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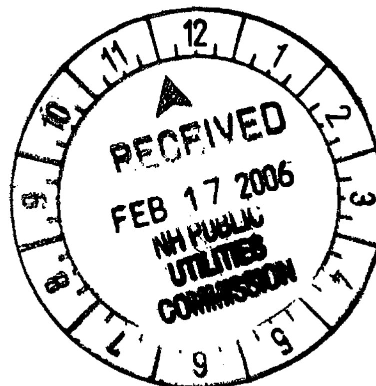
February 17, 2006




**HAND DELIVERED**

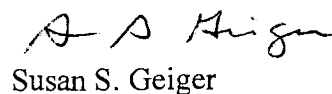
Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: ***DT 05-083 and DT 06-012***

Dear Ms. Howland:

Enclosed for filing with regard to the above-captioned matters are an original and eight copies of a brief filed on behalf of BayRing Communications, Inc. and segTEl, Inc. Please do not hesitate to contact me if you have any questions. Thank you.

Very truly yours,



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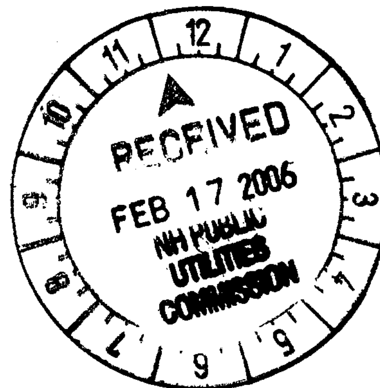


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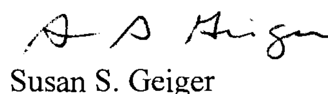

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**THE STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

| | |
|---|---|
| **Verizon NH Wire Center Investigation)** | **Docket No. DT 05-083** |
| **)** | |
| **And )** | |
| **Verizon NH Revisions to Tariff 84 )** | **Docket No. DT 06-012** |

**BRIEF OF BAYRING COMMUNICATIONS**

**AND**

**segTEL, INC.**

**Susan S. Geiger**
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## I. INTRODUCTION/PROCEDURAL BACKGROUND

### A. Docket Nos. DT 05-034 and DT 05-083

On February 4, 2005, the Federal Communications Commission issued an order which, *inter alia,* established standards for determining wire centers in which Incumbent Local Exchange Carriers (ILECs) were no longer required to provide certain Unbundled Network Elements (UNEs) pursuant to section 251 of the Telecommunications Act of 1996. *See In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* FCC 04-290 (February 4, 2005) (the TRRO). On February 22, 2005, Verizon –New Hampshire (Verizon) filed revisions to its Tariff No. NHPUC 84 regarding Verizon's obligation to provide certain unbundled network elements (UNEs) (i.e. DS1 loops, DS3 loops and dedicated high-capacity transport facilities) to Competitive Local Exchange Carriers (CLECs) in light of the TRRO. The filing purported to implement the TRRO and contained provisions allowing Verizon to refuse new orders for UNEs determined to be "non-impaired", to disconnect delisted UNEs and to charge higher rates for the UNEs that Verizon continued to provide during a specified transition period. The aforementioned tariff filing was docketed by the Commission in DT 05-034. The Commission rejected Verizon's proposed removal of dark fiber loops from the tariff (due to Verizon's continuing section 271 obligations in New Hampshire) but allowed the tariff provisions regarding DS1 loops, DS3 loops and dedicated high-capacity transport facilities to go into effect by operation of law without a formal adjudicative process because of time constraints and other limitations imposed by RSA 378:6, IV. which the

Commission stated prevented it from conducting "the depth of review needed for changes of the scope and complexity posed in this case." *Letter of Debra A. Howland, Executive Director and Secretary to Ms. Lisa A. Thorne, Vice President-New Hampshire,* Docket No. DT 05-034 (April 22, 2005). [1]

On the same day that the Commission issued the secretarial letter allowing the above-referenced tariff revisions to go into effect by operation of law, the Commission also issued an Order of Notice instituting DT 05-083.[2] That Order of Notice stated that the purpose of Docket No. DT 05-083 was to investigate the tariff revisions filed in DT 05-034, to determine which wire centers in New Hampshire are affected by the TRRO and what procedure the Commission should adopt for future determinations with respect to affected wire centers. The Order of Notice also stated that the Commission reserved the right to consider in Docket DT 05-083 whether Verizon remains obligated, notwithstanding the provisions of section 251 and the TRRO, to provide the affected UNEs by virtue of its status as a Regional Bell Operating Company (RBOC) that has obtained authority to provide interLATA long-distance service in New Hampshire pursuant to section 271 of the TAct.

**B. Docket No. DT 06-012**

On January 11, 2006, Verizon filed further revisions to its Tariff No. 84 relating to unbundled IOF Transport and High Capacity Loops. These revisions, if approved by the Commission, would enable Verizon, in its sole discretion, to convert delisted dedicated transport and high capacity loop UNEs purchased pursuant to section 251 to

[1] Verizon has challenged this letter in a federal court action filed against the New Hampshire Public Utilities Commission and the three Commissioners. *See Verizon New England, Inc. v. New Hampshire Public Utilities Commission et al,* United States District Court for the District of New Hampshire, Docket No. 05-CV-94-PB.

[2] Verizon has challenged this Order of Notice in the federal court action referenced in footnote 1, above.

special access arrangements and rates (under tariff provisions administered by the FCC) that Verizon, in its sole discretion, deems to be analogous to the delisted UNEs.

The Commission opened Docket DT 06-012 to consider the further revisions to Tariff No. 84 regarding conversion to special access. On January 23, 2006, the Commission issued an Order of Notice in DT 06-012 which, *inter alia,* stated that the UNEs at issue in this docket are currently under investigation in Docket DT 05-083 which will determine whether certain high-capacity transport or loop UNEs are delisted in certain Verizon wire centers and, if so, which ones. The Order of Notice further stated that if these UNEs are delisted, "the Commission has reserved the right to determine whether the delisted UNEs must then be provided on an unbundled basis pursuant to Section 271 of the Telecommunications Act." *Order of Notice*, DT 06-012 (January 23, 2006) at 2. The Order of Notice indicated that the Verizon filing raised, *inter alia,* the issues of whether: "1) it is appropriate for Verizon to determine at its sole discretion whether a service shall be either disconnected or converted to special access arrangements, 2) it is appropriate for Verizon to determine what the analogous replacement circuit shall be; and 3) the proposed revisions are just and reasonable and in the public interest. *See* RSA 378:7." *Id.*

By letter dated February 2, 2006 to the Commission's Executive Director and Secretary, Commission Staff (Staff) recommended that the Commission consolidate DT 06-012 with DT 05-083 and render a decision applicable to both by March 10, 2006 . By Secretarial letter dated February 3, 2006 to the parties in Docket Nos. DT 05-083 and DT 06-012, the Commission , *inter alia,* approved the recommendation to consolidate the two cases.

To facilitate briefing of the outstanding issues in the consolidated dockets, Staff provided the parties with an outline of issues and questions. Staff has also filed an affidavit setting forth information about the Dover, Keene, Manchester, Nashua and Portsmouth wire centers. *See Affidavit of Kath Mullholand* (February 8, 2006). This brief is submitted in response to the outline and affidavit. It also addresses the issues identified in the Commission's Orders of Notice in DT 05-083 and DT 06-012.

## II. SUMMARY OF THE ARGUMENT

When determining whether Verizon is relieved of its obligation to provide high capacity loops and transport under section 251 of the TAct, due to the presence of a threshold number of "fiber based collocators", the Commission must look at the number of carriers unaffiliated with Verizon or each other in a particular wire center that operate (i.e. have the ability to perform work on or otherwise physically control) an entire cable (as opposed to individual strands of fiber or other parts of a cable) or another comparable transmission facility (e.g. a high capacity wireless transmission facility/antenna transmitting at a capacity analogous to fiber optic cable) that terminates at an active and powered collocation arrangement within the wire center and that leaves the wire center unaltered. A party that meets these requirements is considered a fiber based collocator. The only exception to this rule is that if Verizon provides dark fiber to a carrier on an indefeasible right of usage (rather than on a UNE or other basis), that arrangement would cause Verizon's dark fiber cable to be counted as that of a fiber based collocator. An IRU determination involves looking at the CLEC's operational control of the dark fiber,

the term of the usage and how the contract is treated for accounting purposes by both Verizon and the acquiring CLEC.

UNEs must be made available to CLECs making requests under section 251 until such time as the Commission renders a decision to the contrary based on a complaint brought by Verizon. A subjective determination by Verizon or a CLEC that UNEs are no longer available at a particular wire center under section 251 is not a binding determination of non-impairment as to any party.

Because Verizon has a continuing obligation to provide high capacity loops and transport under section 271 of the TAct as well as under the tariffing obligations to which it agreed in exchange for the Commission's favorable endorsement of Verizon's status as an interLATA carrier, a decision by this Commission in this proceeding regarding the unavailability of high capacity loops or transport in a particular wire center under section 251 of the TAct should not result in a disconnection or conversion of the UNEs to the FCC's special access tariff. Instead, the UNEs must be provided at rates which are just and reasonable. The current tariffed rates for UNEs in delisted wire centers (i.e. the "Transition Plan" rates found in Tariff No. 84, Part B, section 2.1.1.D.2 and Section 5.3.1.C.2) are just and reasonable because they are 15% higher than the corresponding TELRIC rates which themselves have been found to be just and reasonable by this Commission and the FCC. *See In the Matter of Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Select Services, Inc., for Authorization to Provide In-Region,*

*InterLATA Services in New Hampshire and Delaware* ,Memorandum Opinion and Order, WC Docket No. 02-157 (September 25, 2002) (hereinafter "FCC's §271 Order"), ¶ 34. In addition, the above-referenced Transition Plan rates have been approved by the FCC. *See* 47 CFR§§ 51.319(a)(4)(iii), 51.319(a)(5)(iii), 51.319(e)(2)(ii) and 51.319(e)(2)(iii). Therefore, there would be no harm to Verizon if these Transition Plan rates applied to section 271 UNEs.

To the extent that Verizon's current tariff contains provisions that are inconsistent with its section 271 obligations, those provisions should be declared invalid and unenforceable. Verizon should be ordered to file new tariff provisions reflecting its section 271 oligations.

## III. WIRE CENTER IMPAIRMENT DETERMINATIONS

### A. Effective Date: The date of this Commission's final determination of "no impairment" should be the effective date on which a particular network element should be delisted under section 251.

The FCC has stated affirmatively that CLECs **are** impaired under section 251 without access to unbundled high capacity loops and transport (including dark fiber transport) **except** when certain conditions exist in specific wire centers. *See*, e.g. TRRO order at ¶¶ 5 (Executive Summary; Dedicated Interoffice Transport and High-Capacity Loops), 66 (Dedicated Interoffice Transport) and 146 (High-Capacity Loops). Thus it is clear that the FCC intends that the general rule is that impairment exists until such time as non-impairment is demonstrated. The question for resolution in this proceeding is: exactly when is Verizon relieved of its section 251 obligation to provide these UNEs under TELRIC rates? While the answer to this question is not provided with specificity

in the TRRO, it is clear from the overall scheme in the TRRO that Verizon must provision UNE orders made by requesting carriers until such time at the Commission decides otherwise. See TRRO Order at ¶ 234.

Paragraph 234 of the TRRO provides that an ILEC must immediately process a UNE request from a requesting carrier even if the ILEC disagrees with the requesting carrier's determination that the wire center doesn't meet the applicable delisting criteria. Said paragraph 234 also requires that disputes regarding UNE availability must be brought to a state commission or other appropriate authority. Thus, because the Commission is clearly authorized by the TRRO to resolve questions concerning whether high capacity transport and loops are delisted as section 251 UNEs in particular wire centers, the date of the Commission's decision should be the "effective date" (i.e. the date on which the UNE is no longer available under section 251). Because the Commission is bound to follow the due process provisions embodied in NH RSA 541-A, notice and an opportunity for comment should be provided to CLECs before the Commission decides the question of impairment in any give wire center. Therefore, since the Commission will be determining in this consolidated (and noticed) proceeding which of the five wire centers at issue (if any) meet the delisting criteria for certain UNEs, the date of the Commission's final decision (i.e. the date on which any reconsideration or appellate processes conclude) should be the "effective date" for section 251 delisting.

Future wire center impairment determinations should follow the process outlined in the TRRO. Any wire center that is not determined in the instant proceeding to be non-impaired will continue to be treated as impaired for purposes of section 251 unbundling responsibility and TELRIC rates. Should Verizon dispute a CLEC's self determination

of impairment, it should follow the process outlined in the TRRO and file a complaint with the Commission. Such notice should include all of the relevant facts supporting the claim that a particular wire center qualifies for UNE delisting. Thereafter, the Commission should provide notice and an opportunity to comment on the filing before it renders a final determination with respect to the affected wire center. BayRing and segTEL also respectfully suggest that the Commission maintain on its website a list of wire centers where the Commission has determined that high capacity transport and loop are no longer available under section 251 of the TAct so that CLECs can refer to this list when conducting their "reasonably diligent inquiry" as to whether a particular wire center qualifies for UNE delisting.

**B. Determination Process: A CLEC's self-determination that it is not impaired without access to UNEs at a particular wire center is not binding on other CLECs.**

Staff's briefing outline poses the question: "(i)f an individual CLEC makes a self-determination that it is no longer impaired in a particular wire center, is that CLEC's determination binding on other CLECs?" Staff's question concerning the ability of one CLEC's determination to bind others is premised on the notion that a CLEC will be making a self-determination of "no impairment". This is inconsistent with the process outlined in the TRRO. The TRRO does not contemplate that CLECs will be making determinations of "no impairment." Rather, the TRRO expects that a CLEC will be undertaking "a reasonably diligent inquiry" to determine whether it continues to be eligible to purchase high capacity loops and links under section 251 in a particular wire center and, based on that inquiry, the CLEC will "self-certify that, to best of its

knowledge", it meets the criteria for access to unbundled high capacity loops and transport. *TRRO* at paragraph 234. Upon receiving such request, an ILEC "must immediately process the request." *Id.* However, if a CLEC self-certifies that it is impaired without access to the section 251 UNE, and Verizon disagrees with that determination, Verizon must bring any dispute regarding impairment to the Commission or other appropriate authority for final resolution. *Id.* In the meantime, Verizon must provision the section 251 UNE if a CLEC self-certifies that impairment exists.

In the alternative, if during its "reasonably diligent inquiry" as to the status of a particular wire center, a CLEC determines that the delisting criteria have been met, the CLEC should not place an order under section 251 for the UNE. In those circumstances, there is no obligation under the TRRO or applicable rules for a CLEC to make a certification or other declaration regarding its own determination of "no impairment." One CLEC's decision not to place a UNE order (based on its determination of "no impairment") should not bind other CLECs in any way for several reasons. First, it is unclear how CLECs will know that another CLEC has made a self determination regarding "no impairment". Second, even if a CLEC informs other CLECs or Verizon of its self-determination of "no impairment" with respect to a particular wire center, other CLECs may disagree with that assessment. Third, CLECs, like Verizon, are not impartial third parties or regulatory authorities. Some CLECs or competitive access providers (CAPs) who have no intention of serving a particular wire center and who wish to harm their competitors by thwarting their access to section 251 UNEs at that wire center could do so merely by making a bogus self-determination declaration of non-impairment. Any system that permits one CLEC's self-declaration of non-impairment to bind another party

could result in abusive practices harmful to competition. Such a system, therefore, should not be allowed. Lastly, as discussed above, because the Commission is responsible for resolving disputes regarding access to UNEs, the Commission's determination should govern. Accordingly, one CLEC's determination that it is not impaired without access to UNEs in a particular wire center should not have the effect of binding other CLECs to that determination.

**C. CLEC Mergers: When the Commission makes a determination of whether a wire center qualifies for UNE delisting, the facilities of two or more affiliated entities should be counted as belonging to one entity for purposes of calculating the number of fiber-based collocators in a wire center.**

In determining the number of fiber-based collocators (FBCs) within a wire center, it is clear under the federal rules, that "(t)wo or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator." 47 CFR 51.5. For the reasons discussed above, the relevant point in time at which such counting should occur is when the Commission undertakes an evaluation of impairment. If the Commission makes a "no impairment" determination after finding the requisite number of FBCs to be present in the wire center, subsequent mergers of entities whose facilities were counted separately in that wire center should not trigger a recalculation except that any further evaluation (i.e. whether a wire center ascends from a Tier 2 "non impaired" wire center to a Tier 1 "non-impaired" wire center) would have to consider the *actual* FBCs in that wire center at the time of the new non-impairment evaluation. This conclusion is supported by provisions in the federal regulations which indicate that once a wire center exceeds certain thresholds, high capacity loops need not be provided under section 251. *See* 47 CFR 51.319 (a)(4)(i) and (a)(5)(i). It is also

supported by provisions in the federal rules which prevent Tier 1 and Tier 2 wire centers from being reclassified as lower-tiered wire centers. *See* 47 CFR 51.319(e)(3)(i) and (ii).

Based on the foregoing analysis, in conducting an evaluation of impairment, the Commission in this proceeding should not count MCI's facilities separately from Verizon's. Furthermore, the FCC has required that as a condition of Verizon's merger with MCI, Verizon must revise its own calculation of delisted wire centers to exclude MCI and MCI's affiliates from the count of FBCs. *See Verizon Communications Inc. and MCI, Inc. Applications for Transfer of Control,* WC Docket No. 05-75, FCC 05-184, (rel. Nov. 17, 2005), Appendix G. Such recalculation has been made by Verizon for effect retroactively to March 11, 2005 and has been recently filed with the FCC. *See* Letter of Verizon Vice President Dee May to Mr. Thomas Navin, Chief of the FCC's Wireline Competition Bureau dated February 3, 2006 and submitted herewith at Appendix A. Thus, it is entirely appropriate for an impairment evaluation in this proceeding at this time to consider the effect that mergers occurring since March 11, 2005 have on the number of FBCs in a particular wire center.

## IV. FIBER BASED COLLOCATION

The underlying reason for the FCC's decision to relieve Verizon of its unbundling obligations for certain section 251UNEs in certain wire centers was that facilities-based competition had advanced to the point that, in some local markets, competition was sufficiently robust so that CLECs were no longer impaired without access to the incumbent's network elements at mandatory TELRIC rates under section 251. *TRRO* at ¶ 2. The challenge for the FCC was to establish an objective test for determining at which

wire centers a CLEC was no longer impaired without access to an ILEC's UNEs. The FCC "weighed carefully a variety of actual competitive indicia of determining impairment" with respect to high capacity transport, *TRRO* at ¶ 93, and ultimately decided that, in addition to business line density, fiber-based collocation was one of the most objective and readily available pieces of information that would indicate the presence of competitive deployment in a given wire center. *See TRRO* at ¶¶ 99 and 100. A test involving the number of fiber-based collocators and business lines served by a wire center was also adopted for assessing whether a CLEC was impaired without access to high capacity loops at a particular wire center. *See TRRO* at ¶ 168.

The FCC elected to define fiber-based collocation simply. *See TRRO* at ¶ 102. The TRRO states that fiber-based collocation is defined "...as a competitive carrier collocation arrangement, with active power supply, that has a non-incumbent LEC fiber-optic cable that both terminates at the collocation facility and leaves the wire center." *Id.* Thus, under this definition as well that that contained in 47 CFR 51.5, an FBC determination must look at whether a CLEC's fiber optic **cable** both terminates at the collocation facility within a wire center and leaves Verizon's wire center premises.

### A. "Operation" of Fiber-Optic "Cable" or Comparable Transmission Facility

**For purposes of determining whether a CLEC is a fiber-based collocator within the meaning of 47 CFR 51.5, the Commission should examine whether the CLEC is able to *perform work or labor or otherwise exert power or influence* on an entire fiber-optic *cable* as opposed to individual strands of fiber or facilities within a cable.**

#### 1. "Operates"

Under 47 CFR 51.5, a fiber-based collocator is defined as

any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) Terminates at a collocation arrangement within a wire center; (2) Leaves the incumbent LEC wire center premises; and (3) Is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

The term "operates" is not defined in 47 CFR 51.5. Therefore, in accordance with well established principles of statutory construction,[3] the word should be given its plain and ordinary meaning. *See Carignan v. New Hampshire International Speedway, Inc.*, 151 N.H. 409, 419 (2004); *see also Perez-Olivo v. Chavez,* 394 F.3d 45, 48 (1st Cir. 2005) (analysis of statute begins with its actual language and whether a phrase has a plain and unambiguous meaning). When interpreting an undefined statutory term, a resort to the dictionary for clarification of the term's plain meaning is appropriate. *Id.* The word "operates" is defined in Webster's Third New International Dictionary (1986 Edition), as follows: "to perform a work of labor: exert power or influence…". Thus it is clear from the plain meaning of the word "operate", that in order to be counted as a fiber-based collocator for purposes of determining whether a wire center qualifies for UNE delisting, a CLEC must have the ability to control and do physical work on a fiber-optic cable that meets the three additional criteria listed in the rule. The mere act of leasing fiber either from Verizon or another competitive carrier does not qualify a CLEC for FBC status under 47 CFR 51.5. The CLEC must have the ability to physically access

[3] Principles of statutory construction also apply to interpretations of regulations. *Solis v. Saenz,* 60 Fed. Appx. 117, 119 (9th Cir. 2003).

a cable and to perform work on it (including repairs and alterations) at any point along its route before the CLEC can be deemed an FBC. The ability to merely attach optronics to each end of fiber strands is not commensurate with operational control of a cable.

**2. "Cable"**

The term "cable" is also not defined in 47 CFR 51.5. Its plain and ordinary dictionary meaning cross references the term "telegraphic cable" which is defined as: "...several conducting wires enclosed by an insulating and protecting material so as to bring the wires into compact compass for use on poles or to form a strong cable impervious to water to be laid underground or under water." Webster's Third New International Dictionary (1986 Edition). Neither the plain and ordinary meaning of the word "cable" or the way that term is used by the telecommunications industry supports the view that individual strands of wire, fiber or any other material contained within a cable or protective sheath are themselves "cables". Thus, in counting the number of FBCs at a wire center, one must look only at whether the CLEC operates a cable that (1) terminates at an actively powered collocation arrangement within a wire center and that (2) leaves Verizon's wire center premises. *See* 47 CFR 51.5. The actual "strand count" of the cable is irrelevant. What is important is that the same exterior sheath with the same internal strand count exists at the terminus point within the wire center as outside the wire center. This interpretation is both supported by the "plain meaning" rule and is consistent with the FCC's intent that the calculation of FBCs be a simple exercise that uses readily available information.

The only exception to the foregoing rule is that Verizon's cable may be counted as "non-incumbent LEC fiber-optic cable" if dark fiber is obtained from Verizon on an

indefeasible right of use (IRU) basis. *See* 47 CFR 51.5. The rule does not state that dark fiber obtained by a CLEC from Verizon **on a UNE or any other leased non-IRU basis** constitutes fiber-based collocation. Thus it is only when Verizon is performing a non-ILEC function and behaving as a competitive carrier (i.e. providing dark fiber voluntarily under an IRU contract with a CLEC rather than pursuant to any unbundling obligation under the TAct) that Verizon's dark fiber cable should be viewed as belonging to a fiber-based collocator. Even in this case, however, Verizon (not the purchasing entity) would be designated an FBC by virtue of its selling competitive IRU dark fiber on its ILEC cable. Verizon would count as one FBC regardless of the number of CLECs that purchased IRU interests in the cable.

**B. IRU Contracts (Dark Fiber)**

1. What elements must be included in a contract for it to be considered an indefeasible right to use (IRU) contract?

The FCC has defined the term "IRU" as follows:

> An IRU interest in a communications facility is a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use the facility and to include its capital contribution in its rate base, but not the right to control the facility or, depending on the particular IRU contract, any right to salvage. The IRU mechanism traditionally has been applied to the conveyance of circuits in submarine cables, but has also been used to convey capital interests in multi-purpose earth stations. The IRU is conveyed by a facility co-owner to a carrier that did not elect to become a facility co-owner or that as a facility co-owner did not purchase sufficient capacity to meets its projected demand over the life of the facility.

*In the Matter of Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communication Facilities Between or Among U.S. Carrier,* FCC Docket No. 87-45, Report and Order, 7 FCC Rcd 4561, n.1 (1992).

In addition to noting exclusive and irrevocable usage rights, the foregoing FCC definition of IRU includes explicit economic facets. Specifically, an IRU must be accounted for as an asset by a purchasing entity and its sale by the conveying entity must be treated as an asset sale as opposed to a recurring revenue or lease transaction. Thus, the FCC has determined that an IRU is something more than a mere possessory interest and has provided a precise economic test for determining IRU status. This test must be applied notwithstanding that parties to a particular agreement may have decided to subjectively characterize or label the agreement an "IRU".

As for determining what elements must exist in an instrument purporting to create an IRU, telecommunications industry practice reveals that IRU contracts typically contain provisions granting an exclusive, unrestricted and indefeasible (i.e. irrevocable) right to use equipment, fibers or capacity for any legal purpose. Again, it is important to keep in mind that an IRU contract only becomes relevant for FBC purposes if: 1) it is between Verizon and a CLEC and relates to dark fiber; or 2) it is between two CLECs and relates to an entire cable. In the first situation, the IRU contract for dark fiber causes Verizon to be counted as an FBC. In the second situation, the IRU cable contract would mean that the acquiring CLEC is entitled to "operate" the "cable" and therefore, assuming all of the other criteria of 47 CFR 51.5 are met, the acquiring CLEC would be an FBC.

2. Does dark fiber obtained under an indefeasible right to use (IRU) basis meet the definition of a fiber-based collocator, hereinafter "the test", when a carrier obtains dark fiber from the ILEC? Yes. See discussion contained in section IV. A. 2., *supra*. In

addition, if multiple CLECs purchase dark fiber from Verizon on an IRU basis, Verizon's cable should count only as that of a single FBC. This is because Verizon itself is acting as a competitive carrier when it provisions dark fiber on an IRU basis. It is important to note that section (3) of the FBC definition contained in 47 CFR 51.5 relates to the ownership characteristics of a fiber-optic cable. More specifically, for a CLEC to qualify as an FBC, it must either own the cable that is powered and terminates at its collocation and leaves the Verizon central office or it must have an IRU to fully operate the cable of a carrier unaffiliated with Verizon. The exception to this rule is that when Verizon provides dark fiber on an IRU basis, its cable is counted as non-incumbent ILEC fiber-optic cable. *See* 47 CFR 51.5 "Fiber-based collocator."(3).

3. Does dark fiber obtained on an IRU basis meet the test when a carrier obtains dark fiber from a CLEC? No. It is clear from the language in 47 CFR 51.5 that the test is only met if the CLEC obtains dark fiber from an ILEC such as Verizon. While the FBC definition captures the situation where a CLEC operates a fiber-optic cable owned by a party other than the incumbent LEC or the ILEC's affiliate, the rule carves out a specific exception for dark fiber. The express exception to the foregoing ownership rule is that if dark fiber is provided by an ILEC on an IRU basis, the cable is treated as non-incumbent LEC fiber-optic cable. 47 CFR 51.5. Furthermore, any contrary interpretation would frustrate the FCC rules by double or triple-counting the same CLEC's cable based upon the number of other customers accessing it. Unlike Verizon, whose fiber optic cable would ordinarily not count towards the FBC tally, a CLEC that has already pulled its fiber optic cable from outside the wire center into an actively powered collocation

arrangement has already been counted. Therefore, counting any additional CLEC customers of the CLEC would be duplicative and impermissible.

4. Does obtaining dark fiber on a **non-IRU** basis meet the test when a carrier obtains dark fiber from a CLEC which is not affiliated with the ILEC? This question posits the scenario in which one CLEC obtains dark fiber from another CLEC that is unaffiliated with Verizon and the acquiring CLEC does not have an indefeasible right to use the fiber. Under this scenario, the acquiring CLEC is not an FBC for two reasons. First, one CLEC's facilities will be attributable to another CLEC only if the other CLEC can operate them. Absent a long- term IRU arrangement, the operational component of the test cannot possibly be met and therefore the dark fiber facility in this scenario cannot be counted as that of the acquiring CLEC. Second, dark fiber counts as an FBC cable only if the fiber is provided by Verizon and on an IRU basis. *See* 47 CFR 51.5.

**C. Lit Fiber Products**

1. Do lit fiber facilities acquired through a long term lease from a CLEC meet the test if the fiber used to supply those lit-fiber products terminates at the CLEC's collocation and leaves the wire center premises? No. A CLEC's acquisition of lit fiber from another CLEC does not render the acquiring CLEC a fiber-based collocator because lit fiber is not a cable and does not meet any of the tests set forth by the FCC. The FCC has expressly stated that "consideration of transport facilities transferred on an IRU basis is limited to dark fiber and does not include 'lit' fiber IRUs." *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,*

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* FCC 03-36, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (released August 21, 2003) (hereinafter referred to as the "TRO" ), Ftnt 1265.

**D. CATT Collocation Arrangements**

1. Do stand-alone CATT arrangements, without power, meet the test? No. This situation is not referenced anywhere within the definition of FBC in 47 CFR 51.5. However, in theory, a CATT arrangement with power and fiber optic cable that is deployed both within and outside the wire center could meet the test. Powered CATT could meet the FCC test without having an "arrangement" within the collocation space of the central office. However, in the absence of the "actively powered" requirement, the scenario posed by this question would not meet the test.

**E. Verizon's DTS product (Tariff 84, Section E.5.1.)**

1. Does a DTS dark fiber connection interconnecting two CLECs meet the test if the fiber both terminates at the CLEC's collocation and leaves the wire center premises? No. An incumbent LEC's tariffed services purchased on a month-to-month non-IRU basis do not count as fiber-based collocation. An FBC determination is contingent upon the existence of fiber optic cable owned or controlled by a CLEC that meets the all of the criteria in of 47 CFR 51.5. DTS service allows for interconnection between CLEC collocation arrangements **within the same Verizon central office** location via a dedicated path using **Verizon distribution facilities**. *See* Verizon NHPUC Tariff No.

84, Part E, Section 5.1.1.A. Furthermore, it is not purchased pursuant to a long term IRU. Thus, by its very definition, DTS uses a Verizon facility that does not leave the central office and is not purchased on an IRU basis. CLECs that purchase this service therefore do not meet the applicable test for fiber-based collocators.

**F. Verizon's DCS product (Tariff 84, Section E. 5.2)**

1. Does a DCS dark fiber connection between two unaffiliated CLECs meet the test if the fiber both terminates at the CLEC's collocation and leaves the wire center premises? No. An incumbent LEC's tariffed services do not count as fiber-based collocation. An FBC determination is contingent upon the existence of cable owned or controlled by a CLEC that exits the wire center. "DCS allows a CLEC to directly connect facilities from its collocation node to the collocation node of itself or another CLEC via CLEC-provided distribution facilities as long as the collocation nodes of both CLECs are located in the same serving wire center." Verizon NHPUC Tariff No. 84, Part E, Section 5.2.1.A. These "connecting transmission facilities" cannot be placed outside the dedicated physical collocation node. *Id.* at Section 5.2.2.A. Thus since the DCS service entails connection facilities within a wire center, DCS does not qualify for fiber-based collocation status notwithstanding that the connection is made using CLEC-provided distribution facilities.

## G. Conclusions Regarding Particular Wire Centers.

Applying the foregoing definitions and analysis to the information contained in Staff's affidavit[4] yields the following conclusions regarding the number of FBCs in each wire center at issue in this proceeding:

**Dover:** Only CLECs 1 and 2 are FBCs.

**Keene:** Only CLEC 1 is an FBC.

**Manchester:** Only CLEC 1 and 3 are FBCs.

**Nashua:** Only CLECs 1, 3 and 4 are FBCs.

**Portsmouth:** Only CLECs 1 and 2 are FBCs.

# V. SECTION 271 ISSUES

## A. High Capacity Transport is a Section 271 UNE.

As a prerequisite for obtaining authority to provide interLATA long distance service in New Hampshire, Verizon was required to make "transport" available to CLECs on an unbundled basis. *See* 47 U.S.C. s. 271(c)(2)(B)(v). In reviewing Verizon's compliance with this "271 checklist" item (i.e. item number 5), the FCC agreed with the New Hampshire Commission's determination that Verizon had met this obligation. *See* FCC's §271 Order at ¶ 135.

## B. High Capacity Loops are Section 271 UNEs.

As with "transport", Verizon was required to provide "loops" to CLECs on an unbundled basis in order to obtain approval of its request to become an interstate long distance carrier. *See* 47 U.S.C. s. 271(c)(2)(B)(iv). The FCC concluded, as did the New

---

[4] Because CLECs in this proceeding did not have access to discovery responses, BayRing and segTEL accept for purposes of this proceeding only, the information reflected in the wire center diagrams appended to Staff's Affidavit.

Hampshire Commission, that Verizon met checklist number 4 by demonstrating that "it provides **high capacity loops** in accordance with the requirements of section 271." (emphasis added). *See* FCC's §271 Order at ¶ 112.

**C. Verizon's Ongoing Responsibility to Comply with Section 271 Includes the Requirements of Providing Unbundled Loop and Transport**

The FCC has determined that Verizon has an **ongoing** responsibility under 47 U.S.C. s. 271(d)(6) to continue to satisfy the conditions required for approval of its section 271 long distance authority. *Id.* at ¶172. The FCC has also recognized that Verizon and other BOCs (i.e. Bell Operating Companies) "have an independent obligation, under section 271(c)(2)(B), to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at just and reasonable rates." TRO, ¶ 652. In the TRO, the FCC expressly stated that "...**the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops**, switching, **transport** and signaling regardless of any unbundling analysis under section 251."(emphasis added) *Id.*. at paragraph 653. The FCC's conclusions regarding the requirement that BOCs provide unbundled loops and transport under section 271 were upheld by the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004) (USTA II).

The New Hampshire Public Utilities Commission has also recognized that Verizon is required to provide loop and transport as part of its section 271 responsibilities. *See Verizon New Hampshire, segTEL, Inc., Proposed Revisions to Tariff NHPUC No. 84 (Statement of Generally Available Terms and Conditions )Petition for*

*Declaratory Order re Line Sharing,* DT 03-210, DT 04-176, Order No. 24,442 (March 11, 2005) (hereinafter referred to as the "Line Sharing Order"). In the Line Sharing Order, the Commission examined whether certain UNEs fell within the ambit of loop and transport contained in the 271 checklist. In so doing, the Commission left undisturbed the well-settled principles that "loop" and "transport" are clearly section 271 UNEs. Moreover, the Commission recently reiterated that "unbundled loops...and transport continue to be required by Section 271..." *Broadview Networks, Inc. et alia,* DT 05-041, Order No. 24,56 (December 15, 2005), p. 11.

Lastly, and perhaps most noteworthy with respect to the issue of whether high capacity loops and transport are UNEs that must be offered by Verizon under section 271 of the TAct, Verizon itself has conceded this point in a memorandum of law it recently filed in federal court. *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment* at 8, *Verizon New England, Inc. v. New Hampshire Public Utilities Commission et al,* United States District Court for the District of New Hampshire, Civil No. 05-CV-94-PB.

**D. Because High Capacity Transport and Loops are Section 271 UNEs, they must be made available in a tariff approved by this Commission.**

In exchange for the Commission's favorable recommendation to the FCC regarding Verizon's ability to qualify as an interstate long distance carrier pursuant to Section 271, Verizon made a commitment "to make its wholesale offerings available to CLECs via a tariff." *Broadview Networks, Inc. et alia,* DT 05-041, Order No. 24,564 (December 15, 2005), p.13. The Commission has recognized that Verizon's wholesale

tariff filing obligation embraces "the unbundling obligations of both section 251 and section 271." *Verizon New Hampshire, segTEL, Inc.*, DT 03-201 and DT 04-176, Order No. 24, 442 (March 11, 2005), p. 40. Thus, even if a UNE is no longer available under section 251 of the TAct, it must nonetheless be included in Verizon's wholesale tariff if availability of the UNE was part of Verizon's section 271 obligations. *Id.* at 41. As explained above, High Capacity Loops and Transport are clearly network elements that Verizon is responsible for providing to CLECs in exhange for Verizon's ongoing ability to provide interstate long distance service to New Hampshire customers. Accordingly, those UNEs must be provided in a tariff approved by this Commission.

The foregoing position has been supported by the United States District Court for the District of Maine which recently determined that a state Commission's authority regarding UNE rate setting is not expressly or impliedly pre-empted by section 271 of the TAct. *See Verizon New England, Inc. d/b/a Verizon Maine v. Maine Public Utilities Commission et al.*, 403 F. Supp.2d 96, 102 (Nov. 30, 2005). In determining whether Verizon was likely to succeed on the merits of its claim that the Maine Public Utilities Commission was precluded by the Telecommunications Act of 1996 and applicable rulings of the Federal Communications Commission from fixing rates for section 271 UNEs, the federal Court in Maine refused to set aside the Maine PUC's determination that it had the authority to enforce the FCC's "just and reasonable" pricing standard for section 271 UNEs by requiring that such UNEs continue to be provided at TELRIC rates until the Maine Commission or the FCC approves new rates. *See Verizon New England, Inc. d/b/a Verizon Maine, supra* at 100-102.

The existing tariff rates for delisted section 251 high capacity loops and transport are higher than the TELRIC rates that Verizon must provide pursuant to section 251 of the TAct. *See* Verizon Tariff No. 84, Part B Section 2.1.1 D.2 and Section 5.3.1.C.2 (Transition Plan rates). Since TELRIC rates themselves have been determined by the FCC and the Commission to be "just and reasonable", *see FCC §271 Order*, ¶ 34, these Transition Plan rates not only meet the relevant legal standard but also provide Verizon with a 15% increase over the section 251 rates which currently include a rate of return equal to Verizon's retail rates. This 15% adder translates into a rate that more than adequately compensates Verizon. As TELRIC rates are just and reasonable, and the TRO neither mandates nor prohibits the use of TELRIC rates for 271 UNEs, there would be no financial harm to Verizon by implementing the substantially higher Transition Plan rates for section 271 UNE purposes. Lastly, these particular rates have been approved by the FCC for application to high capacity loops and transport once those UNEs have been delisted. *See* 47 CFR§§ 51.319(a)(4)(iii), 51.319(a)(5)(iii), 51.319(e)(2)(ii) and 51.319(e)(2)(iii). Therefore, it is entirely appropriate to use these rates for UNEs provided under section 271.

Verizon made several commitments to the Commission in order to secure the Commission's favorable recommendation that the FCC accord Verizon interLATA long distance carrier status. One of those commitments was that section 271 checklist UNEs would be available to competitors under a state-approved and administered tariff. Verizon may not evade that commitment simply by pointing to the portions of the TRRO which establish criteria for delisting section 251 UNEs and asking the Commission to ignore its own recent decisions, a federal court decision in Maine and the

FCC's decisions that clearly state that high capacity loops and transport must be provided under section 271 at just and reasonable rates even if they are no longer available at TELRIC rates in certain wire centers. At no time during the 271 approval process did Verizon claim that it was satisfying its 271 checklist obligations by allowing CLECs to purchase retail services from the FCC's special access tariffs (which, upon information and belief, predate the TAct by more than a decade and which would result in enormous rate increases for CLECs and their customers). A tariff scrutinized by this Commission for its justness and reasonableness is not only an appropriate method for establishing Verizon's section 271 UNE obligations in New Hampshire, it has been sanctioned by a neighboring state's federal district court and, perhaps even more noteworthy, it was agreed to by Verizon itself as part of the section 271 approval process. For all of these reasons, Verizon should not be allowed to walk away from its obligations to make section 271 UNEs available on an unbundled basis pursuant to a tariff reviewed and approved by this Commission.

## VI. TRANSITION AND REMEDIES

A. Should Verizon be enjoined from disconnecting circuits for a reasonable period of time following the Commission's order in this docket and, if so, for how long? To the extent that Verizon's existing tariff allows it to disconnect UNEs delisted under 251 but which are required by section 271, the relevant tariff provisions should be declared invalid and unenforceable. In light of their status as Section 271 UNEs, Verizon's existing tariff provisions regarding disconnection of high capacity loop and transport UNEs are inconsistent with its responsibility to provide those UNEs at just and

reasonable rates. Thus, the Commission should declare the existing tariff provisions regarding disconnection to be invalid and therefore unenforceable. As the Commission did in the Line Sharing Order at p.50, this Commission should declare that Verizon is prevented from discontinuing to provide or otherwise disconnecting CLECs' high capacity loops and transport.

Similarly, the proposed tariff revisions in Docket DT 06-012 should be rejected because they do not recognize Verizon's responsibility to provide high capacity loops and transport under section 271 of the TAct. Instead they would provide Verizon with unilateral authority to convert delisted UNEs to the FCC's special access tariff which contains rates that are as much as 10 times higher than the corresponding UNE rates. This would have an adverse effect on CLECs as well as their retail customers, some of whom are municipalities and hospitals. Moreover, as noted above, allowing Verizon unilateral authority to substitute special access services for it section 271 unbundling requirements is a material change to the commitment it made to this Commission when it obtained a favorable recommendation on its 271 application. It therefore should not be allowed.

Finally, it is significant to note that yet another Verizon commitment is called into question by the filing made in DT 06-012 which would allow Verizon to unilaterally charge higher special access rates for delisted UNEs. As a condition of its merger with MCI, Verizon stated to the FCC in a letter dated October 31, 2005, that for a period of two years beginning on the Merger Closing Date, Verizon would not seek an increase in state-approved UNE rates that were in effect at that time, except if a UNE rate currently in effect is subsequently deemed invalid or is remanded to a state commission by a court

of competent jurisdiction in connection with a pending appeal. *See* Letter from Verizon Senior Vice President Susanne A. Guyer to The Honorable Kevin Martin, Chairman dated October 31, 2005, p. 2, submitted herewith as Appendix B. Accordingly, inasmuch as Verizon's tariff filing in DT 06-012 is tantamount to seeking a rate increase (i.e. the ability to unilaterally charge higher special access rates for section 251 UNEs that have been delisted), it is inconsistent with the representations made by Verizon to the FCC in connection with its request for merger approval. The filing, therefore, should be rejected.

B. Going forward, how long should the transition period for newly identified wire centers be from the date of a Commission determination that the wire center is unimpaired? Once the Commission has determined that a wire center is unimpaired and that high capacity loops or transport should no longer be available under section 251, the UNE(s) should continue to be provided at the Transition Plan tariffed rates mentioned below. There should be no interruption in service and the tariffed rates should be implemented for service rendered by Verizon on or after the date the Commission's decision becomes final. Assuming, *arguendo*, that a section 251 UNE is delisted but is not required under section 271, the Commission should order the same 12/18 month transition period in all future delistings as has been allowed for initial delistings. Other Commissions have taken this approach and found these transition time frames to be appropriate. *See, e.g. Access One, Inc. et al, Petition for Arbitration, etc.*, Illinois Commerce Commission, Arbitration Decision in Docket 05-0442 (November 2, 2005) at pp. 114-115; *In the Matter of the Indiana Utility Commission's Investigation of Issues Related to The Implementation of the Federal Communication Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Cause

No. 42857 (Approved January 11, 2006), at pp. 64-65; *In the Matter of the Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant to the Federal Communications Commission's Triennial Review Order and its Order on Remand*, Public Utilities Commission of Ohio, Case No. 05-887-TP-UNC (November 9, 2005) at 65.

C. Other Transition Issues

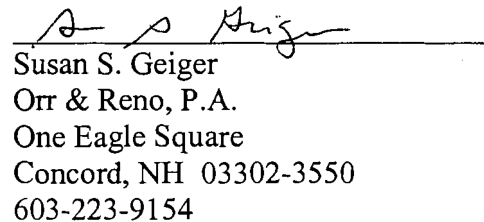
Verizon should be required to update its Tariff No. 84 in light of differing section 251 and section 271 obligations to recognize its responsibility to provide high capacity loops and transport UNEs under section 271 of the TAct at rates that are just and reasonable. Until such time as the Commission evaluates a request by Verizon with supporting cost data for a change in high capacity loop and transport rates, the existing tariffed rates i.e. those found in Tariff No. 84, Part B Section 2.1.1 D.2 and Section 5.3.1.C.2 (i.e. Transition Plan rates) should remain in effect.

As dark fiber transport is also a section 271 UNE, for administrative convenience and to avoid a future lengthy docket in 6 months (the time when the 18 month section 251 transition period for dark fiber in the first set of potentially delisted wire centers is set to expire), BayRing and segTEL respectfully request that the Commission make a determination that dark fiber transport is a section 271 obligation that must be honored by Verizon along with the lit high capacity loop and transport elements discussed at length herein. Since the Commission has already determined in its April 22, 2005 secretarial letter in DT 05-034 that dark fiber loops are 271 UNEs, a similar ruling with respect to dark fiber loops is also requested.

Lastly, Verizon has been charging the higher Transition Plan rates for UNEs that Verizon subjectively believes should be delisted in certain wire centers. If this Commission determines that the Verizon determinations of no impairment are incorrect, Verizon should be ordered to immediately refund to the CLECs the difference between the Transition Plan rates and the TELRIC rates that would have otherwise applied.

Respectfully submitted,

BayRing Communications and
segTEL, Inc.
By their Attorneys,



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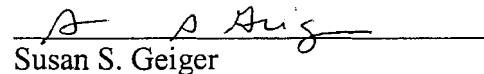
February 17, 2006

Certificate of Service

I hereby certify that a copy of this brief has been sent by first class mail this 17th day of February, 2006 to the service lists in DT 05-083 and DT 06-012.



Susan S. Geiger

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APPENDIX A

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February 3, 2006

Mr. Thomas Navin
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, D.C. 20554

**Re:** **Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, Merger Condition G**

Dear Mr. Navin:

As required by Appendix G of the Commission's Order.[1] Attached is a revised list of wire centers that satisfy the Tier 1 and Tier 2 criteria for dedicated transport and the wire centers that satisfy the non-impairment thresholds for DS1 and DS3 loops. This list amends the original list of wire centers provided by Verizon, as most recently updated on April 15, 2005.[2]

In preparing this revised list, Verizon has excluded collocation arrangements established by MCI or its affiliates, as required by Merger Condition G. Based on these exclusions, thirty-three wire centers have either decreased in status (i.e., from Tier 1 to Tier 2) or have been removed from the list altogether.[3] Specifically, 14 wire centers have shifted from Tier 1 to Tier 2 status; 16 wire centers have shifted from Tier 2 to Tier 3 status and, therefore, have been removed from the list. One wire center has been removed from the list providing DS1 loop UNE relief, and 3 have been removed from the list providing DS3 loop UNE relief.

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[1] *Verizon Communications Inc. and MCI, Inc. Applications for Transfer of Control*, WC Docket No. 05-75, FCC 05-184, 37 Comm. Reg. (P&F) 416 (rel. Nov. 17, 2005).

[2] *See* Letter from Susanne A. Guyer, Verizon, to Jeffrey J. Carlisle, FCC, WC Docket No. 04-313 and CC Docket No. 01-338 (filed Feb. 18, 2005); Letter from Edwin J. Shimizu, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 04-313 and CC Docket No. 01-338 (filed Mar. 4, 2005); Letter from Edwin J. Shimizu, Verizon, to Michelle Carey, FCC, WC Docket No. 04-313 and CC Docket No. 01-338 (filed Apr. 15, 2005).

[3] One of these thirty-three wire centers has decreased in status both for DS1 loop and DS3 loop UNE relief.

Verizon notes, however, that two of these thirty-three wire centers – BRYMPABM in Pennsylvania and NWTNMAWA in Massachusetts – have been re-qualified for Tier 2 transport status, because, pursuant to the Commission's implementation rules allowing updates to the exclusion list, they qualify, even excluding MCI, based on more recent access line and collocation data. *See Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 142, n. 399 (2005) and 47 CFR § 51.319(e)(3). Thus, while these two wire centers do not appear on these lists, a supplemental notice indicating that these two wire centers will retain Tier 2 status was provided to our carrier customers in Pennsylvania and Massachusetts on February 2, 2005.

Sincerely,

Attachment

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

## Effective March 11, 2005

Last updated 02/03/06 to reflect status as of 3/11/05

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

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

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

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

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

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

| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| CA | BLPKCAXF | No | Yes | No | No |
| | CCMNCAXF | No | Yes | No | No |
| | LNBHCAXF | Yes | No | No | No |
| | LNBHCAXS | No | Yes | No | No |
| | SNBBCAXF | No | Yes | No | No |
| | SNMNCAXG | No | Yes | No | No |
| | SNMNCAXP | No | Yes | No | No |
| | THOKCAXF | No | Yes | No | No |
| | WLANCAXF | No | Yes | No | No |
| | WLANCAXH | No | Yes | No | No |
| | WMNSCAXF | Yes | No | No | No |
| CT | GNWCCTGN | Yes | No | No | No |
| DC | WASHDCDN | Yes | No | Yes | Yes |
| | WASHDCDP | Yes | No | No | No |
| | WASHDCMO | Yes | No | Yes | Yes |
| | WASHDCMT | Yes | No | Yes | Yes |
| | WASHDCSW | Yes | No | Yes | Yes |
| | WASHDCWL | No | Yes | No | No |
| DE | DOVRDEDV | No | Yes | No | No |
| | NWRKDENB | Yes | No | No | No |
| | WLMGDEWL | Yes | No | No | No |
| FL | BHPKFLXA | Yes | No | No | No |
| | CLWRFLXA | Yes | No | No | No |
| | CNSDFLXA | No | Yes | No | No |
| | PNLSFLXA | No | Yes | No | No |
| | SPBGFLXA | Yes | No | No | No |
| | SRSTFLXA | No | Yes | No | No |
| | SWTHFLXA | Yes | No | No | No |
| | TAMPFLXA | Yes | No | No | No |
| | TAMPFLXE | Yes | No | No | No |
| | TAMPFLXX | Yes | No | No | No |
| | WSSDFLXA | Yes | No | No | No |
| | YBCTFLXA | No | Yes | No | No |
| HI | HNLLHIMN | Yes | No | No | No |

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

## Effective March 11, 2005

Last updated 02/03/06 to reflect status as of 3/11/05

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

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

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

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

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

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

| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| IN | FTWYINXA | No | Yes | No | No |
| MA | BKLIMAMA | No | Yes | No | No |
| | BRNTMAWA | No | Yes | No | No |
| | BRTNMACR | Yes | No | No | No |
| | BSTNMABE | Yes | No | Yes | Yes |
| | BSTNMABO | Yes | No | No | Yes |
| | BSTNMAFR | Yes | No | No | No |
| | BSTNMAHA | Yes | No | No | Yes |
| | BURLMABE | No | Yes | No | No |
| | CMBRMABE | Yes | No | No | No |
| | CMBRMAWA | Yes | No | Yes | Yes |
| | DNVSMAHI | Yes | No | No | No |
| | FRMNMAUN | Yes | No | No | No |
| | HLYKMAMA | No | Yes | No | No |
| | LWLLMAAP | Yes | No | No | No |
| | LWRNMACA | Yes | No | No | No |
| | LXTNMAWA | No | Yes | No | No |
| | MLDNMAEL | No | Yes | No | No |
| | MRBOMAMA | Yes | No | No | No |
| | NATNMAMA | No | Yes | No | No |
| | QNCYMAHA | Yes | No | No | No |
| | SALMMANO | Yes | No | No | No |
| | SOVLMACE | Yes | No | No | No |
| | SPFDMAWO | Yes | No | No | Yes |
| | WLHMMASP | Yes | No | No | No |
| | WLHMMAWE | Yes | No | No | No |
| | WRCSMACE | Yes | No | No | Yes |
| MD | BLTMMDCH | Yes | No | Yes | Yes |
| | BLTMMDWL | Yes | No | No | No |
| | BTHSMDRP | Yes | No | No | No |
| | CHCHMDBE | Yes | No | No | Yes |
| | CLMAMDCB | No | Yes | No | No |
| | FPATMDFR | No | Yes | No | No |
| | FRDRMDFR | Yes | No | No | No |

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

## Effective March 11, 2005

Last updated 02/03/06 to reflect status as of 3/11/05

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

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

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

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

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

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

| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| | GMTWMDGN | No | Yes | No | No |
| | GTBGMDGB | Yes | No | No | No |
| | HGTWMDHG | No | Yes | No | No |
| | LARLMDLR | No | Yes | No | No |
| | RKVLMDMR | Yes | No | No | No |
| | RKVLMDRV | Yes | No | No | No |
| | SLBRMDSB | Yes | No | No | No |
| | SLSPMDSS | Yes | No | No | Yes |
| | TWSNMDTW | No | Yes | No | No |
| | WHTNMDWT | No | Yes | No | No |
| ME | BNGRMEPA | No | Yes | No | No |
| | LSTNMEAS | No | Yes | No | No |
| | PTLDMEFO | Yes | No | No | Yes |
| NC | DRHMNCXE | Yes | No | No | No |
| | DRHMNCXM | Yes | No | No | No |
| NH | DOVRNHTH | No | Yes | No | No |
| | KEENNHWA | Yes | No | No | No |
| | MNCHNHCO | Yes | No | No | Yes |
| | NASHNHWP | Yes | No | No | No |
| | PTMONHIS | Yes | No | No | No |
| NJ | ATCYNJAC | No | Yes | No | No |
| | CMDNNJCE | Yes | No | No | No |
| | ELZBNJEL | Yes | No | No | No |
| | ENWDNJEN | No | Yes | No | No |
| | EORNNJEO | No | Yes | No | No |
| | FRFDNJFA | No | Yes | No | No |
| | HCKNNJHK | Yes | No | No | Yes |
| | HOLMNJHO | No | Yes | No | No |
| | JRCYNJBR | Yes | No | No | No |
| | JRCYNJJO | Yes | No | No | Yes |
| | MRTWNJMR | Yes | No | No | Yes |
| | MSTWNJMO | No | Yes | No | No |
| | NBRGNJNB | No | Yes | No | No |
| | NBWKNJNB | Yes | No | No | Yes |

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

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

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| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| | NWPVNJMH | No | Yes | No | No |
| | NWRKNJ02 | Yes | No | Yes | Yes |
| | NWRKNJIR | No | Yes | No | No |
| | PLFDNJPF | No | Yes | No | No |
| | PNNKNJPN | No | Yes | No | No |
| | PSSCNJPS | Yes | No | No | No |
| | PSVLNJPL | No | Yes | No | No |
| | PSWYNJPI | No | Yes | No | No |
| | PTSNNJAR | No | Yes | No | No |
| | RCPKNJ02 | Yes | No | No | No |
| | RDBKNJRB | No | Yes | No | No |
| | RTFRNJRU | Yes | No | No | No |
| | SOVLNJSM | No | Yes | No | No |
| | TMRVNJTR | No | Yes | No | No |
| | TRENNJTE | Yes | No | No | No |
| | UNCYNJ02 | Yes | No | No | Yes |
| | WHIPNJWH | No | Yes | No | No |
| NY | ALBYNYSS | Yes | No | No | No |
| | AMHRNYMP | Yes | No | No | No |
| | BFLONYEL | No | Yes | No | No |
| | BFLONYFR | Yes | No | No | Yes |
| | BFLONYHE | Yes | No | No | No |
| | BFLONYMA | No | Yes | No | No |
| | BRWDNYBW | Yes | No | No | Yes |
| | FLPKNYFP | No | Yes | No | No |
| | FRDLNYFM | No | Yes | No | No |
| | GRCYNYGC | Yes | No | Yes | Yes |
| | HCVLNYHV | No | Yes | No | No |
| | LYBRNYLB | Yes | No | No | No |
| | MINLNYMI | Yes | No | No | Yes |
| | NYCKNY77 | No | Yes | No | No |
| | NYCKNYBR | Yes | No | Yes | Yes |
| | NYCKNYWM | Yes | No | No | No |
| | NYCMNY13 | Yes | No | Yes | Yes |

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

**Effective March 11, 2005**

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| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| | NYCMNY18 | Yes | No | Yes | Yes |
| | NYCMNY30 | Yes | No | Yes | Yes |
| | NYCMNY36 | Yes | No | Yes | Yes |
| | NYCMNY37 | Yes | No | Yes | Yes |
| | NYCMNY42 | Yes | No | Yes | Yes |
| | NYCMNY50 | Yes | No | Yes | Yes |
| | NYCMNY56 | Yes | No | Yes | Yes |
| | NYCMNY73 | Yes | No | No | No |
| | NYCMNY79 | Yes | No | No | Yes |
| | NYCMNY97 | Yes | No | No | No |
| | NYCMNYBS | Yes | No | Yes | Yes |
| | NYCMNYVS | Yes | No | No | Yes |
| | NYCMNYWS | Yes | No | Yes | Yes |
| | NYCQNYFL | No | Yes | No | No |
| | NYCQNYJA | Yes | No | No | No |
| | NYCQNYLI | Yes | No | No | No |
| | NYCQNYNW | No | Yes | No | No |
| | NYCRNYNS | No | Yes | No | No |
| | NYCXNYTR | No | Yes | No | No |
| | SCHNNYSC | No | Yes | No | No |
| | SYRCNYSU | Yes | No | No | Yes |
| | WHPLNYWP | Yes | No | No | Yes |
| | WSNCNYUN | No | Yes | No | No |
| | WSVLNYNC | Yes | No | No | No |
| OR | BVTNORXB | Yes | No | No | No |
| | SMRWORXA | No | Yes | No | No |
| | TGRDORXA | Yes | No | No | No |
| PA | ALTWPAAL | Yes | No | No | No |
| | AMBLPAAM | No | Yes | No | No |
| | ARMRPAAR | Yes | No | No | No |
| | BCYNPABC | Yes | No | No | No |
| | BHLHPABE | Yes | No | No | No |
| | BLLVPABE | No | Yes | No | No |
| | CARNPACA | Yes | No | No | No |

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

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| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| | CNSHPACN | Yes | No | No | No |
| | CPHLPACH | Yes | No | No | No |
| | CRAFPACR | Yes | No | No | No |
| | CRPLPACO | Yes | No | No | No |
| | DRMTPADO | Yes | No | No | No |
| | GLNSPAGL | No | Yes | No | No |
| | GNBGPAGR | No | Yes | No | No |
| | HRBGPAHA | Yes | No | No | No |
| | HTBOPAHB | Yes | No | No | No |
| | KGPRPAKP | Yes | No | No | No |
| | LNCSPALA | Yes | No | No | No |
| | MBRGPAME | No | Yes | No | No |
| | MOVLPAMO | Yes | No | No | No |
| | NRTWPANR | Yes | No | No | No |
| | OKMTPAOA | No | Yes | No | No |
| | PAOLPAPA | Yes | No | No | No |
| | PEHLPAPH | No | Yes | No | No |
| | PHLAPAEV | Yes | No | No | Yes |
| | PHLAPALO | Yes | No | Yes | Yes |
| | PHLAPAMK | Yes | No | Yes | Yes |
| | PHLAPAPE | Yes | No | No | No |
| | PHLAPAPI | No | Yes | No | No |
| | PHLAPATR | Yes | No | No | No |
| | PITBPAAL | Yes | No | No | No |
| | PITBPACA | No | Yes | No | No |
| | PITBPADT | Yes | No | Yes | Yes |
| | PITBPAEL | No | Yes | No | No |
| | PITBPANS | Yes | No | No | No |
| | PITBPAOK | Yes | No | No | No |
| | PYVLPAPE | Yes | No | No | No |
| | RBTPPART | Yes | No | No | No |
| | RDNGPARE | No | Yes | No | No |
| | SCTNPASC | Yes | No | No | No |
| | SHSAPASH | Yes | No | No | No |

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

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| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| | STCGPAES | Yes | No | No | No |
| | SWKYPASE | No | Yes | No | No |
| | TRCKPATC | Yes | No | No | No |
| | WAYNPAWY | Yes | No | No | No |
| | WCHSPAWC | No | Yes | No | No |
| | WKBGPAWK | Yes | No | No | No |
| | WLBRPAWB | No | Yes | No | No |
| | WLPTPAWI | No | Yes | No | No |
| RI | CNTNRIPH | No | Yes | No | No |
| | PRVDRIBR | Yes | No | No | No |
| | PRVDRIWA | Yes | No | No | Yes |
| | WNSCRICL | Yes | No | No | No |
| | WRWKRIWS | Yes | No | No | No |
| TX | CLSTTXXA | No | Yes | No | No |
| | DNTNTXXA | No | Yes | No | No |
| | IRNGTXXA | Yes | No | No | No |
| | IRNGTXXC | No | Yes | No | No |
| | IRNGTXXD | No | Yes | No | No |
| | IRNGTXXG | Yes | No | No | No |
| | PLANTXXA | Yes | No | No | No |
| | PLANTXXB | No | Yes | No | No |
| | PLANTXXD | No | Yes | No | No |
| VA | ALXNVAAX | No | Yes | No | No |
| | ALXNVABA | Yes | No | No | No |
| | ARTNVAAR | Yes | No | No | Yes |
| | ARTNVACY | No | Yes | No | No |
| | CNVIVACT | Yes | No | No | No |
| | FLCHVAMF | No | Yes | No | No |
| | FRFXVAFF | Yes | No | No | Yes |
| | HRNDVAHE | Yes | No | Yes | Yes |
| | MCLNVALV | Yes | No | Yes | Yes |
| | MNSSVAXA | No | Yes | No | No |
| | NRFLVABS | Yes | No | No | No |
| | PNTGVADF | No | Yes | No | No |

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

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

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

| | | Wire Center Qualified w/o MCI - Yes or No - 02/03/06 | | | |
|---|---|---|---|---|---|
| Operated State | Wire Center | Tier 1 | Tier 2 | DS1 Loop | DS3 Loop |
| | RCMDVAGR | Yes | No | No | No |
| | RCMDVAPE | No | Yes | No | No |
| | RCMDVASR | No | Yes | No | No |
| | RONKVALK | No | Yes | No | No |
| | VINNVAVN | Yes | No | No | No |
| | VRBHVACC | Yes | No | No | No |
| VT | BURLVTMA | No | Yes | No | No |
| WA | BOTHWAXB | No | Yes | No | No |
| | RDMDWAXA | Yes | No | No | No |
| WV | CHTNWVLE | Yes | No | No | No |
| Total Qualified WCs | | 152 | 96 | 25 | 49 |

APPENDIX B

**Susanne A. Guyer**
Senior Vice President
Federal Regulatory Affairs

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susanne.a.guyer@verizon.com

October 31, 2005

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: <u>Applications for Consent to Transfer Control of Filed by Verizon Communications, Inc. and MCI, Inc., WC Docket No. 05-75</u>**

Dear Chairman Martin:

Verizon and MCI are submitting this letter at the request of the Commission's staff.

As we have demonstrated in great detail during the course of this proceeding, the combination of Verizon and MCI will produce significant public interest benefits and will not harm competition in any segment of the market.

Indeed, as we explained in our original application, the combination of Verizon and MCI will strongly promote the public interest by providing benefits to all customer segments. Large enterprise customers will benefit from the creation of a strong and stable new facilities-based competitor that will be capable of providing a full range of communications services to these customers nationwide. Government and national security customers will benefit from the strengthening of an important infrastructure provider that serves governmental and national security customers nationwide. Wholesale customers will benefit from the creation of a stronger nationwide provider with a broader facilities-based reach. Mass-market customers will benefit from the combination of MCI's IP experience and expertise with Verizon's ongoing deployment of the nation's most advanced broadband networks. And the U.S. economy will benefit from enhanced efficiency and innovation-producing investments along with the creation of a strong U.S. competitor in the global marketplace.

In addition, this transaction has now been subject to exhaustive review by the U.S. Department of Justice, which considered numerous product and geographic markets, evaluated all overlaps between the applicants' businesses, concluded that the only issue of potential competitive concern relates to a limited number of commercial buildings in Verizon's local telephone service areas, and obtained a consent decree to completely address that issue. Likewise, this transaction has been reviewed and cleared by the European Commission and other international authorities and by numerous state commissions.

As we also have explained at length previously, arguments by other parties to the contrary are both incorrect, and in many instances have nothing to do with the transaction at issue here and are currently being considered by the Commission in other proceedings of general applicability. Under the Commission's own long-standing precedent, those arguments do not provide a basis for denying or conditioning the license transfers at issue here.

Accordingly, for all these reasons, the pending license transfer applications can and should be approved promptly and without conditions.

Nevertheless, in order to provide still further comfort that the combination of Verizon and MCI is in the public interest, the applicants offer the following commitments.[1] Applicants reserve the right to withdraw these voluntary commitments upon two days written notice to the Commission if the Commission has not approved the merger at that time.

1. For a period of two years, beginning on the Merger Closing Date, Verizon's incumbent local telephone companies[2] will not seek any increase in state-approved rates for unbundled network elements (UNEs) that are currently in effect, provided that this restriction shall not apply to the extent any UNE rate currently in effect is subsequently deemed invalid or is remanded to a state commission by a court of competent jurisdiction in connection with an appeal that is currently pending (i.e., for appeals of state commission decisions in California, Maine, New Hampshire and Pennsylvania). In the event of a UNE rate increase in California, Maine, New Hampshire or Pennsylvania during the two year period following a court decision invalidating or remanding a UNE rate, Verizon/MCI may implement that UNE rate increase but shall not seek any further increase in the UNE rates in that state during the two year period. This condition shall not limit the ability of Verizon/MCI and any telecommunications carrier to agree voluntarily to any UNE rate nor does it supersede any current agreement on UNE rates.

The benefit of this condition is that it will assure carrier-customers who choose to purchase unbundled network elements of a period of rate stability.

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[1] The term "Verizon/MCI" as used in this letter refers to Verizon Communications, Inc. and its wholly-owned domestic U.S. wireline operating companies which include Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Contel of the South, Inc. d/b/a Verizon Mid-States, GTE Southwest Incorporated d/b/a Verizon Southwest, NYNEX Long Distance, Inc. d/b/a Verizon Enterprise Solutions, Verizon Global Networks Inc., Verizon California Inc., Verizon Delaware Inc., Verizon Florida Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon North Inc., Verizon Northwest Inc., Verizon Pennsylvania Inc., Verizon Select Services Inc., Verizon South Inc., Verizon Virginia Inc., Verizon Washington, DC Inc., Verizon West Coast Inc., Verizon West Virginia Inc., as well as MCI, Inc. and all of its domestic wireline operating companies.

[2] As used in these conditions, the term "incumbent local telephone company," "incumbent local exchange carrier" or "ILEC" shall mean an "incumbent local exchange carrier" as set forth in 47 U.S.C. § 251 (h)(1)(A) and (B)(i).

2. Within 30 days after the Merger Closing Date, Verizon/MCI shall exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers in which Verizon claims there is no impairment pursuant to section 51.319(a)-(e) of the Commission's rules. Verizon/MCI shall file with the Commission, within 30 days of the Merger Closing Date, revised data or lists that reflect the exclusion of MCI collocation arrangements, as required by this condition.

3. Verizon/MCI affiliates that meet the definition of an incumbent local exchange carrier contained in Section 251 (h)(1)(A) and (B)(i ) of the Act ("Verizon's ILECs") shall, for the Verizon Service Area,[3] provide to the Commission performance metric results contained in the Service Quality Measurement Plan for Interstate Special Access Services ("The Plan"), as described herein and in Attachment A. The Verizon ILECs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of the data collected according to the performance measurements listed in Attachment A. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the Verizon's ILECs' monthly performance in delivering interstate special access services within each of the states in the Verizon Service Area. These data shall be reported on an aggregated basis for interstate special access delivered to (i) Verizon/MCI's Section 272 affiliates, (ii) Verizon's other affiliates, and (iii) non-affiliates.[4] The Verizon ILECs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The Verizon ILECs shall implement the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) 30 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when Verizon/MCI file their 10th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

4. For a period of thirty months following the Merger Closing Date, Verizon/MCI shall not increase the rates paid by MCI's existing customers (as of the Merger Closing Date) of the DS1 and DS3 wholesale metro private line services that MCI provides in Verizon's incumbent local telephone company service areas above their level as of the Merger Closing Date.[5]

The benefit of this condition is that it will assure MCI's existing customers of these services of a period of rate stability.

---

[3] For purposes of this condition, "Verizon service area" means the areas within Verizon's service territory where Verizon's ILEC subsidiaries, as defined in 47 U.S.C. § 251 (h)(1)(A) and (B)(i ), are incumbent local exchange carriers.

[4] Data in categories (i) and (ii) shall not include Verizon/MCI retail data.

[5] For purposes of these conditions, Verizon's incumbent local telephone company service areas means the areas within Verizon's service territory in which a Verizon operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251 (h)(1)(A) and (B)(i).

5. For a period of thirty months following the Merger Closing Date, Verizon's incumbent local telephone companies will not provide special access offerings to their wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

The benefit of this condition is that it provides assurance that Verizon's special access offerings will not be offered solely to its wireline affiliates.

6. For a period of 30 months following the Merger Closing Date, before Verizon's incumbent local telephone companies provide a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to their own section 272(a) affiliate(s), they will certify to the Commission that they provide service pursuant to that contract tariff to an unaffiliated customer other than SBC/ATT or its wireline affiliates. Verizon's incumbent local telephone companies also will not unreasonably discriminate in favor of their affiliates in establishing the terms and conditions for grooming special access facilities.

The benefit of this condition is that it provides assurance that the company will not provide special access offerings to its affiliates that are not available to other special access customers other than SBC/AT&T.

7. Verizon's incumbent local telephone companies will not increase the rates in their interstate tariffs, including contract tariffs, for DS1, DS3 and OCn special access services that Verizon's incumbent local telephone companies provide in their local service areas, as set forth in Verizon's tariffs on file with the Commission on the merger closing date.[6] This condition shall terminate 30 months from the Merger Closing Date.

The benefit of this condition is that it provides Verizon's customers a period of rate stability.

8. Within 30 days of the Merger Closing Date, and continuing for two years thereafter, Verizon/MCI will post its Internet backbone peering policy or policies on a publicly accessible website. During the term of this condition, Verizon/MCI will post any revisions to its peering policy or policies on a timely basis as they occur.

The benefit of this condition is that it is consistent with standard industry practice and will provide transparency as to the policy that will apply.

9. For a period of three years after the Merger Closing Date, Verizon/MCI will maintain at least as many settlement free U.S. peering arrangements for Internet backbone services with domestic operating entities as they did in combination on the Merger Closing Date.

---

[6] This condition does not apply to Advanced Services that would have been provided by a separate Advanced Services affiliate under the terms of the Bell Atlantic/GTE Merger Order, 15 FCC Rcd 14032, App. D (2000).

Verizon/MCI may waive the terms of its published peering policies to the extent necessary to maintain the number of peering arrangements required by this condition.

The benefit of this condition is that it provides assurance of stability in the number of peering relationships that will be maintained following closing.

10. Within twelve months of the Merger Closing Date, Verizon will deploy and offer stand-alone ADSL within the local service areas of Verizon's incumbent local telephone companies. Stand-alone ADSL means ADSL service on ADSL-equipped lines without requiring customers to also purchase circuit switched voice grade telephone service. This service will be available both for existing Verizon voice and ADSL customers who wish to port their voice service to a VoIP provider or to another facilities-based provider such as cable or wireless, and for new customers who wish to subscribe only to Verizon's ADSL and not to its voice service. This service will remain available in a given state for two years after the "implementation date" in that state. For purposes of this condition, the "implementation date" for a state shall be the date that Verizon can offer this service on eighty percent of Verizon's ADSL- equipped lines in Verizon's local service area in that state. Within twenty days after meeting the implementation date in a state, Verizon/MCI will file a letter with the Commission certifying to that effect. In any event, this commitment will terminate no later than three years from the Merger Closing Date.

This benefit of this condition is that it will further the public interest in the widespread availability of broadband service, and in the deployment of new and innovative services to consumers.

11. Effective on the Merger Closing Date, and continuing for two years thereafter, Verizon/MCI will conduct business in a manner that comports with the principles set forth in the FCC's Policy Statement, issued September 23, 2005 (FCC 05-151)..

These general principles provide guidance to help ensure that the public Internet will remain open, affordable and accessible to consumers, and we encourage all participants in the value chain that makes up the public Internet, including other wireline providers, application providers, equipment providers and content providers, to endorse these principles as we have done.

12. For three years following the Merger Closing Date, Verizon/MCI shall file annually a declaration by an officer of the corporation attesting that Verizon/MCI has substantially complied with the terms of these conditions in all material respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second and third declaration shall be filed one and two years thereafter respectfully.

13. For the avoidance of doubt, unless expressly stated to the contrary above, all conditions and commitments contained in this letter shall end on the second anniversary of the Merger Closing Date.

These commitments provide still further assurance that this transaction is in the public interest, and the license transfer applications therefore should be promptly approved.

Sincerely,