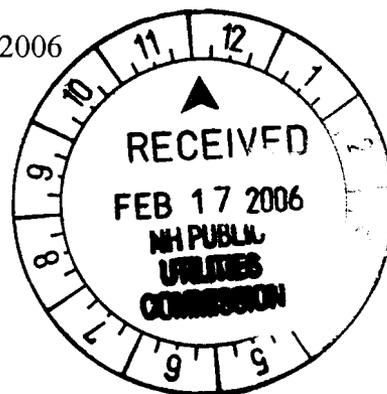




Via Overnight Mail & Electronic Mail

February 16, 2006

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



Re: Verizon New Hampshire Wire Center Investigation, DT 05-083

Dear Ms. Howland:

Conversent's Brief on Wire Center Issues is enclosed for filing.

Thank you. Please contact me (401-834-3326 direct, gkennan@conversent.com) if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Gregory M. Kennan".

Gregory M. Kennan
Director, Regulatory Affairs and Counsel

Cc: Service List

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

**Verizon New Hampshire —
Wire Center Investigation**

DT 05-083

CONVERSENT'S BRIEF ON WIRE CENTER ISSUES

Conversent Communications of New Hampshire, LLC ("Conversent") submits the following brief on issues raised by the Staff's Outline of Issues to be Addressed in Briefs dated January 31, 2006.

I. Wire Center Impairment Determinations

A. Effective date

- 1. When is an impairment determination binding on all parties? (For example, should it be when Verizon notifies the CLECs that a wire center is no longer impaired, or when a CLEC determines through self-certification that it is no longer impaired in a particular wire center, or when the Commission makes a finding about a particular wire center?)**

A wire center impairment determination should become effective on the date that the Commission approves or allows to go into effect an amendment to Verizon's Tariff No. 84.

The purpose of this investigation is to determine which wire centers in New Hampshire are affected by the revised unbundling rules announced in the Triennial Review Remand Order (TRRO). Order of Notice (OON) at 1-2 (Apr. 22, 2005). As the Commission recognized, the question of which wire centers are affected has to be addressed in Verizon's wholesale tariff, Tariff No. 84. *Id.* at 2. The tariff process provides an efficient mechanism for the Commission to oversee future amendments to the wire center list. The tariff mechanism will advance the

desirable goal of a unitary list of wire centers. All interested persons will have access to the wire center list. Further, the tariff filing procedure ensures that the Commission will have the opportunity to review the wire center list, including future amendments. (That level of review will be less extensive once the ground rules for wire center listing are established in this proceeding.)

Verizon may express concerns about use of the tariff mechanism, on the ground that filing future amendments to the wire center list will create delay. Such concerns would be unfounded. This docket will set the ground rules for future wire center determinations. OON at 2. Once the rules are set, Verizon may file future changes to the wire center list as proposed tariff amendments, to be effective in 30 days under normal Commission procedure. It is unlikely that the Commission would suspend such filings, as this proceeding will have determined most of the issues associated with wire center impairment determinations.

Thus, the tariff mechanism provides the most efficient and transparent method of amending the wire center list.

B. Determination Process

1. If 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?

As a practical matter, the situation of a CLEC finding impairment where Verizon does not is unlikely to arise. To the extent that an impairment determination rests on business line count, Verizon has better access to that information than any CLEC. For certain information, such as the number of UNE loops in a wire center, a CLEC's only access to that information is via Verizon.

To the extent that such determination rests on the number of fiber-based collocators, Verizon is in at least as good a position as any CLEC to have relevant information. Simply, a

CLEC could not establish a fiber connection without Verizon knowing it. Verizon closely controls work in its central offices. Verizon itself performs most (if not all) cabling work in the CO. In any installation of fiber, Verizon would pull the cable from the cable vault or CATT to the collocation cage. There is no way a CLEC could become a fiber-based collocater surreptitiously.

So, Verizon will know as soon as, or likely before, any CLEC that a wire center has become non-impaired. It may then file amendments to Tariff No. 84 as Conversent suggests under point I.A.i above.

Even if an individual CLEC did determine that a wire center or route was non-impaired in advance of or absent any Verizon determination, that CLEC's determination cannot bind other CLECs. First, other CLECs will not know of it. A CLEC will not publicly announce its determination that a wire center or route is non-impaired. A CLEC that is unable to make the required certification of eligibility will simply not place an order for UNEs in the wire center or for the route. No other CLEC will know what the first CLEC is doing, or why.

Further, if a CLEC did make such determination, it likely would be based in part on its risk tolerance. What happens if a CLEC makes an incorrect certification of UNE eligibility is not settled. In other states, however, Verizon has sought to convert incorrectly-ordered UNEs to other services, at its discretion, and retroactively bill the CLEC for the difference in rate back to the order date, plus late payment charges and interest. See Verizon's proposed ICA Amendment § 3.6.2.3 submitted to the Massachusetts Department of Telecommunications and Energy.¹ A particular CLEC might prefer the certainty of ordering a substitute service (if available) under another arrangement (e.g., a term contract) instead of risking whatever Verizon might impose if

Verizon prevails in the eligibility dispute. Such a CLEC's business decision, however, is highly individual; it cannot and should not bind other CLECs.

C. CLEC Mergers

- 1. Should facilities owned or operated by two CLECs who merge to form one entity be counted only once in future wire center impairment determinations even if they have been counted as two in prior determinations concerning the same wire center?**

CLECs that merge should be counted as a single collocator in future determinations of wire center non-impairment. The FCC rule is clear: "Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator." 47 C.F.R. § 51.5, definition of "fiber-based collocator."

Under the FCC rules, however, a wire center may not be downgraded from Tier 1 to Tier 2 or from Tier 2 to Tier 3. 47 C.F.R. § 51.319(e)(i)-(ii). Thus, while a merger of CLECs does not change past determinations,² it may affect future determinations even if a wire center is already non-impaired for certain UNEs. For example, a wire center might have been designated as Tier 2 due to the presence of three fiber based collocators, CLECs A, B, and C. If A and B merge, the wire center remains Tier 2. However, going forward it will take two, not one, additional fiber-based collocators for the wire center to be designated as Tier 1.

¹ A copy is attached. In the attachment, Verizon's proposed provisions are in brackets and bold type. The bold, italicized, underlined type is the CLECs' proposal. Normal type is uncontested language in the post-arbitration conforming amendment.

² Conversent's comment applies only to mergers between CLECs and does not apply to the Verizon/MCI and the AT&T/SBC mergers under the FCC approval orders or otherwise. However, the Staff's factual statement indicates that the Verizon/MCI and AT&T/SBC mergers were not a factor in the count of fiber-based collocators in New Hampshire. Thus, it is not necessary to comment further in this brief on how the Verizon/MCI and AT&T/SBC mergers might affect the fiber collocator count, and Conversent reserves all rights.

II. Fiber Based Collocation

A. Operation of Fiber

1. **Pursuant to 47 CFR 51.5, the definition of a *fiber-based collocator* requires the carrier to "operate" a fiber-optic cable or comparable transmission facility. How should the term "operate" be interpreted?**

The dictionary definition of "operate" is "to run or control the functioning of." *The American Heritage Dictionary of the English Language*. Another dictionary's definition is "to cause to function: work; to put or keep in operation." *Merriam-Webster's Online Dictionary* (www.m-w.com). Thus, to operate a fiber-optic cable or comparable facility, one must cause it to function or control the functioning of it. Merely owning the cable or installing it does not constitute operating it. Also, that a carrier's telecommunications traffic may be transmitted over the fiber-optic cable does not, in and of itself, constitute operating it.

B. IRU Contracts (Dark Fiber)

1. **What elements must be included in a contract for it to be considered an IRU contract?**

An "Indefeasible Right of Use (or User)" is defined as:

A term used in the underseas cable and fiber optic carrier business. Someone owning an IRU means he has the right to use the circuit for the time and bandwidth the IRU applies to. An IRU is to submarine or fiber optic cable what a lease is to a building.

Newton's Telecom Dictionary (15th Ed.) at 426.

The Federal Communications Commission has stated, "Non-owners of cable systems may acquire capacity either by a short-term-lease or as an indefeasible right of user (IRU), which essentially is a perpetual leasehold in a circuit of capacity." *In re Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, ¶ 86 (Sept. 14, 1998). The FCC has also stated, "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” *In re Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers*, CC Docket No. 87-45, Report and Order, 7 FCC Rcd. 4561, 4561 n.1 (1992), *quoted in In re Application of WorldCom*, FCC 98-225, at fn. 253.

2. Does dark fiber obtained on an infeasible 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?

Not in and of itself. The definition in 47 C.F.R. § 51.5 has a number of elements.³ One of those elements is that the fiber optic cable must be owned by someone other than the ILEC or its affiliate. However, the FCC created an exception to this element for fiber obtained from the ILEC under an IRU: “Dark fiber obtained from an incumbent LEC on an infeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable.” Assuming that all the other criteria in the definition are met, a collocator that operates ILEC dark fiber obtained under an IRU would be a fiber-based collocator.

³ The definition in the FCC regulations is:

Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an infeasible 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.

47 C.F.R. § 51.5.

3. **Does dark fiber obtained on an IRU basis meet the test when a carrier obtains dark fiber from a CLEC?**
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?**

When a collocator that meets all other elements of the definition obtains dark fiber from a CLEC that is not an ILEC affiliate, it does not appear to matter under 47 C.F.R. § 51.5 whether the fiber is obtained on an IRU basis.

C. Lit Fiber Products

1. **Do lit fiber facilities acquired on 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 that utilizes lit transport provided by another carrier is not a fiber-based collocator. That CLEC is not operating the fiber facility, but is merely obtaining transport services from another carrier. See the discussion under point II.A.1 above.

D. CATT Collocation Arrangements

1. **Do stand-alone CATT arrangements, without power, meet the test?**

No. The definition of “fiber-based collocator” in § 51.5 is clear: to qualify, a collocation arrangement must have “active electrical power.” A CATT does not.

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?**

Conversent takes no position with respect to DTS arrangements.

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?**

Conversent takes no position with respect to DCS arrangements.

III. Section 271

A. Is high capacity transport a 271 element?

Yes. Section 271 identifies “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.” It does not distinguish on the basis of the capacity of the transport.

B. Are high capacity loops a 271 element?

Yes. Section 271(c)(2)(B)(iv) specifies “Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.” It does not distinguish on the basis of the loop’s capacity.⁴

IV. Transition

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?

As stated above under point I.A.1, a wire center impairment determination should become effective on the date that the Commission approves or allows to go into effect an amendment to Verizon’s Tariff No. 84. Transition periods begin to run at that time. No disconnection (or conversion to other, non-UNE arrangements) may occur until after the end of the applicable transition period.

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?

The Commission should apply a rolling transition plan for UNEs in wire centers that are determined to be non-impaired subsequent to the original effective date of the TRRO. The

⁴ Fiber to the home (FTTH) and fiber to the curb (FTTC) loops are not § 271 elements under the FCC’s *Broadband Elements Forbearance Order, In the Matter of Petition for Forbearance of the Verizon Telephone Companies*

transition periods should be the same as when a wire center was deemed non-impaired upon the original effective date of the TRRO — one year for DS1 and DS3 high-capacity loops and DS1 and DS3 dedicated transport, and eighteen months for dark fiber dedicated transport. The transition period should begin to run when the Commission approves or allows to go into effect an amendment to Verizon’s Tariff No. 84 that adds a wire center or changes its status.

The FCC established transition periods to allow for a reasonable and orderly transfer from UNEs to other facilities or arrangements. In the case of DS1 and DS3 dedicated transport and DS1 and DS3 loops, the FCC determined that a “twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions where to deploy, purchase, or lease facilities.” TRRO, ¶¶ 143, 196.

The FCC set a longer transition period, 18 months, for dark fiber dedicated transport, because additional activities are required for an orderly transition. The FCC determined that it would take time to negotiate IRUs or other arrangements with transport carriers. If the CLEC elects to self-deploy, the process could take several years.

Because incumbent LECs generally do not offer dark fiber as a tariffed service regulated under sections 201 and 202 of the Act, and because it may take time for competitive LECs to negotiate IRUs or other arrangements with incumbent or competitive carriers, we find that a more lengthy transition plan is warranted for transitioning carriers from the use of UNE dark fiber to alternative facilities. Moreover, we find that “lit” DS3 or OCn services are sufficiently different from dark fiber not to qualify as a ready substitute. Because incumbent LECs offer no tariffed service comparable to dark fiber, we find that, if no impairment is found for a particular route on which a competitive LEC utilizes unbundled dark fiber, the risk of service disruption is significantly higher than for DS3 and DS1 unbundled transport, for which comparable service offerings are available under tariff. The record reveals that, even under ideal situations, deploying fiber transport facilities can take up to several years. For these reasons,

we adopt an eighteen-month transition period for dark fiber transport facilities similar to the twelve-month transition period that we adopt for DS1 and DS3 transport. We expect that the extra time will be sufficient to allow carriers the time necessary to migrate to alternative fiber arrangements, including self-deployed fiber.

TRRO, ¶ 144 (footnotes omitted).

The reasons that the FCC articulated for transition periods apply with equal force to wire centers deemed non-impaired upon the effective date of the TRRO and to wire centers that become non-impaired by subsequent events (such as addition of a fiber-based collocator or growth in business access lines). For both the initial set of non-impaired wire centers and those later becoming non-impaired, CLECs will have to undertake the same tasks to obtain an orderly transition, including seeking out and concluding arrangements with alternative transport providers (if any exist).

Likewise for dark fiber — the time needed to enter IRUs and perform the other tasks necessary to obtain third-party dark fiber, or to self-provision dark fiber, is the same for the initial set of non-impaired wire centers and those added later. A CLEC must make contractual arrangements with one or more alternative transport provider(s). Transitioning to an alternative fiber provider requires a physical reconfiguration of the CLEC network. Engineering work must be performed, and fiber must be moved or newly installed in the Verizon central office. If the CLEC self-provisions fiber, additional work outside the central office is required.

The transition periods are particularly acute when a wire center is reclassified on the basis of business line count rather than fiber-based collocators. If a wire center becomes a Tier 2 wire center on the basis of line count, there simply may be no existing alternative provider of dark fiber. Since there is no Verizon special-access analog to dark fiber, a CLEC must reconfigure its network to obtain Verizon dark fiber on another route (if that is even possible), self-provision, or

induce a third-party fiber provider to construct new facilities. These activities require the longest lead times.

Therefore, the transition periods should be the same duration for the initial set of non-impaired wire centers and to those that later become non-impaired.

Other state Commissions have recognized that it is appropriate to impose the same transition period for subsequently-added wire centers as for the initial set (12 months for DS1 and DS3 loops and transport and 18 months for dark fiber). For example, the Ohio Commission ruled:

[W]e are not convinced that the amount of time necessary for CLECs to perform the tasks necessary to an orderly transition, including decisions to deploy, purchase, or lease facilities in newly delisted wire centers would be shorter for subsequent transitions. We, therefore, agree with the CLECs that a 12-month period for the transition of DS1 and DS3 loops and dedicated transport at newly delisted wire centers is reasonable and should be adopted. For similar reasons, we adopt the CLECs' proposed 18-month period for the subsequent transition of dark fiber loops and transport.

*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 Order on Remand, Case No. 05-0887-TP-UNC, Arbitration Award at 65 (Ohio PUC Nov. 9, 2005).*⁵ The Illinois Commerce Commission similarly determined that “there is no reason to believe the necessary tasks, such as identifying potential alternative suppliers or vendors, getting price quotes and negotiating contracts, and constructing new facilities, can be completed in any less time than during the initial transition period.” *In re Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order, No. 05-0442, Arbitration Order at 114 (Ill. Commerce*

⁵ The reference to subsequent transition of dark fiber loops appears to be in error, but is of no matter here.

Comm'n Nov. 2, 2005). The District of Columbia Public Service Commission reasoned that "since the FCC's arguments for the transition apply equally to such future reclassifications of high-capacity loops to become discontinued UNEs, these transition rules should apply also to such future reclassifications." With respect to dedicated transport, the D.C. Commission stated simply, "The transition rules should apply in future cases where wire centers qualify for nonimpairment." *In re Petition of Verizon Washington, DC Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. TAC-19, Recommended Decision at 16, 18 (Sept. 6, 2005), *aff'd in part and rev'd in part on other grounds*, Order No. 13836 (D.C. PSC Dec. 15, 2005). *See also In the Matter, on the Commission's Own Motion, to Commence a Collaborative Proceeding to Monitor and Facilitate Implementation of Accessible Letters Issued by SBC Michigan and Verizon*, Case No. U-14447, Order at 31 (Mich. PSC Sept. 20, 2005) (imposing 9-month transition period for DS1 and DS3 loops and transport and 12 months for dark fiber; Commission specifically "finds that SBC's proposal [of 90-day transition for all UNEs] is not reasonable, because it creates a time frame that is too tight for conducting an orderly transition away from UNEs.")

Conversent expects that Verizon will argue that the 90-day transition period in some or all existing interconnection agreements covers transitions at wire centers subsequently deemed non-impaired. Verizon would be wrong for at least two reasons. First, the FCC admonished, "[W]e expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms through the section 252 process." TRRO ¶ 142 n. 399, ¶ 196 n. 519.⁶ In this

⁶ Footnote 339 states:

We recognize that some dedicated transport facilities not currently subject to the nonimpairment thresholds established in this Order may meet those thresholds in the future. We expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms for such facilities through the section 252 process.

Footnote 519 states:

statement, the FCC clearly directs the parties to negotiate in the *future*, not rely on past negotiations. Second, if the Commission determined that new negotiations were not required, in Conversent's case at least, its interconnection agreement requires the parties "to work cooperatively to develop an orderly and efficient transition process." As the FCC found and as described above, an orderly and efficient transition process requires 18 months for dark fiber and one year for DS1 and DS3 loops and transport. Further, Conversent's agreement explicitly provides that the Commission may set the transition period.⁷

For these reasons, the Commission should establish a rolling transition period of 12 months for DS1 and DS3 loops and dedicated transport and 18 months for dark fiber dedicated transport.

V. Other Issues Not Addressed Above

Conversent commends the Staff for its thorough factual investigation in this docket. The Staff recognized that it was in the best position to gather the necessary information, and acted in

We recognize that some high-capacity loops with respect to which we have found impairment may in the future meet our thresholds for non-impairment. For example, as competition grows, competitive LECs may construct new fiber-based collocations in a wire center that currently has more than 38,000 business lines but 3 or fewer collocations. In such cases, we expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms through the section 252 process.

⁷ Section 11.0 of Conversent's interconnection agreement provides, in relevant part:

[I]f [Verizon] intends to cease provisioning a Network Element that it is no longer required by Applicable Law to provision, the Parties agree to work cooperatively to develop an orderly and efficient transition process for discontinuation of provisioning such Network Element. Unless otherwise agreed to by the Parties (or required by Applicable Law), the transition period shall be at most three (3) months from the date that the FCC (or other applicable government entity of competent jurisdiction) issues (or issued) public notice that [Verizon] is not required to provision a particular Network Element.

The agreement in turn defines "Applicable Law" as: "Applicable Law' means all laws, regulations and orders applicable to each Party's performance of its obligations hereunder." *Id.* § 1.3.

Thus, the agreement specifically contemplates that the Commission may set a different transition period than the default specified in the agreement.

the best interests of all parties in discharging this responsibility. Conversent is grateful to for the Staff's initiative.

February 16, 2006

Respectfully Submitted,



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locations. Verizon shall provide the back-up data required by this section no later than ten (10) business days following ***CLEC Acronym TXT***'s written request, but only if a non-disclosure agreement covering the back-up data is in effect between Verizon and ***CLEC Acronym TXT*** at that time. Upon ***CLEC Acronym TXT***'s request, Verizon shall update the back-up data to the month in which ***CLEC Acronym TXT*** requests the back-up data; provided, however, that Verizon need not provide the back-up data for a particular Wire Center for a date later than the original date on which the data must have been current to establish the level of non-impairment (e.g., Tier 2, etc.) that Verizon asserts as to that Wire Center.

3.6.1.3 Since Verizon has now modified its electronic ordering system to include a method for ***CLEC Acronym TXT*** to provide the certification required by this section, ***CLEC Acronym TXT*** shall use such method, as updated from time to time, to provide such certification **[, so long as such method is no more onerous than providing certification by letter].**

3.6.2 Provision-then-Dispute Requirements.

3.6.2.1 Upon receiving a request from ***CLEC Acronym TXT*** for unbundled access to a TRRO Certification Element and the certification required by Section 3.6.1 above, Verizon shall immediately process the request in accordance with any applicable standard intervals and, for the avoidance of any doubt, shall not delay processing the request on the grounds that the request is for a TRRO Certification Element. If Verizon wishes to challenge ***CLEC Acronym TXT***'s right to obtain unbundled access to the subject element pursuant to 47 U.S.C. § 251(c)(3), Verizon must provision the subject element as a UNE and then seek resolution of the dispute by the Department or the FCC, or through any dispute resolution process set forth in the Agreement that Verizon elects to invoke in the alternative.

3.6.2.2 If Verizon intends to retroactively reprice a facility or service back to the date of provisioning **[pursuant to section 3.6.2.3 below] [should Verizon prevail in a dispute]**, then Verizon, within thirty (30) days of the date on which it receives ***CLEC Acronym TXT***'s certification under Section 3.6.1 above, must notify ***CLEC Acronym TXT*** that Verizon disputes the subject order; **provided, however, that if Verizon fails to notify ***CLEC Acronym TXT*** within such thirty (30) day period, in no event shall Verizon's right to reprice retroactively be limited to a date later than the date on which Verizon notifies ***CLEC Acronym TXT*** that Verizon disputes the subject order].**

3.6.2.3 **[To the extent it is determined that Verizon is entitled to retroactive pricing of a facility under this Section 3.6.2, such repricing shall be at rates no greater than the lowest rates ***CLEC Acronym TXT*** could have obtained in the first instance (for the facility to be repriced) had ***CLEC Acronym TXT*** not ordered such facility as UNE] [If a dispute pursuant to section 3.6.2.2 above is resolved in Verizon's favor, then ***CLEC Acronym TXT*** shall**

TEXT IN REGULAR FONT REFLECTS AGREED LANGUAGE

TEXT IN **NON-UNDERLINED FONT** REFLECTS VERIZON'S LANGUAGE THAT ONE OR MORE CLECS DISPUTE (EXCEPT THERE IS NO DISPUTE AS TO ANY BOLD LANGUAGE IN THE INTRODUCTORY TEXT PRIOR TO SECTION 1)

TEXT IN **UNDERLINED FONT** REFLECTS CLEC PROPOSED LANGUAGE THAT VERIZON DISPUTES. 15

compensate Verizon for the additional charges that would apply if ***CLEC Acronym TXT*** had ordered the subject facility or service on a month-to-month term under Verizon's interstate special access tariff (except as provided in section 3.6.2.3.1 below as to dark fiber) and any other applicable charges, applicable back to the date of provisioning (including, but not limited to, late payment charges for the unpaid difference between UNE and access tariff rates). The month-to-month rates shall apply until such time as ***CLEC Acronym TXT*** requests disconnection of the subject facility or an alternative term that Verizon offers under its interstate special access tariff for the subject facility or service.]

3.6.2.3.1 [In the case of Dark Fiber Transport (there being no analogous service under Verizon's access tariffs), the monthly recurring charges that Verizon may charge, and that ***CLEC Acronym TXT*** shall be obligated to pay, for each circuit shall be the charges for the commercial service that Verizon, in its sole discretion, determines to be analogous to the subject dark fiber facility and, unless otherwise agreed in writing by the Parties, Verizon may disconnect the subject dark fiber facility thirty (30) days after the date on which the dispute is resolved in Verizon's favor. In any case where ***CLEC Acronym TXT***, within thirty (30) days of the date on which the dispute is resolved in Verizon's favor, submits a valid ASR for a "lit" service to replace the subject Dark Fiber Transport facility, Verizon shall continue to provide the Dark Fiber Transport facility at the rates provided for above, but only for the duration of the standard interval for installation of the "lit" service.]

3.6.2.4 Notwithstanding any other provision of the Amended Agreement, [but subject to and without limiting Section 4.4, below,] Verizon may reject a ***CLEC Acronym TXT*** order for a TRRO Certification Element without first seeking dispute resolution in any case where ***CLEC Acronym TXT***'s order conflicts with a non-impaired Wire Center designation that the Department or the FCC has ordered or affirmatively approved or that has otherwise been confirmed through previous dispute resolution.

3.6.3 If Verizon revises or has revised its Wire Center list to add any new Wire Centers not listed as of March 11, 2005 or to upgrade ("upgrade" meaning movement to a higher level of non-impairment (e.g., from Tier 2 to Tier 1)) the non-impairment status of any Wire Centers listed as of March 11, 2005, then Verizon, to the extent it has not already done so, shall notify ***CLEC Acronym TXT*** in writing of such changes ("Wire Center Update Notice") and the following provisions shall apply:

3.6.3.1 ***CLEC Acronym TXT***'s embedded base of TRRO Certification Elements that are or become Discontinued Facilities by operation of any such change to the Wire Center List shall be treated as Discontinued Facilities under Section 3.9.2 below effective as of ninety (90) days of the date on which Verizon issues (or issued) the Wire Center Update

TEXT IN REGULAR FONT REFLECTS AGREED LANGUAGE

TEXT IN **NON-UNDERLINED FONT** REFLECTS VERIZON'S LANGUAGE THAT ONE OR MORE CLECS DISPUTE (EXCEPT THERE IS NO DISPUTE AS TO ANY BOLD LANGUAGE IN THE INTRODUCTORY TEXT PRIOR TO SECTION 1)

TEXT IN **UNDERLINED FONT** REFLECTS CLEC PROPOSED LANGUAGE THAT VERIZON DISPUTES. 16