should be adopted.

Issue III-4, Section 2.19, Nonconforming Facilities:¹⁰ US LEC has proposed several revisions to this provision, and during the negotiations had tentatively concluded to withdraw two of its revisions (the additional wording contained in subsection (c) and the elimination of subsection (i)). US LEC objects to the phrase “class of facilities” in subsection (m) because it was unable to find any reference within the *TRO* or the FCC’s rules that provided authority to the state commission to make a general finding of impairment for a “class of facilities.” US LEC asked Verizon for a reference to support the phrase. Verizon was unable to provide any citation for the inclusion in the amendment nor was Verizon able to explain the need for such a clause. US LEC, therefore, asks that the language be deleted.

⁹ *TRO*, fn. 1125.

¹⁰ Verizon and US LEC also disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue III-5, Added Section 2.22, Reverse Collocation: US LEC seeks to have “reverse collocation” defined in the glossary based on the FCC’s conclusions in the text of the *TRO*¹¹ and the FCC’s rules, Sections 51.318(b)(2)(iv) and 51.318(c)(2). US LEC has provided the support from the TRO to Verizon for the concept and definition of “reverse collocation.”¹² Verizon suggested that US LEC’s concerns were addressed in Section 3.6.2.1 of the Amendment, and would not accept the addition of the proposed definition. US LEC asks that its definition be adopted as it comports with the *TRO* discussions and the FCC’s rules.

Issue III-6, Section 2.19, Route: US LEC has inserted “Reverse Collocation sites” into to the definition as such wording is consistent with the FCC’s pronouncements in the TRO. See discussion in Issue III-5 above.

Issue III-7, Section 2.25, Sub-Loop for Multiunit Premises Access: In this section, Verizon changed the definition of “technical feasibility” contained in the FCC’s rules from a positive assertion to a negative assertion. US LEC suggested that the definition in Section 2.25 should mirror the FCC’s rules.¹³ Verizon absolutely refused. The parties tentatively agreed to place both parties’ language in the definition, but Verizon did not provide US LEC the proposed language. Verizon took the time and effort to re-word the FCC rule in a manner that US LEC can only speculate Verizon believed would benefit it in the future to deny access of an unbundled network element. US LEC’s proposal should be adopted as it sets forth the wording from the FCC’s rules.

¹¹ *TRO*, fn. 1843.

¹² *Id.*, fn. 1126 and fn. 1843

¹³ See 47 C.F.R. 51.319(b)(1)(i).

IV. UNE TRO PROVISIONS

Issue IV-1, Section 3.1, Loops: US LEC has proposed to add a description of Loops in 3.1. After discussions with Verizon, the parties agreed that in those agreements that the updated definition of loops was not included, the Verizon definition would be used. In the more recent agreements, the additional language would not be needed.

Issue IV-2, Sections 3.1.1.1 and 3.1.1.2, Hi-Cap Loops: US LEC had requested to more specifically define the “written requests” necessary to order the DS1 loops and DS3 loops. The parties had tentatively agreed to the language as set forth in Exhibit B.

Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-3, Section 3.1.1.2, Hi-Cap Loops: Verizon has inserted an equivalency standard into the cap on unbundled DS3 loops, *i.e.*, “or two DS-3 equivalents”. The FCC rules provide that “[a] requesting telecommunications carrier may obtain a maximum of two unbundled DS3 loops for any single customer.”¹⁴ Neither the rule nor the text of the TRO reflects that the FCC adopted a cap based on “DS-3 equivalents” in connection with this cap. US LEC requested Verizon to provide support for the additional language. Verizon was unable to do so. US LEC, therefore, requests that the section conform to the FCC’s rules.

Issue IV-4, Section 3.1.13, Dark Fiber Loops: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

¹⁴ 47 C.F.R. § 51.319(a)(5)(iii).

Issue IV-4, Section 3.1.1.3, Dark Fiber Loops, Nonimpairment: US LEC objects to the inclusion of the phrase “class of locations” because it was unable to find any reference within the FCC’s TRO or the FCC’s rules that discussed impairment based on a “class of locations.” US LEC had asked Verizon for a reference to support the phrase. Verizon was unable to provide any citation for the inclusion in the amendment nor was Verizon able to explain the need for such a clause. US LEC, therefore, asks that the language be deleted.¹⁵

Issue IV-5, Section 3.1.2.2, FTTH Loops, Overbuilds: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

US LEC requests to add, word-for-word from the FCC rules,¹⁶ the conditions that Verizon must meet pursuant to the FCC’s rules to withhold access to overbuild FTTH loops. If Verizon’s position is that its template conforms to the FCC’s rules and the *TRO*, there should be no reason that it would not agree to this language. Nevertheless, US LEC was advised that the Verizon negotiators would be required to “take it back” and perhaps reword the proposed language. Verizon never responded back to US LEC.

The parties also disagree on what access on an unbundled basis Verizon must give US LEC to the FTTH loop if the copper loops or hybrid loops were not available to the customer premises sought to be served by US LEC. Verizon proposed a vague transmission path that was capable of “voice grade” service. The FCC’s rules require

¹⁵ US LEC also sought to make the section reciprocal on the reservations of rights in connection with nonimpairment findings. US LEC believes that Verizon had tentatively agreed to this revision.

¹⁶ 47 C.F.R. Section 51.319(a)(3).

that Verizon provide nondiscriminatory access to “a 64 kbps transmission path capable of voice grade service” over the FTTH on an unbundled basis.¹⁷ US LEC asks to have the language be the same as that contained in the FCC rules. US LEC’s reason for the clarification is that a transmission path less than 64 kbps could support “voice grade” service, but the quality of such voice grade service would not be as high as voice grade service on a 64 kbps transmission path. US LEC is concerned that Verizon would use the language to give less than a quality voice grade transmission path, but assert that it is meeting its unbundling obligation as agreed to by the parties under the language of the amendment.

During negotiations, Verizon stated that it might consider a change reflecting a “DS0” or similar language, but it disagreed with the FCC’s unbundling requirement (apparently, the 64 kbps requirement). Verizon did not wish to agree to the FCC’s rule language because it had a petition for reconsideration pending to change the language, and did not want to undermine its position by agreeing to wording contrary to its position in its pleading. Again, Verizon’s refusal to incorporate the exact wording from the FCC’s rules on the basis that Verizon disagrees with the obligation imposed by the FCC demonstrates that the template is not consistent with the FCC’s rules. Conversely, US LEC’s insistence that the FCC language be used rather than Verizon’s interpretation or desired results from a petition from consideration should not be considered as an “unreasonable” revision. US LEC’s language should be adopted.

Issue IV- 6, Section 3.1.4, IDLC Hybrid Loops: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled

¹⁷ 47 C.F.R. Section 51.319(a)(3)(ii)(C).

network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-7, Section 3.1.3.3, Hybrid Loops Generally, Narrowband Services:

Similar to the disagreement described in Issue IV-5, US LEC seeks to clarify subsection (b) to reflect that Verizon was required to make available a 64 kbps transmission path available to US LEC. As previously discuss, Verizon has refused to such revision.

The FCC's rule provides "nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (*i.e.*, equivalent to DS0 capacity)." Neither party's proposed language mirrors the FCC's language exactly. US LEC, however, is willing to incorporate the FCC wording into this section in lieu of US LEC's requested modification.

Issue IV-8, Section 3.1.4.2, IDLC Hybrid Loop: Paragraph 297 of the TRO states "if neither [a home run copper loop or through availability of Universal DLC systems], incumbent LECs must present requesting carriers a technically feasible method of unbundled access." Verizon presents US LEC only one option; construction of the necessary copper loop or UDLC facility as a special construction project. US LEC does not believe that the FCC intended to require the CLEC to bear the burden of constructing the network element in those instances where the ILEC chose to design its system to prevent it from meeting its obligation of unbundled network element access as required under Sections 251 and 271 of the Act. US LEC will not agree to the additional requirements, and maintains it is appropriate to use the more general words set forth in Paragraph 297, *i.e.*, "incumbent LECs must present requesting carriers a technically feasible method of unbundled access."

Issue IV-9, Section 3.1.4.3, IDLC Hybrid Loops, Intervals and Performance

Measures: US LEC proposes to delete the entire section because it has found no support for Verizon's position that Verizon's performance for providing loops pursuant to the section would not be subject to the performance metrics. US LEC asked Verizon to provide a citation to support this section. US LEC was advised that Verizon had no citation to provide, but would be providing a counterproposal language for this section. Verizon never provided such language to US LEC. The Commission should reject Verizon's attempt to be relieved from performance metrics associated with unbundled network elements.

Issue IV- 10, Section 3.2.1.1, Line Sharing, New Line Sharing: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-11, Section 3.3.1, Sub-Loop for Access to Multiunit Premises: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-12, Section 3.3.1.1 Inside Wire Sub-Loop: Similar to Issue IV-7, Verizon changed the definition of "technically feasible" contained in the FCC's rules from a positive assertion to a negative assertion. During negotiations, US LEC sought to revise the language to reflect the FCC's rules' language. Verizon refused to agree to such change. The parties tentatively agreed to place both parties' language in the definition,

but Verizon did not provide its proposed language. US LEC's proposal should be adopted.

Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-13, Section 3.3.2, Distribution Sub-Loop Facility: Similar to Issue IV-7, Verizon changed the definition of "technically feasible" contained in FCC's rules from a positive assertion to a negative assertion. US LEC sought to revise the language to reflect the FCC's rules' language. Verizon refused to agree to such change. The parties tentatively agreed to place both parties' language in the definition, but Verizon did not provide its proposed language. US LEC's proposal should be adopted.

Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-14, Section 3.4.1, Unbundled Local Switching, General Requirements: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

US LEC also wishes to ensure that the provisions of this section do not eliminate the use of the Tandem Switching for transit traffic, and added "stand alone Tandem Switching" for this purpose. US LEC agrees that unbundled tandem switching that is provided in conjunction with unbundled local switching is not required to be provided on an unbundled basis under Section 251 (but would still be required to be provided

pursuant to Section 271 of the Act) if a nonimpairment finding is made as to unbundled local switching.

Issue IV-15, Section 3.4.2: During negotiations, the parties had agreed that the language that had initially been deleted by US LEC referencing the “transition” plan would be re-inserted, but that the term “rolling transition plan” as used by the FCC in the text of the TRO¹⁸ and its rules would be added as a defined term to the TRO glossary and be substituted for “transmission plan.” Verizon had promised to provide revised language, but never did.

Issue IV-16, Section 3.5.1, Unbundled Interoffice Facilities, General Requirements: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

US LEC disagrees with Verizon’s wording in subsection (b) as to when Verizon is required to provide Dedicated Transport and Dark Fiber Transport. The parties had previously agreed that the language should more closely paraphrase the FCC’s rules, and US LEC had provided language for Verizon’s review, but received no response as to the counterproposal. US LEC’s proposed language should be adopted.

Issue IV-17, Section 3.5.2, Dedicated Transport: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-18, Section 3.5.2.1, Dedicated Transport: US LEC objects to this section unless additional language is added to address and recognize the concept of

¹⁸ TRO, ¶¶ 521-524.

“reverse collocation” as discussed in the FCC’s TRO to be consistent with the FCC’s decision in the TRO. The FCC found that when the ILEC had placed its equipment at the CLEC’s central office or switch location, or at any other non-affiliated entity’s premises, regardless of whether such equipment was in a cage, then there was so-called “reverse collocation.” By reason of the reverse collocation, the transmission facility between that location and the ILEC wire center or switch was included in the definition of “dedicated transport.”¹⁹ US LEC is requesting only Verizon’s unbundling obligation be consistent with the FCC’s decision, and that Verizon not be permitted to by default not be required to recognize “reverse collocations.”

US LEC had also added the phrase “subject to unbundling” in subsection (b) because such transmission paths are within the definition of “Dedicated Transport.” The FCC, however, found such transmission paths at the OCN level were not required to be unbundled pursuant to Section 251(c)(3). Nevertheless, US LEC submits that Verizon continues to have an obligation to make such network elements available to US LEC subject to Section 271 of the Act.

Issue IV-19, Section 3.5.2.2, Dedicated Transport, Cap on Dedicated Transport: Verizon has inserted an equivalency standard into the cap on unbundled DS3 Dedicated Transport, *i.e.*, “or twelve (12) DS-3 equivalents, *e.g.*, 336 DS1s”). The FCC rules provide that “[a] requesting telecommunications carrier may obtain a maximum of 12 unbundled dedicated DS3 circuits for any single route.”²⁰ Neither the rule nor the text of the TRO reflects that the FCC adopted a cap based on “DS-1 equivalents” in connection with this cap. US LEC had previously requested Verizon to provide support

¹⁹ TRO, fn. 1126.

²⁰ 47 C.F.R. § 51.319(e)(2)(iii).

for the additional language. Verizon was unable to do so. US LEC, therefore, requests that the section conform to the FCC's rules.

US LEC also requests that the phrase "or on all Routes" be deleted because it appears redundant or inconsistent with the text of the TRO and the FCC's rules. US LEC asked for a citation to support Verizon's contention that it should remain in the amendment. Verizon was unable to do so, but insisted that it remain. US LEC's request that the phrase "or on all Routes" is reasonable and should be approved.

Issue IV-20, Section 3.5.3, Dark Fiber Transport: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

Issue IV-21, Section 3.5.3.1, Dark Fiber Transport: US LEC objects to this section unless additional language is added to address and recognize the concept of "reverse collocation" as discussed in the FCC's TRO to be consistent with the FCC's decision in the TRO. The FCC found that when the ILEC had placed its equipment at the CLEC's central office or switch location, or at any other non-affiliated entity's premises, regardless of whether such equipment was in a cage, then there was so-called "reverse collocation." By reason of the reverse collocation, the transmission facility between that location and the ILEC wire center or switch was included in the definition of "dedicated transport."²¹ US LEC is requesting only Verizon's unbundling obligation be consistent with the FCC's decision, and that Verizon be required to recognize "reverse collocations."

²¹ TRO, fn. 1126.

Issue IV-22, Section 3.5.3.2, Dark Fiber Transport, Nonimpairment: US LEC

also requests that the “or on all Routes” be deleted because it appears redundant or inconsistent with the text of the TRO and the FCC’s rules. US LEC previously asked for a citation to support Verizon’s contention that it should remain in the amendment. Verizon was unable to do so, but insisted that it remain. US LEC’s request that the phrase “or on all Rates” is reasonable and should be approved.

Issue IV-22, Section 3.6.1. Commingling and Combinations: Verizon and US

LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

The parties also disagree on whether a non-recurring charge could be imposed on US LEC for commingling arrangements, and if such charges could be imposed, how the rate would be determined. US LEC disagrees that Verizon incurs any greater costs by a commingling arrangement of network elements. Verizon has been unable to provide any clarification of what costs it is attempting to recover that it did not recover through the current non-recurring charges for service orders, etc. under the Agreement or its wholesale tariffs. If there is such a charge, US LEC submits that it must be determined under Section 252(d) of the Act, and that Verizon may not unilaterally create a rate.

US LEC has deleted the last sentence in this section because it found no support for Verizon’s position that Verizon’s performance for providing combinations or commingled circuits pursuant to the section would not be subject to performance metrics. During negotiations, US LEC asked Verizon to provide a citation to support this section. US LEC was advised that Verizon had no citation to provide, but would be providing a

counterproposal language for this section. The Commission should reject Verizon's attempt to be relieved from performance metrics associated with unbundled network elements.

Issue IV-23, Section 3.6.2 and all subsections, Service Eligibility Criteria:

Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.²²

Also during negotiations, US LEC asked that for embedded EEL circuits that US LEC either not be required to re-certify to the eligibility requirement for each such circuit, or that US LEC be provided additional time to make such re-certification. US LEC does not necessarily dispute that EELs that were provisioned under the safe harbor rules under the FCC's Supplemental Clarification Order are not required as of October 2, 2003 to comply with the new service eligibility criteria in the FCC Rule 51.318. US LEC however, is concerned with the burden of having to inventory and confirm the eligibility of each circuit within a 30-day period. US LEC does not wish to have to make the choice of having to either issue a blanket certification, that may be incorrect, or face having its embedded circuits be deemed "Nonconforming" when in fact that may be conforming. US LEC seeks a reasonable period of time to conduct its due diligence, and either certify to the embedded EELs' eligibility or issue an order to convert the circuit to an analogous service to ensure that no disruption occurs to its end user's services.

More troubling to US LEC is Verizon's attempt to do a pre-audit on the combined or commingled circuits ordered by US LEC. The FCC has established general criteria

²² In Subsection 3.6.2.1, US LEC asked that the first 5 subsections be re-written to reflect the language in FCC Rule 51.318(b), and believed that Verizon had agreed to this revision.

that must be certified by the CLEC when it requests the combined or commingled high capacity circuits. US LEC believes that when it places an order for such circuits, it is certifying that the circuit meets such criteria. Verizon, however, seeks to add to the certification requirements by requiring US LEC provide the associated telephone number, the associated interconnection trunk identification, and other such specific information on the order form. US LEC asserts that Verizon is attempting to do a pre-audit of the circuit, which it is prohibited from conducting pursuant to the FCC's rules, and attempting to delay and impede US LEC's access to these network elements. Based on issues that arise during the provisioning process today with clarifications and placement of information on the ASR/LSR and how each Verizon processor interprets the requirements, US LEC can only envision excessive delays in ordering the commingled and combined high capacity circuits if Verizon's proposed additional irrelevant information is required. A blanket certification should be sufficient that US LEC, by its order, certifies that the circuit provisioned meets the service eligibility criteria. Verizon has the ability to conduct a yearly audit to verify the usage criteria, and, if a specific circuit(s) does not comply, Verizon is entitled to a true-up of the difference in pricing from the date the circuit was installed to the date on which the circuit is converted back to wholesale.

Verizon has also issued an industry letter stating that as of May 3, 2004, this information is required to be placed on the ASR/LSR to obtain high-capacity circuits. US LEC asks that the Commission enjoin Verizon from implementing this policy, as it is contrary and inconsistent with the FCC's rules.

For example, the FCC discusses the requirement for the assignment of a telephone number ("TN") for a DS1 loop and notes that in some instances, the CLEC may not

assign a telephone number until after the loop is provisioned.²³ The FCC specifically states that the CLEC need not have assigned a TN at the time of its request for the EEL. Verizon, however, proposes to require the CLEC to reflect a TN on its order before it can provision the EEL.

Verizon also attempts to apply nonrecurring charges for conversions contrary to FCC Rule 51.316(c) as well as a re-tagging fee. US LEC's position is that a re-tagging of the circuit is solely for Verizon's benefit and not a service that US LEC has requested. Consequently, US LEC should not be charged for Verizon's internal needs.

As discussed previously, US LEC disagrees that performance metrics do not apply to provisioned EELs, and does not agree the EEL order constitutes a project.

Finally, Verizon's audit language is one-sided and does not provide the protections that the FCC believed were necessary to balance the ILECs' need to confirm the usage criteria against the risk of the audit being used to harass and burden the CLECs. The FCC detailed the audit requirements for EELs and the obligations and rights each party had in connection with audits.²⁴ US LEC has proposed language that incorporates the FCC's reasoning that balances the ILEC's need to ensure compliance with the service eligibility requirements and the risk of baseless audits intended to impose additional costs on the CLECs. Verizon's language eliminates the elements of the audits that provide protection to the CLEC against unwarranted, intrusive, and costly audits. US LEC's language mirrors the language contained in the FCC's order, and provides the necessary balance to allow Verizon to conduct an audit to determine compliance with the usage requirements, but does not unduly burden US LEC in cooperating with the audits.

²³ *TRO*, ¶ 602 and fn. 1840.

²⁴ *FCC TRO* at ¶¶ 625 – 629.

Accordingly, US LEC does not want to give up any protections that the FCC found relevant in providing for the audit rights of the ILEC.

Issue IV-24, Section 3.7.1, Routine Network Modifications: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

US LEC's proposed language is drawn from the FCC's rules²⁵ and is more consistent than Verizon's initial language.

Issue IV-25, Section 3.7.2, Routine Network Modifications, Performance Plans: US LEC proposes to delete the entire section because it finds no support for Verizon's position that Verizon's performance for providing loops pursuant to the section would not be subject to the performance metrics. US LEC has asked Verizon to provide a citation to support this section. US LEC was advised that Verizon had no citation to provide, but would be providing a counterproposal language for this section. Verizon never provided such language to US LEC, and the template filed with its Petition has not changed the initial language in this section. The Commission should reject Verizon's attempt to be relieved from performance metrics associated with unbundled network elements.

Issue IV-26, Section 3.8.1, Nonconforming Facilities - Switching: Verizon and US LEC disagree as to the legal authority that requires Verizon to provide US LEC access to unbundled network elements or combinations of such elements. The discussion of this issue is found in Issue I-1.

²⁵ See 47 C.F.R. Sections 51.319(a)(8) and 51.319(e)(5).

Issue IV-27, Section 3.8.2, Other Nonconforming Facilities: Verizon and US LEC disagree on the length of the transition period for nonconforming facilities. US LEC objects to the short time period provided to transition nonconforming facilities as it wishes to ensure that its end users have no disruption to their services as a transition is conducted. US LEC is unable to agree that Verizon has the ability to disconnect any service without notice and an opportunity for US LEC to take action to cure, if such cure is necessary. US LEC believes that its proposal is reasonable, and should be adopted by the Commission.

V. PRICING ATTACHMENT TO THE TRO AMENDMENT

Issue V-1: US LEC objects to the Verizon proposal in this Attachment because it essentially requires US LEC to agree to whatever pricing Verizon decides that it wants to impose. US LEC will not agree to any rates unilaterally set by Verizon if those rates must be determined under Section 252(d)(2). US LEC has provided a method by which pricing should be determined and the procedures to incorporate the proper rates into the agreement, and that method should be adopted.

CONCLUSION AND PRAYER FOR RELIEF

Verizon's template agreement is not fully consistent with, or compliant with, the FCC's TRO or FCC rules. US LEC had initiated, in good faith, negotiations with Verizon to arrive at a mutually agreed upon TRO Amendment. Verizon discontinued negotiations with US LEC prior to February 20, 2004. US LEC submits that its proposed TRO Amendment reflects the requirements of the *TRO* and should be adopted by the Commission.

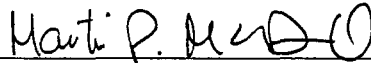
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing Response has been provided by U.S. Mail to Richard A. Chapkis, 201 North Franklin Street, FLTC0717, Tampa, Florida 33602; Aaron M. Panner & Scott H. Angstreich, Sumner Square, 1615 M. Street, NW, Suite 400, Washington, DC 20036 and Kimberly Caswell, 201 N. Franklin Street, Tampa, Florida 33601; and a copy has been furnished also by U.S. Mail to all the individuals listed on the attached list, on this 13 day of April, 2004.



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AMENDMENT NO. ____

to the

INTERCONNECTION AGREEMENT

between

[VERIZON LEGAL ENTITY]

and

[CLEC FULL NAME]

This Amendment [NUMBER] (the "Amendment") is made by and between Verizon [LEGAL ENTITY] ("Verizon"), a [STATE OF INCORPORATION] corporation with offices at [VERIZON STATE ADDRESS], and [FULL CLEC NAME], a [CORPORATION/PARTNERSHIP] with offices at [CLEC ADDRESS] ("US LEC"), and shall be deemed effective **[FOR CALIFORNIA]** upon Commission approval pursuant to Section 252 of the Act (the "Amendment Effective Date").] **[FOR ALL OTHER STATES:** on _____ (the "Amendment Effective Date").] Verizon and US LEC are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in Verizon's service territory in the [State or Commonwealth] of [STATE/COMMONWEALTH NAME OF AGREEMENT] (the "State"/"Commonwealth").

WITNESSETH:

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

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

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

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

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

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

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

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

Agreement. Pending such renegotiations, the terms and conditions of the Agreement shall be in effect to the same extent as if the terms and conditions of this Amendment that relate to the reversed provisions had not been executed.

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

SIGNATURE PAGE

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

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

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

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

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

Date: _____

Date: _____

TRO Attachment

1. General Conditions

- 1.1 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT: (a) Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of UNEs ("Combinations"), or UNEs commingled with wholesale services ("Commingling"), to US LEC - under the terms of this Amended Agreement only to the extent required by either both 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51 or as otherwise required by the [***State Commission TXT***] pursuant to 47 U.S.C. § 252(e)(3), and, (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to US LEC - to the extent that provision of access to such UNEs, Combinations, or Commingling is not required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 and is not otherwise required by the [***State Commission TXT***] pursuant to 47 U.S.C. § 252(e)(3).
- 1.2 US LEC- may use a UNE, a Combination, or Commingling only for those purposes for which Verizon is required by either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51 or as otherwise required by the [***State Commission TXT***] pursuant to 47 U.S.C. § 252(e)(3) to provide such UNE, Combination, or Commingling to US LEC -
- 1.3 ~~Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent Verizon is required by a change in Applicable Law to provide to US LEC pursuant to either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51 a UNE, a Combination, or Commingling that is not offered under the Amended Agreement to US LEC as of the Amendment Effective Date, the rates, terms, conditions for such UNE, Combination, or Commingling shall be as provided in an applicable Verizon tariff, or, in the absence of an applicable Verizon tariff, as mutually agreed in writing by the Parties and shall be effective as of the date of the change in Applicable Law.~~
- 1.4 ~~The Parties Verizon reserve_s the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction whether that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3), (b) is not a Network Element Verizon is required by 47 U.S.C. § 251(c)(3) to provide to US LEC***CLEC Acronym TXT***, or (c) is an item that Verizon is not required to offer to US LEC ***CLEC Acronym TXT***, at the rates set forth in the Amended Agreement. Verizon reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3), (b) is not a Network Element Verizon is required by 47 U.S.C. § 251(c)(3) to provide to ***CLEC Acronym TXT***, or (c) is an item that Verizon is not required to offer to ***CLEC Acronym TXT*** at the rates set forth in the Amended Agreement.~~
- 1.4.1.5 US LEC reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction that an item not identified in the Agreement or this Amendment as a Network Element (a) is a Network Element Verizon is required under 47 U.S.C. § 251(c)(3) to provide to US LEC, or (b) is an item that Verizon is otherwise required to offer to US LEC at rates to be determined by the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction.

2. TRO Glossary

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

2.1 Call-Related Databases.

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

2.2 Dark Fiber Loop.

An unactivated optical transmission facility within a LATA, without attached multiplexing, aggregation or other electronics, between a wire center and an Enterprise Customer's premises, that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

~~2.22.3~~ Dark Fiber Transport.

An unactivated optical transmission facility within a LATA, without attached multiplexing, aggregation or other electronics, between Verizon switches or wire centers, that is provided on an unbundled basis pursuant to either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51.

~~2.32.4~~ Dedicated Transport.

A DS1 or DS3 transmission facility between Verizon switches (as identified in the LERG) or wire centers, within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51. Transmission facilities or services provided between (i) a Verizon wire center or switch and (ii) a switch or wire center of US LEC or a third party are not Dedicated Transport, unless Verizon has installed any local switching equipment at the premises of US LEC or any other entity not affiliated with Verizon, regardless of whether Verizon has a cage.

~~2.42.5~~ DS1 Dedicated Transport.

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

~~2.52.6~~ DS3 Dedicated Transport.

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

~~2.62.7~~ DS1 Loop.

A digital transmission channel suitable for the transport of 1.544 Mbps digital signals that is provided on an unbundled basis pursuant to either 47 U.S.C. § 251(c)(3) or and 47

C.F.R. Part 51. This loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-1 Loop requires the electronics necessary to provide the DS-1 transmission rate.

2.72.8 DS3 Loop.

A digital transmission channel suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS-1 channels) that is provided on an unbundled basis pursuant to either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51. This Loop type is more fully described in Verizon TR 72575, as revised from time to time. A DS-3 Loop requires the electronics necessary to provide the DS-3 transmission rate.

2.9 Enterprise Customer.

An end user customer designated as an "enterprise" customer by the [***State Commission TXT***].

2.82.10 Enterprise Switching.

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

2.92.11 Feeder.

The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving wire center and a remote terminal or feeder/distribution interface.

2.102.12 FTTH Loop.

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

2.112.13 House and Riser Cable.

A distribution facility in Verizon's network, other than a fiber optic facility in a FTTH Loop, between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the Demarcation Point for such facility, that is owned and controlled by Verizon.

2.122.14 Hybrid Loop.

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

2.132.15 Line Sharing.

The process by which US LEC provides xDSL service over the same copper Loop that Verizon uses to provide voice service by utilizing the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions (the High Frequency Portion of the Loop, or "HFPL"). The HFPL includes the features, functions, and capabilities of the copper Loop that are used to establish a complete transmission path between Verizon's distribution frame (or its equivalent) in its Wire Center and the demarcation point at the end user's customer premises, and includes the high frequency

portion of any inside wire (including any House and Riser Cable) owned and controlled by Verizon.

2-142.16 Local Switching.

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

2.17 Mass Market Customer.

An end user customer designated as a "mass market" customer by the [***State Commission TXT***].

2-152.18 Mass Market Switching.

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

2-162.19 Nonconforming Facility.

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

in a new build environment; (m) FTTH Loops (lit or unlit) in an overbuild environment, subject to the limited exceptions set forth herein; or (n) any facility or class of facilities as to which the [***State Commission TXT***] or the FCC, on or after October 2, 2003, makes a general finding of nonimpairment.

2-172.20 Packet Switching.

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

2-182.21 Qualifying Service.

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

2.22 Reverse Collocation

Installation of local switching equipment by Verizon at US LEC's premises or any other entity not affiliated with Verizon, or in a common location, regardless of whether Verizon has a cage, for purposes of interconnection. {fn 1126 & 1843}

2-192.23 Route.

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

2-202.24 Signaling.

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

2-242.25 Sub-Loop for Multiunit Premises Access.

Any portion of a Loop, ~~other than a FTTH Loop,~~ that is technically feasible to access at a terminal in Verizon's outside plant at or near a multiunit premises. ~~It is not technically feasible to access a portion of a Loop at a terminal in Verizon's outside plant at or near a multiunit premises if a technician must access the facility by removing a splice case to reach the wiring within the cable.~~ A point of technically feasible access is any point in Verizon's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premise.

2-222.26 Sub-Loop Distribution Facility.

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

2-232.27 Tandem Switching.

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

3. UNE TRO Provisions

3.1 Loops. Verizon shall provide nondiscriminatory access to stand-alone local loops comprised entirely of copper wire or cable, where available. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology.

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

3.1.1.1 DS1 Loops. Upon US LEC ~~***CLEC Acronym TXT***~~'s submission of a Local Service Request (LSR), Access Service Request (ASR) of other form agreed to by the Parties written request, Verizon shall provide US LEC ~~***CLEC Acronym TXT***~~ with nondiscriminatory access to a DS1 Loop on an unbundled basis under the Amended Agreement in accordance with, but only to the extent required by, either 47 U.S.C. § 251(c)(3) and/or 47 C.F.R. Part 51 or otherwise required by [~~***State Commission TXT***~~] pursuant to 47 U.S.C. § 252(e)(3).

~~3.1.1.23.1.1~~ DS3 Loops. Upon US LEC ~~***CLEC Acronym TXT***~~'s written submission of a LSR, ASR, or other form agreed to by the Parties request, Verizon shall provide ~~***CLEC Acronym TXT***~~ US LEC with nondiscriminatory access to a DS3 Loop on an unbundled basis under the Amended Agreement in accordance with, but only to the extent required by either 47 U.S.C. § 251(c)(3) or 47 C.F.R. Part 51 or otherwise required by [~~***State Commission TXT***~~] pursuant to 47 U.S.C. § 252(e)(3), 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

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

3.1.13. Dark Fiber Loops. Upon ~~US LEC~~ ~~***CLEC Acronym TXT***~~'s written request, Verizon shall provide ~~US LEC~~ ~~***CLEC Acronym TXT***~~ with nondiscriminatory access to a Dark Fiber Loop on an unbundled basis under the Amended Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 or as otherwise required by the [~~US LEC~~ ~~***State Commission TXT***~~] pursuant to 47 U.S.C. § 252(e)(3), or 47 U.S.C. § 271, or other applicable law or regulation.

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

3.1.2 FTTH Loops.

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

3.1.2.2 Overbuilds. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, ~~US LEC~~ ~~***CLEC Acronym TXT***~~ shall not be entitled to obtain access to a FTTH Loop (or any segment thereof) on an unbundled basis where Verizon has deployed the subject Loop parallel to, or in replacement of, an existing copper Loop, and (A) Verizon maintains the existing copper loop connected to the particular customer premises after deploying the FTTH loop and provides nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loop pursuant to section 51.319 (a)(3)(iii), and (B) Verizon shall restore the copper loop to serviceable condition upon request; provided, however, that if such a Loop replaces a copper Loop that Verizon has retired, and there are no other available copper Loops or Hybrid Loops, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide ~~US LEC~~ ~~***CLEC Acronym TXT***~~ with nondiscriminatory access on an unbundled basis to a 64 kbps

transmission path from Verizon's serving wire center to the demarcation point at the end user's customer premises capable of providing narrowband voice-grade services.

3.1.3 Hybrid Loops Generally.

3.1.3.1 Packet Switching. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, US LEC ~~***CLEC Acronym TXT***~~ shall not be entitled to obtain access to the Packet Switching Capability of any Hybrid Loop on an unbundled basis.

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

3.1.3.3 Narrowband Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, when ~~***CLEC Acronym TXT***~~ US LEC seeks access to a Hybrid Loop for the provision to its customer of "narrowband services," as such term is defined by the FCC, then in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall either (a) provide nondiscriminatory access under the Amended Agreement to a spare home-run copper Loop serving that customer on an unbundled basis, or in Verizon's sole discretion, (b) provide nondiscriminatory access under the Amended Agreement, on an unbundled basis, to a 64 kbps voice-grade transmission path between the main distribution frame (or equivalent) in the end user's serving wire center and the end user's customer premises, using time division multiplexing technology.

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

3.1.4 IDLC Hybrid Loops.

Notwithstanding any other provision of the Agreement, Section 3.1.3 above, or any Verizon tariff or SGAT, if [~~***CLEC Acronym TXT***~~ US LEC] requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier

(over a Hybrid Loop), Verizon shall, as and to the extent required by either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51, provide [~~***CLEC Acronym TXT***US LEC~~] unbundled access to a Loop capable of narrowband voice-grade service to the end user customer served by the Hybrid Loop.

3.1.4.1 ~~Verizon will endeavor to provide [~~***CLEC Acronym TXT***US LEC~~] with an existing copper Loop or a Loop served by existing Universal Digital Loop Carrier ("UDLC"). Standard recurring and non-recurring Loop charges will apply. In addition, a non-recurring charge will apply whenever a line and station transfer is performed.~~

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

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

3.2 Line Sharing.

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

3.2.1 Line Sharing.

3.2.1.1 New Line Sharing. Verizon shall be under no obligation to provision new Line Sharing arrangements under the Agreement or this Amendment; *provided, however*, that as and to the extent required by either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51, Verizon shall provide new Line Sharing arrangements on a transitional basis pursuant to rates, terms, and conditions offered by Verizon in a separate agreement that shall be subject to FCC-prescribed pricing rules, consistent with 47 C.F.R. § 51.219(a)(1)(i)(B).

3.2.1.2 Grandfathered Line Sharing. Any existing Line Sharing arrangement over a copper Loop or Sub-Loop in place with an end user customer of ~~***CLEC Acronym TXT***US LEC~~ will be grandfathered at existing rates, provided ~~***CLEC Acronym~~

~~TXT***US LEC~~ began providing xDSL service to that end user customer using Line Sharing over that Loop or Sub-Loop prior to October 2, 2003, and only so long as ~~***CLEC Acronym~~
~~TXT***US LEC~~ has not ceased providing xDSL service to that end user customer at the same location over that Loop or Sub-Loop.

3.3 Sub-Loop.

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

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

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

3.3.1.1.1.1 ~~***CLEC Acronym~~ ~~TXT***US LEC~~ shall locate its facilities within cross connect distance of the point of interconnection on such cable. Facilities are within cross connect distance of a point of interconnection if they are located in the same room (not including a hallway) or within twelve (12) feet of such point of interconnection.

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

3.3.1.1.1.3 ~~***CLEC Acronym~~ ~~TXT***US LEC~~'s facilities cannot be attached, otherwise

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

- 3.3.1.1.1.4 ~~***CLEC Acronym TXT***US LEC~~ shall identify its facilities as those of ~~***CLEC Acronym TXT***US LEC~~.
- 3.3.1.1.2 To provide ~~***CLEC Acronym TXT***US LEC~~ with access to a House and Riser Cable, Verizon shall not be obligated to (a) move any Verizon equipment, (b) secure any right of way for ~~***CLEC Acronym TXT***US LEC~~, (c) secure space for ~~***CLEC Acronym TXT***US LEC~~ in any building, (d) secure access to any portion of a building for ~~***CLEC Acronym TXT***US LEC~~ or (e) reserve space in any building for ~~***CLEC Acronym TXT***US LEC~~.
- 3.3.1.1.3 Verizon shall perform cutover of a Customer to ~~***CLEC Acronym TXT***US LEC~~ service by means of a House and Riser Cable subject to a negotiated interval. Verizon shall install a jumper cable to connect the appropriate Verizon House and Riser Cable pair to ~~***CLEC Acronym TXT***US LEC~~'s facilities, and Verizon shall determine how to perform such installation. ~~***CLEC Acronym TXT***US LEC~~ shall coordinate with Verizon to ensure that House and Riser Cable facilities are converted to ~~***CLEC Acronym TXT***US LEC~~ in accordance with ~~***CLEC Acronym TXT***US LEC~~'s order for such services.
- 3.3.1.1.4 If proper ~~***CLEC Acronym TXT***US LEC~~ facilities are not available at the time of installation, Verizon shall bill ~~***CLEC Acronym TXT***US LEC~~, and ~~***CLEC Acronym TXT***US LEC~~ shall pay to Verizon, the Not Ready Charge set forth in the Agreement and the Parties shall establish a new cutover date.
- 3.3.1.1.5 Verizon shall perform all installation work on Verizon equipment in connection with ~~***CLEC Acronym TXT***US LEC~~'s use of Verizon's House and Riser Cable. All ~~***CLEC Acronym TXT***US LEC~~ equipment connected to a House and Riser Cable shall comply with applicable industry standards.
- 3.3.1.1.6 Verizon shall repair and maintain a House and Riser Cable at the request of ~~***CLEC Acronym TXT***US LEC~~. ~~***CLEC Acronym TXT***US LEC~~ shall be solely responsible for investigating and determining the source of all troubles and for providing Verizon with appropriate dispatch information based on its test

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

3.3.1.2 Single Point of Interconnection. In accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, upon request by ~~***CLEC Acronym TXT***US LEC~~ and provided that the conditions set forth in Subsections 3.3.1.2.1 and 3.3.1.2.2 are satisfied, the Parties shall negotiate in good faith an amendment to the Amended Agreement memorializing the terms, conditions and rates under which Verizon will provide a single point of interconnection at a multiunit premises suitable for use by multiple carriers:

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

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

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

3.4 Unbundled Local Circuit Switching.

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

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

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

3.5 Unbundled Interoffice Facilities.

3.5.1 General Requirements. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003: (a) Verizon shall provide Dedicated Transport and Dark Fiber Transport under the Agreement in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51; and (b) Verizon shall provide Dedicated

Transport and Dark Fiber Transport to ~~***CLEC Acronym TXT***US LEC~~ only if ~~***CLEC Acronym TXT***~~ obtains access to the subject facility connects Verizon's switches or wire centers in order to provide a "Qualifying Service" on a common carrier basis.

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

3.5.2.1 Upon receipt of a LSR, ASR or other agreed-upon form from US LEC ~~***CLEC Acronym TXT***~~'s written request, Verizon shall provide US LEC ~~***CLEC Acronym TXT***~~ with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt:- (a) a transmission facility or service between a Verizon switch or wire center and a switch or wire center of US LEC ~~***CLEC Acronym TXT***~~ or a third party is not Dedicated Transport unless Verizon has installed any local switching equipment at the premises of US LEC or any other entity not affiliated with Verizon, regardless of whether Verizon has a cage; and (b) a transmission facility or service that uses an OCn interface or a SONET interface is not Dedicated Transport, subject to unbundling. Subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue providing the Nonconforming Facilities described in clauses (a) and (b) above under the Agreement or the Amended Agreement.

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

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

3.5.3 Dark Fiber Transport. On or after October 2, 2003, notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, and in accordance

with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51:

3.5.3.1 Upon receipt of a LSR, ASR or other agreed-upon form -from US LEC ~~***CLEC Acronym TXT***~~'s written request, Verizon shall provide US LEC ~~***CLEC Acronym TXT***~~ with nondiscriminatory access to Dark Fiber Transport on an unbundled basis pursuant to the Amended Agreement. For the avoidance of doubt, Dark Fiber Transport does not include a dark fiber facility between (a) a Verizon switch or wire center and (b) a switch or wire center of US LEC ~~***CLEC Acronym TXT***~~ or any third party unless Verizon has installed any local switching equipment at the premises of US LEC or any other entity not affiliated with Verizon, regardless of whether Verizon has a cage, and subject to the provisions of Section 3.8 below, Verizon is under no obligation to provide or continue providing such Nonconforming Facility under the Amended Agreement.

3.5.3.2 Nonimpairment. Subject to the provisions of Section 3.8 below, Verizon shall be under no obligation to provide or continue providing US LEC ~~***CLEC Acronym TXT***~~ with nondiscriminatory access to Dark Fiber Transport on an unbundled basis under the Agreement or the Amended Agreement on a particular Route upon a finding by the [~~***State Commission TXT***~~] or the FCC that requesting telecommunications carriers are not impaired without access to unbundled Dark Fiber Transport on the subject Route(s) ~~or on all Routes~~. Any Dark Fiber Transport previously made available to US LEC ~~***CLEC Acronym TXT***~~ on the subject Route(s) shall be considered a Nonconforming Facility as of the effective date of the nonimpairment finding, subject to an amendment agreed to by the Parties in writing.

3.6 Commingling and Combinations.

3.6.1 Commingling. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, but subject to the conditions set forth in the following section, Verizon will not prohibit the commingling of an UNE unbundled Network Element or a combination of UNEs unbundled Network Elements obtained under the Agreement or Amended Agreement pursuant to either 47 U.S.C. § 251(c)(3) or and 47 C.F.R. Part 51, or under an Verizon UNE tariff ("Qualifying UNEs"), with wholesale services obtained from Verizon under a Verizon access tariff or separate non-251 agreement ("Qualifying Wholesale Services"), but only to the extent and so long as commingling restrictions are prohibited by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Moreover, to the extent and so long as required by either 47 U.S.C. § 251(c)(3) or and 47 U.S.C. Part 51, Verizon shall, upon request of ~~***CLEC Acronym TXT***~~ US LEC, perform the functions necessary to commingle Qualifying UNEs with Qualifying Wholesale Services. The rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the Qualifying Wholesale Services, and the rates, terms and conditions of the Amended Agreement or the Verizon UNE tariff, as applicable, will apply to the Qualifying UNEs; ~~provided, however, that a nonrecurring charge will only apply for each to new UNE circuits that are is part of a commingled arrangement, as set forth in the Pricing Attachment to this Amendment. This charge will not apply for access circuits converted to UNEs or for UNEs~~

~~converted to access circuits. This charge is intended to offset Verizon's costs of implementing and managing commingled arrangements. "Ratcheting," as that term is defined by the FCC, shall not be required. Qualifying UNEs that are commingled with Qualifying Wholesale Services are not included in the shared use provisions of the applicable tariff. Verizon's performance in connection with the provisioning of commingled facilities and services shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.~~

3.6.2 Service Eligibility Criteria for UNE Certain Combinations and Commingled Facilities and Services. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT to the contrary:

3.6.2.1 Verizon shall not be obligated to provide:

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

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

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

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

~~3.6.2.1.5 unbundled DS3 Dedicated Transport commingled with DS3 channel termination service;~~

unless and until ~~***CLEC Acronym TXT***US LEC~~ : (a) certifies in writing to Verizon for each ~~DS1 circuit or DS1 equivalent circuit that, on or after October 2, 2003,~~ it is in compliance with each of the service eligibility criteria set forth in 47 C.F.R. § 51.318. ~~***CLEC Acronym TXT***US LEC~~ must remain in compliance with said service eligibility criteria for so long as ~~***CLEC Acronym TXT***US LEC~~ continues to receive the aforementioned combined or commingled facilities and/or services from Verizon. The service eligibility criteria shall be applied to each DS1 circuit ~~or DS1 equivalent circuit~~. If the circuit is, becomes, or is subsequently determined to be, noncompliant, the noncompliant circuit will be treated as a Nonconforming Facility subject to the provisions of Section 3.8 below. The foregoing shall apply whether the circuits in question are being provisioned to establish a new circuit or to convert an existing wholesale service, or any part thereof, to ~~UNE unbundled network elements~~. For existing circuits, the CLEC must re-certify in writing for each DS1 circuit or DS1 equivalent within 30 days of the Amendment Effective Date. ~~Circuits not re-certified shall be Nonconforming Circuits.~~

3.6.2.2 Each ~~w~~Written certification to be provided by ~~***CLEC Acronym TXT***US LEC~~ pursuant to Section 3.6.2.1 above must comply

~~with contain the following requirements information for all Combination each DS1 circuit or DS1 equivalent: (a) a the local number assigned to each combined DS1 circuit or DS1 equivalent; (b) a the local numbers assigned to each combined DS1 equivalent on a DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was local number must be established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the a collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6) or Reverse Collocation in the same LATA as the US LEC customer, and not under a federal collocation tariff; (e) one the interconnection trunk circuit identification number that serves for every twenty-four (24) combined each DS1 circuits. There must be one such identification number per every 24 DS1 circuits; and (f) a Class 5 the local switch that serves each combined DS1 circuit. When submitting an ASR for a circuit, tThis information must be contained in the written certification provide by US LEC in compliance with Section 3.6.2.7 Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.~~

3.6.2.3 ~~The~~ No nonrecurring charges apply for any access circuit converted to UNEs or for conversions UNEs converted to access circuits as specified in the Pricing Attachment to this Amendment and apply for each circuit converted.

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

~~3.6.2.5 All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access. If such change in circuit ID requires that the affected circuit(s) be retagged, then a retag fee per circuit will apply as specified in the pricing attachment.~~

~~3.6.2.6 3.6.2.5 All requests for conversions in excess of 24 circuits will be handled as a project and will be excluded from all ordering and provisioning metrics.~~

~~3.6.2.7 3.6.2.6~~ Once per calendar year, Verizon may obtain and pay for an independent auditor to audit US LEC ***CLEC Acronym TXT***'s compliance in all material respects with the service eligibility criteria applicable to EELs Combinations. Any such audit shall be performed in accordance with the standards established by the American Institute for Certified Public Accountants, and may include, at Verizon's discretion, the examination of a sample selected in accordance with the independent auditor's judgment. To the extent the independent auditor's report concludes that US LEC ***CLEC Acronym TXT*** failed to comply with the service eligibility criteria for any DS1 or DS1 equivalent circuit, then US LEC ***CLEC Acronym TXT*** must convert all each such

noncompliant circuits to the appropriate service, true up any different in payments, and make the correct payments on a going-forward basis, ~~and~~. In the event that the independent auditor's report concludes that US LEC failed to comply in all material respects with the service eligibility criteria, US LEC will reimburse Verizon for the entire cost of the independent auditor within thirty (30) days after receiving a statement of such costs from Verizon. Should the independent auditor confirm US LEC ***CLEC Acronym TXT***'s compliance in all material respects with the service eligibility criteria for each DS1 or DS1 equivalent circuit, then Verizon will reimburse US LEC ***CLEC Acronym TXT*** for US LEC's cost associated with the audit. ~~shall provide to the independent auditor for its verification a statement of US LEC ***CLEC Acronym TXT***'s out-of-pocket costs of complying with any requests of the independent auditor, and Verizon shall then reimburse US LEC ***CLEC Acronym TXT*** for its out-of-pocket costs within thirty (30) days of the auditor's verification of the same.~~ US LEC ***CLEC Acronym TXT*** shall maintain records adequate to support its compliance with the service eligibility criteria for each DS1 or DS1 equivalent circuit for at least eighteen (18) months after the service arrangement in question is terminated.

3.7 Routine Network Modifications.

- 3.7.1 General Conditions. In accordance with, but only to the extent required by, both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall make such routine network modifications, at the rates and charges set forth in the Pricing Attachment to this Amendment, as are necessary to permit access by ~~***CLEC Acronym TXT***~~ US LEC to the Loop, Dedicated Transport, and Dark Fiber Transport facilities available under the Amended Agreement, including DS1 Loops and DS1 Dedicated Transport, and DS3 Loops and DS3 Dedicated Transport, and Dark Fiber Loops and Dark Fiber Transport. ~~Where facilities are unavailable, Verizon will not perform trenching, pull cable, construct new Loops or Transport or install new aerial, buried, or underground cable to provision an order of ***CLEC Acronym TXT***~~ US LEC . Verizon will perform routine ~~Routine~~ network modifications applicable to Loops or Transport, and such routine network modifications may include, but are not limited to: ~~rearranging or splicing of in-place cable at existing splice points; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; deploying a new multiplexer or reconfiguring an existing multiplexer; accessing manholes; and deploying bucket trucks to reach aerial cable. Routine network modifications applicable to Dark Fiber Transport also may include, but are not limited to, splicing of in-place dark fiber at existing splice points; accessing manholes; deploying bucket trucks to reach aerial cable; and routine activities, if any, needed to enable ***CLEC Acronym TXT***~~ US LEC to light a Dark Fiber Transport facility that it has obtained from Verizon under the Amended Agreement. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier or the placement of new cable.
- 3.7.2 Performance Plans. ~~Verizon's performance in connection with the provisioning of Loops or Transport (including Dark Fiber Transport) for which routine network modifications are necessary shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.~~

3.8 Transitional Provisions for Nonconforming Facilities.

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

3.8.1.1 Mass Market Switching. Upon a finding by the [~~***State Commission TXT***~~] that no impairment exists in a particular market with respect to Mass Market Switching, Verizon will continue accepting orders under the Amended Agreement for Mass Market Switching for a transitional period of five (5) months. Thereafter, Verizon shall be under no obligation to accept new orders for Mass Market Switching. Counting from the date of the [~~***State Commission TXT***~~]'s order finding no impairment in a particular market or markets, ~~***CLEC Acronym TXT***US LEC~~ shall submit orders to Verizon to migrate the embedded base of its end user customers in the subject market off of Verizon's Mass Market Switching product to any other switching service or product made available by Verizon under separate agreement, or to ~~***CLEC Acronym TXT***US LEC~~'s own or a third party's facilities, in accordance with the following schedule: (a) during month 13, ~~***CLEC Acronym TXT***US LEC~~ must submit orders to migrate one-third of its embedded base of end user customers; (b) during month 20, ~~***CLEC Acronym TXT***US LEC~~ must submit orders to migrate one-half of the remaining embedded base of end user customers; and (c) during month 27, ~~***CLEC Acronym TXT***US LEC~~ must submit orders to migrate the remainder of its embedded base of end user customers. For purposes of the foregoing schedule, customers already in a "rolling" transition plan established by the [~~***State Commission TXT***~~] shall not be included in the embedded base.

3.8.1.2 Enterprise Switching. Verizon will provide ~~***CLEC Acronym TXT***US LEC~~ with at least ~~ninety~~ thirty (930) days advance written notice of the date on which Verizon will cease provisioning Enterprise Switching to ~~***CLEC Acronym TXT***US LEC~~. Verizon agrees to continue provisioning Enterprise Switching to ~~***CLEC Acronym TXT***US LEC~~ under the terms of the Agreement during a transitional period, which transitional period shall end on the date set forth in the notice. ~~Beginning January 1, 2004, ***CLEC Acronym TXT*** shall have ninety (90) days in which to submit orders to Verizon to migrate its embedded base of end user customers served by Verizon's Enterprise Switching product to any other switching service or product made available by Verizon under separate agreement, or to ***CLEC Acronym TXT***'s own or a third party's facilities.~~

3.8.2 Other Nonconforming Facilities. With respect to any Nonconforming Facility not addressed in Section 3.8.1 above, Verizon will notify ~~***CLEC Acronym TXT***US LEC~~ in writing as to any particular unbundled facility previously made available to ~~***CLEC Acronym TXT***US LEC~~ that is or becomes a Nonconforming Facility, as defined herein. The Parties acknowledge that such notice was issued prior to the execution of this Amendment with respect to certain Nonconforming Facilities. During a transitional period of ~~ninety~~ thirty (930) days from the date of such notice, Verizon agrees to continue

providing the Nonconforming Facilities addressed in the subject notice(s) to ~~***CLEC Acronym TXT***US LEC~~ under the terms of the Agreement. At the end of that ~~ninety thirty-(930)~~ day period, unless ~~***CLEC Acronym TXT***US LEC~~ has submitted an LSR or ASR, as appropriate, to Verizon requesting disconnection of the Nonconforming Facility, Verizon shall convert the subject Nonconforming Facilities to an analogous access service, if available, or if no analogous access service is available, to such other service arrangement as Verizon and US LEC ~~***CLEC Acronym TXT***~~ may agree upon (e.g., a separate agreement at market-based rates or resale); *provided, however*, that where there is no analogous access service, if ~~***CLEC Acronym TXT***US LEC~~ and Verizon have failed to reach agreement as to a substitute service within such ~~ninety thirty-(930)~~ day period, then Verizon may disconnect the Nonconforming Facilities; and *provided, further*, that with respect to any dark fiber facility that, pursuant to the terms of this Amendment, is (or becomes) a Nonconforming Facility, the transition period shall be one hundred and twenty ninety-(1290) days from the date of the aforementioned notice; and *provided further*, that unless the parties have been able to negotiate a suitable transitional services agreement for such dark fiber facilities within that one hundred and twenty ninety-(1290) day period, Verizon shall no longer be obligated to provide the Nonconforming Facility in question to US LEC ~~***CLEC Acronym TXT***US LEC~~. Where the Nonconforming Facilities are converted to an analogous access service, Verizon shall provide such access services at the available rates selected by US LEC month-to-month rates, and in accordance with the terms and conditions, of Verizon's applicable access tariff, with the effective bill date being the first day following the ninety thirty-(930) day notice period. No nonrecurring charges for service termination, connection disconnection, reconnection, or other charges associated with the installation of a new service shall apply to the conversion of Nonconforming Facilities to an analogous access service. US LEC ~~***CLEC Acronym TXT***~~ shall pay all applicable termination charges, if any, for any Nonconforming Facilities that ~~***CLEC Acronym TXT***US LEC **~~ requests Verizon to disconnect, or that Verizon disconnects as a result of the Parties' failure to reach agreement on a substitute service. —

Pricing Attachment to the TRO Amendment

1. General

1.1 As used in this Attachment:

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

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

1.2 Charges for Services provided under the Amended Agreement shall be those set forth in Appendix A of this Pricing Attachment and in the Amended Agreement (including any cross references therein to applicable tariffs). For rate elements provided in Appendix A of this Pricing Attachment that do not include a Charge, if any, whether marked as "TBD" or otherwise, Verizon is developing such Charges and has not finished developing such Charges as of the Amendment Effective Date. Any additional changes to the Pricing Attachment will be negotiated between the Parties. When Verizon finishes developing such a Charge, Verizon shall notify ***CLEC Acronym TXT*** in writing of such Charge in accordance with, and subject to, the notices provisions of the Amended Agreement and thereafter shall bill ***CLEC Acronym TXT***, and ***CLEC Acronym TXT*** shall pay to Verizon, for Services provided pursuant to this Amendment on the Amendment Effective Date and thereafter in accordance with such Charge. Any Charges set out in a notice provided by Verizon to ***CLEC Acronym TXT*** pursuant to this Section 1.2 shall be deemed to be a part of Appendix A of this Pricing Attachment immediately after Verizon sends such notice to ***CLEC Acronym TXT*** and thereafter.

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

1.4 In the absence of Charges for a Service established pursuant to Sections 1.2 through 1.3 of this Attachment, the Charges for the Service shall be mutually agreed to by the Parties in writing.] However, in the absence of such agreement, Verizon shall not be excused from its obligation to provide any service, facility, or network element identified in the Agreement or this Amendment. Either party shall be entitled to petition the [***State Commission TXT***] to arbitrate pursuant to Section 252(b) of the Act the Charges for any such service, facility, or network element as to which no agreed Charges exist, and ***CLEC Acronym TXT*** shall be obligated to pay the arbitrated Charges for all services, facilities, and network elements used by it while the arbitration request was pending.

All Charges contained in Appendix A shall be considered interim rates subject to true-up, unless and until such Charges have been specifically determined by the [***State Commission TXT***], or by the FCC acting pursuant to Section 252(e)(6) of the Act, to be a just and reasonable rate within the terms of the Act. If the [***State Commission TXT***] or the FCC, as the case may be, determines that the just and reasonable rate for a particular service is different from that set forth in Appendix A, then any services used by ***CLEC Acronym TXT*** shall be true-up to the just and reasonable rate retroactive to the date such Charges became part of Appendix A, and the just and reasonable rate so determined shall be deemed to be a part of Appendix A of this Pricing Attachment immediately thereafter.

