

DT 01-206

VERIZON NEW HAMPSHIRE

**Order Approving in Part and Denying in Part Statement of
Generally Available Terms and Conditions Additional Unbundled
Network Elements**

O R D E R N O. 23,948

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I. PROCEDURAL HISTORY

On August 4, 2000, Verizon New Hampshire (Verizon) filed with the New Hampshire Public Utilities Commission (Commission) a number of revisions to its Statement of Generally Available Terms and Conditions (SGAT) in DE 97-171 (hereinafter collectively referred to as the UNE Remand filing), to comply with the Federal Communications Commission's (FCC's) *UNE Remand Orders*¹ and *Advanced Services Orders*².

¹ On remand from the U.S. Supreme Court, the FCC adopted new rules specifying additional network elements that incumbent local telephone companies are required to unbundle and provide to competitors, the so-called UNE Remand elements. The FCC's relevant orders are *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, FCC Common Carrier Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (rel. November 5, 1999), *Supplemental Order* (rel. November 24, 1999), and *Supplemental Order Clarification* (rel. June 2, 2000).

² *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) (*Line Sharing Order*); Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Propose Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-998 (rel. January 19, 2001) (*Line Sharing Reconsideration Order*.)

By Order No. 23,738 in DE 97-171, (July 6, 2001), hereinafter referred to as the *July 6th Order*, the Commission decided to consider the UNE Remand filing in a separate docket and directed Verizon to re-file its UNE Remand filing so as to comport with its holdings in the *July 6th Order*. On August 30, 2001, Verizon did so.

By Order of Notice dated October 14, 2001, the Commission opened this docket. The Order of Notice announced that an expedited review would be appropriate in order to facilitate contemporaneous completion of the UNE Remand docket with Docket No. DT 01-151, consideration of Verizon's §271 application, because the docket constitutes a compliance filing pursuant to the *July 6th Order*. At a duly noticed prehearing conference, the Commission granted intervenor status to AT&T Communications of New England, Inc., AT&T Broadband, RNK Communication, CTC Communications, Sprint Communications Company, Covad Communications Company, and Network Plus, Inc. The Commission granted limited intervenor status to Mr. William Harper for segTEL, Inc. By Order No. 23,837 (November 2, 2001) the Commission approved a procedural schedule; the Commission revised the approved procedural schedule by letter from the Executive Director dated December 14, 2001.

The procedural order indicated that the review would be conducted by a Facilitator, Paul M. Hartman of Beacon Telecommunications Advisors, Inc., who would provide a report and recommendation to the Commission prior to a final hearing at which Parties would have the opportunity to present objections to the Facilitator's report and recommendation.

The review approved by the Commission included a technical session on November 11, 2001, at which Verizon representatives explained the UNE Remand filing and were subject to oral examination by all Parties. The technical session resulted in a number of oral requests for information, along with numerous written data requests filed by Parties and Staff, to which Verizon responded during an extended discovery process. The Facilitator convened a number of multi-party teleconferences to ensure that all relevant requests were fully answered.

The OCA filed a Motion for Dismissal or Deferral on December 3, 2001. In response, both Verizon and Staff filed memoranda opposing OCA's motion. The OCA withdrew its motion on December 13, 2001.

The Parties and Staff filed briefs, in accord with the revised procedural schedule, on December 28, 2001. The Facilitator submitted a recommended decision to the Commission on January 3, 2002, to which Parties and Staff responded with

written comments objecting to 29 of the Facilitator's recommendations. Finding merit in some of the comments, the Facilitator then convened a series of conference calls to develop a final Facilitator's recommendation. At the conclusion of the conference calls, only eight issues remained in dispute. The Facilitator submitted his final recommendation to the Commission on January 16, 2002, as the Modified Facilitator's Report (MFR).

A final hearing before the Commission to consider the MFR was held on January 17, 2002. The hearing consisted of oral argument by the Parties and Staff regarding unresolved issues in the MFR.

II. INTRODUCTION

The Commission limited the scope of review in this proceeding to whether the proposed tariffs comport with the FCC's rules and whether they comport with the Commission's *July 6th Order*. In recognition of the compliance nature of the docket, and in order to expedite the process to establish approved terms and conditions for all UNEs, the Commission appointed a Facilitator to manage the technical sessions and discovery process, to review briefs, and to submit a Facilitator's Report recommending resolution of all the contested issues. The Parties and Staff raised numerous

substantive issues that the Facilitator resolved in his MFR. The Facilitator recommended resolutions for all substantive issues, several of which were contested at hearing before the Commission. In addition to the eight contested issues, concerns were raised by some Parties regarding procedural aspects of this case. We address the procedural issues below in Section III. H.

All issues raised are listed below³. A description of the Facilitator's resolutions to which no Party objected is provided, and, except where indicated, the Commission hereby adopts the Facilitator's resolutions. Also included in this list are eight contested issues which are addressed in full in Section III.

IIA. ISSUES RESOLVED BY FACILITATOR

- 1. Reduction of time estimates for non-recurring costs.** The labor time estimates for the UNE Remand elements are to be reduced by 36.12% pursuant to the Commission's directive in the *July 6th Order*.
- 2. The fill factor (utilization factor) associated with Dark Fiber.** See Section III. A., below.

³ As presented here, the issues are numbered differently than they were in the Facilitator's listing as a result of his combining issues that related to the same topic.

3. **The charge for Unusable Dark Fiber.** Loop Dark Fiber is made available to a CLEC between two points, and may result in segments of fiber that do not connect back to Verizon's central office. When this occurs, an Unusable Dark Fiber charge applies to the segments of stranded fiber. The Facilitator set this charge at \$0.00, finding that all costs are already being recovered in lit fiber charges.
4. **Dark Fiber service order charges.** Service order charges are set at \$22.50 per service order for a single pair between two end-points, and \$20.45 for each additional fiber pair between the same two end-points when the request is made at the same time as the request for the initial pair. These rates mirror those set in Massachusetts.
5. **Dark Fiber billing increments.** Billing increments will continue to be rounded to the nearest whole mile, as proposed by Verizon, since that appears to match costs and units, and the rates that emerge from that method do not appear discriminatory.
6. **Field surveys for Dark Fiber.** Field surveys shall be provided by Verizon at time and material rates. The

charges for a field survey will be waived under the following circumstances: Verizon's record review indicates that fiber is available, the CLEC requests a field survey within three months of the record review⁴, and the requested field survey shows no fiber is actually available due to reasons other than use by another carrier or Verizon itself.

7. **Verizon Network Planners.** Verizon need not make its network planners available to CLECs for consultation on Dark Fiber. Network planning assistance is not required by any prior order of the Commission.
8. **Dark Fiber jumper cable charges.** Verizon shall employ the Engineer, Furnish, and Install (EF&I) factor for a Smart Jack to calculate Dark Fiber jumper cable charges.
9. **Dark Fiber request process.** In its Dark Fiber request process, Verizon shall provide initial availability information within 15 business days. Where it determines that no facilities are available, Verizon shall identify for the CLEC the route triggering the "no facilities

⁴ A Field Survey Request will typically follow a CLEC Service Order for Dark Fiber that is rejected due to "no facilities available."

available" response, indicate what alternate routes have been investigated, and show the first blocked segment on each route as well as all of those segments which are not blocked (the 15-Day Information). Within 30 calendar days, unless the CLEC declines by checking the negative check-off space⁵ on Verizon's Dark Fiber Request Form, Verizon shall provide more complete information (30-Day Information) pursuant to the Commission's *Dark Fiber Order*. Verizon may charge the CLECs for 30-Day Information. These changes notwithstanding, CLECs will continue to follow Verizon's normal Dark Fiber inquiry and ASR processes.

- 10. Verizon's ability to reserve Dark Fiber.** The Facilitator stated that Verizon's proposed reservation terms, which mirrors its policies in other Verizon states (except for Massachusetts) is in compliance with the Commission's orders.

⁵ Although not specifically enumerated by the Facilitator, the Parties agreed that the Dark Fiber Request Form utilized by Verizon will include a negative check-off space to decline 30-day Information, so that CLECs will not be charged for unwanted information.

11. Access to splice points. The provisioning of Dark Fiber at additional splice points is addressed in Section III. B., below.

12. Parallel provisioning of Dark Fiber and collocation.

Verizon is currently conducting a trial of parallel provisioning in Pennsylvania. The Facilitator recommends Verizon introduce parallel provisioning in New Hampshire, conditioned upon a favorable outcome of the Pennsylvania trial.

13. Dark Fiber repair. The Facilitator recommends that the Commission require Verizon to maintain CLEC-utilized fibers by using the same methods, procedures and practices it uses for Verizon-utilized fibers contained in the same sheath.

14. Repairing degraded fiber. Although Verizon does not repair individual fibers, in the normal course of business Verizon repairs all fibers when an entire ribbon degrades regardless of who uses the individual fibers in the ribbon. In order to attain parity, Verizon must also repair entire ribbons which consist entirely of CLEC-utilized fibers.

15. Verizon's responsibility to augment the supply of Dark Fiber. See Section III. C., below.

- 16. The Engineer, Furnish, and Install (EF&I) Factor used to compute costs for Line Sharing.** The Facilitator recommends that Verizon use the same EF&I factor for line sharing as it applies in the Smart Jack study. The factor applies to non-recurring charges for Splitter Installation and the recurring charges for Administrative Support and Splitter Equipment Support.
- 17. Administration and Support charges (Option A) for Line Sharing.** When a CLEC installs a splitter for line sharing purposes in their own collocation space within the Verizon CO, Verizon assesses Administration and Support Charges. The Facilitator found that these proposed charges are reasonable and should be adopted.
- 18. Administration and Support charges (Option C) for Line Sharing.** When a CLEC installs a splitter for line sharing purposes in Verizon's CO for use with virtual collocation, Verizon assesses Administration and Support Charges. The Facilitator found that these proposed charges are reasonable and should be adopted.
- 19. Splitter Installation Charges for Line Sharing.** CLECs argued that Splitter Installation Charges could better reflect the actual tasks performed. The Facilitator found

that Verizon's proposed charges are appropriate and reasonable and should be adopted.

20. Application Augment Fee and Engineering and Implementation

Fee for Line Sharing. The Facilitator recommends that the application fee be set at \$1,500 based on a similar fee set by the Massachusetts Department of Telecommunications and Energy (MA DTE). The Facilitator also refers to the MA DTE decision in his recommendation that the E&I fee be set at \$1,632.30 for an initial installation and \$1,453.09 for an augment. These rates are subject to change and true-up back to the date of this order, pending the outcome of the Massachusetts comprehensive TELRIC proceeding currently underway.

21. Cooperative Testing costs for Line Sharing. These costs

accrue for coordination and performance of continuity testing on a DSL-compatible non-line-sharing loop on the installation date. The Facilitator recommends that the Commission follow the findings in the MA DTE's *Phase III Order*, setting the charge at \$0.00.

22. Loop Qualification charges. Loop qualification includes

mechanized loop qualification, manual loop qualification, and engineering queries. See Section III. D. for mechanized loop qualification. The Facilitator recommends

that for manual loop qualifications, the Commission adopt the rate approved recently by the Rhode Island Public Utilities Commission of \$72.37 per link. The Facilitator also recommends that the Commission Staff investigate any future claims of unwarranted manual loop qualifications. As regards the loop qualification engineering query charges, the Facilitator recommends a rate revised, on the basis of the 36.12% labor reduction, to \$105.22 per link.

23. Loop Conditioning. Loop conditioning includes removal of load coils, removal of bridged taps, and removal of load coils and bridged taps on multiple loops. See Section III. E. and F., below.

24. Recurring and non-recurring costs for subloop unbundling.

The Facilitator recommends the Commission adopt Verizon's proposed recurring costs and adjust Verizon's proposed non-recurring costs by reducing the labor time estimates by 36.12% pursuant to the *July 6th Order*.

25. EEL Conversions. This issue concerns the provisioning interval and billing for converting special access to Extended Enhanced Loops (EELs). Verizon proposes a 30-day provisioning interval for conversions, to be revised downward when mechanized conversions are possible. The mechanized conversions process is anticipated to be

available in Massachusetts during the first quarter of 2002. The Facilitator recommends that Verizon make the mechanized process available in New Hampshire at the same time. Billing at UNE rates would begin at the end of the 30-day provisioning interval, whether or not conversion has actually occurred.

- 26. New EEL Components.** The CLECs raised issues regarding restrictions on ordering EELs and on the commencement of billing for portions of EEL provisioning. Recognizing that the SGAT does not address new EEL components, the Facilitator recommends that to the extent that Verizon voluntarily provides new individual EEL components, Verizon will file an SGAT with terms and conditions subject to Commission approval. The service list for Docket No. DT 01-206 will receive copies of Verizon's filing.
- 27. CLEC liability for termination penalties when converting special access circuits to EELs.** As Verizon agreed that conversions from special access to EELs may occur without termination penalty as long as the minimum service term has expired, CLECs have the option of avoiding termination liability. It is the Commission's understanding that when

there is a month-to-month contract⁶ for special access, the CLEC may convert the special access circuit to a UNE without penalty, anytime after the initial 90 days of special access service.

- 28. EEL Link Test charges.** These charges cover the costs for end-to-end testing of EEL arrangements. The Facilitator recommends the Commission adopt rates based upon the Massachusetts decision applying deaveraged non-recurring rates for EEL link test charges, as follows:

Service	Urban	Suburban	Rural
2W Analog loop	11.07	12.33	15.57
2W Digital loop	21.49	22.86	26.16
4W Analog loop	34.30	36.51	41.17
56KD loop	44.62	46.74	52.63
1.544 Mbps Digital loop	78.07	81.12	121.26

- 29. Recurring and non-recurring charges for UNE-Ps.** UNE-Ps consist of unbundled local loop, local switching, shared trunk port and transport, signaling systems and call related databases, *et al.*, as listed in the SGAT. The Facilitator points out that Verizon's rates comply with

⁶ Month-to-month contracts have an initial 90-day minimum service period. While a circuit may be converted to EELs before the 90-day period expires, the CLEC (or its customer) will be charged for 90 days of service at the special access month-to-month rate.

the *July 6th Order* and are therefore accepted, to the extent that the non-recurring labor rates are reduced by 36.12% in compliance with the *July 6th Order*.

30. **Recovery of Field Installation costs for both new and migrated 2-wire UNE-P.** The Facilitator rejected the Joint CLECs' and OCA's argument that these costs should be recovered on a recurring rather than a non-recurring basis.
31. **UNE-P cost modeling assumptions.** According to the Joint CLECs and OCA, Verizon's modeling assumptions for UNE-P fail to capture efficiencies and incorrectly include more complex activities than necessary. The Facilitator concluded that no adjustments are necessary because Verizon's filing comports with the Commission's prior orders.
32. **Collocation power penalty charges.** This issue has been resolved in docket DT 02-018.
33. **Merger Savings.** See Section III. G., below.
34. **Cost of Capital.** See Section III. G., below.

III. CONTESTED ISSUE POSITIONS AND COMMISSION ANALYSIS

A. Dark Fiber Fill Factor

1. Verizon

Verizon filed a Dark Fiber tariff using a Fill Factor⁷ of 50% but, after Staff pointed out that a fill factor of 50% was inconsistent with the *July 6th Order*, Verizon agreed to file using a 65% utilization factor. Verizon argues that having some form of a utilization factor in the dark fiber cost study is appropriate, as for determining any TELRIC unit cost, and does not result in double recovery of costs. According to Verizon, the utilization factor of any network component is independent of the types or numbers of elements and services that are offered, and is intended to represent the average utilization over the long run for the entire element. Nonetheless, in its brief, Verizon agrees to increase the utilization factor to 80% for Dark Fiber inter-office facilities (IOF) because it did so in Massachusetts.

⁷ When calculating UNE rates, a fill factor or utilization rate is employed to ensure that the price of an individual UNE reflects the cost of the components of that UNE plus the cost of any unused or spare capacity that results from construction of that UNE.

2. OCA and Joint CLECs

The Joint CLECs and OCA argue that the unique terms and conditions of Dark Fiber must be considered when setting the utilization factors in order to avoid a misstatement of costs. In their view, Verizon's terms and conditions indicate that the Company will never construct or place new Dark Fiber to meet the demands of competitors. Dark Fiber is always provisioned out of spare fiber, according to the OCA and Joint CLECs, and Verizon witness Anglin conceded at the November 9th Technical Session that loop and transport buyers are currently paying for spare capacity because it is factored into the cost of usable fiber. Therefore, these Parties argue, unless the fill factor is set at 100%, Verizon will be collecting twice for the same element.

3. Staff

Staff contends that the fill factor allows for excess recovery by Verizon. The Commission's *July 6th Order*, according to Staff, by approving a 65% fill factor for interoffice facilities lit fiber, ensures recovery of the costs associated with the 35% spare fiber subsequently ordered to be made available as Dark Fiber. However, Staff reasons further, setting the Dark Fiber fill factor at 100% would cause the customers for lit fiber to pay a disproportionate

amount for spare capacity. To address that concern, Staff proposes an 80% utilization factor in the cost studies for both lit fiber and Dark Fiber products.

4. Facilitator

The Facilitator reports that it is likely that Verizon's proposal would produce at least some double recovery and that the mathematically correct adjustment to prevent double recovery would be to eliminate all of the capacity costs from the costs associated with Dark Fiber by setting the fill factor at 100%. However, the Facilitator points out that there are, in fact, some capacity costs associated with the actual provisioning of Dark Fiber. Therefore, he reasons, some amount of fill factor is appropriate.

The Facilitator gives credence to the argument that actual availability of Dark Fiber could be assumed to be 16%, measured by the number of CLEC requests for Dark Fiber actually not rejected by Verizon-NH. Thus, he finds that a fill factor of 84% (100% - 16%) may be a reasonable one. The Facilitator also determines as reasonable a fill factor of 82.5%, obtained by determining the midpoint between the 100% advocated by the Joint CLECs and the 65% originally agreed to by Verizon. Based on these calculations, the Facilitator considers that Verizon's later-proposed 80% fill factor is

also reasonable and recommends that the Commission adopt an 80% factor for Dark Fiber.

5. Commission Analysis

On the facts before us we find that Dark Fiber is provisioned out of spare capacity and that, when the forward-looking cost for lit fiber was determined, spare capacity costs were fully recovered. Given that the spare capacity is now offered as a network element, and costs will exist for provisioning the element, we believe that a utilization factor is appropriate when calculating the unit cost of the UNE IOF Dark Fiber. Without a utilization factor for Dark Fiber (and corresponding corrections to the lit fiber utilization factor), consumers of lit fiber products would be subsidizing consumers of Dark Fiber.

We do not accept the claim that available Dark Fiber exists in the network for which costs have not been recovered. Verizon's denial of any double counting is undermined by its refusal to make Dark Fiber available up to a particular utilization percentage (as stated in Verizon's brief at p. 10.) Verizon proposes, as agreed during discussions with the Parties, to use a fill factor of 80% for costing Dark Fiber. We accept the Facilitator's rationale and consider that 80% would be a reasonable fill factor for Dark Fiber if the fill

factor for lit fiber is also adjusted. We will therefore order Verizon to calculate the costs of lit fiber using a fill factor of 80% as well. The Dark Fiber fill factor applies to Inter-office Fiber Cable and to the CO FDF Equipment.

B. Access Points to Interoffice Fiber Cable

1. Verizon-NH

Verizon currently permits access to Dark Fiber only at existing hard termination points. Verizon objects to providing Dark Fiber at any existing splice point, arguing that "technically feasible point of interconnection" does not mean Verizon must provide access regardless of any technical, service, and operational issues. Verizon argues that the Commission recognized this basic premise when it ordered interconnection at remote terminals, but not beyond, in its *Dark Fiber Order*. Going beyond that could require a technician to attempt splicing and connecting at places where no hard box⁸ is present, a task that Verizon claims would be a bad practice. In support of its position, Verizon cites the FCC's statement, in ¶206 of the *UNE Remand Order* in reference to subloops, that "accessible terminals are defined as points on the loop where technicians can access the wire or fiber

⁸ A "hard box" is a hard-sided enclosure installed for the purpose of protecting and facilitating access to fiber end points.

within the cable without removing a splice case to reach the wire or fiber within." According to Verizon, the FCC's reasoning should be applied here.

Verizon admits that the Massachusetts DTE ruled that CLECs may access Dark Fiber at any splice point. Verizon argues, however, that it has no experience that would support the feasibility of the requirement, as Massachusetts is the only former Bell Atlantic state that has granted such access and no splice point interconnection has yet occurred in Massachusetts.

2. OCA and Joint CLECs

The Joint CLECs and the OCA argue that access to Dark Fiber at splice points is technically feasible, since the Massachusetts DTE has ordered Verizon to provide such access at both splice points and hard termination points. MA DTE *Phase 4-N Order* (December 13, 1999). According to the Joint CLECs and OCA, CLECs in New Hampshire should be allowed to request service between two existing splice points or between a splice point and a customer's premises. Furthermore, they argue that Verizon should provide additional splice points wherever CLECs request, as Ameritech Indiana must pursuant to that State Commission's order.

The Joint CLECs and OCA assert that such a requirement is necessary in order to achieve parity, reasoning as follows. Currently, Verizon can access its fiber at splice points and Verizon is rejecting 84% of all CLEC Dark Fiber requests. Verizon New Hampshire's high rejection rate, when viewed in conjunction with the actual 53.6% fill rate for fiber facilities, is evidence that Verizon is unfairly maintaining quantities of fiber in an "unterminated state" in order to deny it to CLECs. Dark Fiber availability would increase substantially, according to the Joint CLECs and OCA, if Verizon merely inventoried the resource properly and completed the fiber strands by terminating them to an accessible terminal.

The Joint CLECs and OCA argue that the Commission's 1998 decision regarding splice points, Order No. 22,942, should be revisited because experience since then demonstrates that additional access is warranted.

3. Staff

Staff supports the MFR, looking to the Commission's prior *Dark Fiber Order*, which does not require access at splice points.

4. Facilitator

The Facilitator indicates only that the Commission's 1998 *Dark Fiber Order* governs here.

5. Analysis

By our Order No. 22,942, we intended to make Dark Fiber available to wholesale users for the purpose of enhancing competition in the New Hampshire telecommunications market. At the time, we limited access to remote terminals, since no regulatory commission had defined technically feasible points for access to Dark Fiber. Now, however, the FCC has provided us a guideline, its so-called "best practices" rule, stating in the *UNE Remand Order* at paragraph 227:

... once a state has determined that it is technically feasible to unbundle subloops at a designated point, it will be presumed that it is technically feasible for any incumbent LEC, in any other state, to unbundle the loop at the same point everywhere. (Emphasis added.)

Our neighboring state, Massachusetts, has determined that access to splice points is technically feasible; and it has not been shown that the New Hampshire network differs from the Massachusetts network so as to make such access infeasible. Accordingly, we will require Verizon to revise its Dark Fiber tariff, section 5.16.1 (g), to allow access at existing splice points. To allay any concern about the security of splice cases, such access shall be performed by Verizon personnel at

the request of the CLEC. CLECs shall pay for this requested service at time and materials rates.

A recent decision by the District of Columbia Public Service Commission (DC PSC) corroborates our decision, although our decision is made independently. In Case No. TAC 12, *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Verizon Washington D.C.* (DC PSC Order on Reconsideration), Order No. 12286, (DC PSC Jan. 4, 2002), the DC PSC affirmed an arbitrator's conclusion that access to splice points is technically feasible because the MA DTE and the Indiana Commission had so determined. The DC PSC arbitrator's decision was based on the FCC's rebuttable "best practices" rule, finding that Verizon failed to rebut the presumption of technical feasibility.

The DC PSC's *Order on Reconsideration* addresses all of the arguments raised here by Verizon, rejecting them as do we. See, *Yipes, supra* at ¶¶ 34-74. If, as claimed by Verizon, no CLEC has yet requested access to Dark Fiber at splice points, that does not constitute proof of technical infeasibility. Further, Verizon reopens splice cases on occasion for its retail provisioning purposes and should be able to provide the

same access for competitors with no increased danger to network reliability. Verizon bears the burden of showing technical infeasibility. We determine that Verizon has not met its burden of proving technical infeasibility; accordingly, access to Dark Fiber at splice points is hereby ordered.

C. Dark Fiber Augments

1. Verizon

Verizon argues that any requirement to consider CLEC requests for Dark Fiber represents a mandate to forecast future Dark Fiber demand. Verizon asserts that the Company is under no obligation to construct its network for the purpose of making Dark Fiber available to competitors. In Verizon's opinion, such a requirement conflicts with the FCC determination that ILECs are only required to unbundle existing facilities, and are not required to construct facilities to meet carrier requests. For support, Verizon cites the FCC's *Third Report and Order*, fn. 323, in which the FCC noted that Dark Fiber, unlike copper wire stored as inventory, was installed to handle increased capacity, is connected to ILEC facilities currently used to provide service, and is available to CLECs without installation by the incumbent. Verizon also cites the Commission's *Dark Fiber*

Order for the same premise. At pp. 20-21, the Commission stated that ILECs need not build out or deploy fiber where it has not yet been installed.

Verizon strongly objects to any requirement to consider the CLECs' forecasts of future need for Dark Fiber. Verizon believes the burden of so-called "stranded investment" would shift onto Verizon when any CLEC's forecast turns out to be over-optimistic and no orders for Dark Fiber ensue. In that case, Verizon would be left with excess and unproductive plant, to the detriment of Verizon shareholders and ratepayers. Verizon also notes that no commission in the former Bell Atlantic region, including the NYNEX region, has required Verizon to incorporate the forecasts for CLEC Dark Fiber in its planning.

2. OCA and Joint CLECs

In light of the 84% unavailability figure⁹, the Joint CLECs argue that Verizon must take wholesale demand for Dark Fiber into account when planning to add fiber to its network. If, as Verizon has suggested, some of the capital cost of facilities should be allocated to Dark Fiber, then it is

⁹ The Parties argued in this docket that, since Verizon rejected 90 of the 107 Dark Fiber requests made between January 2000 and July 2001, Dark Fiber was unavailable 84% (90 divided by 107) of the time.

incumbent on Verizon to plan for Dark Fiber. Furthermore, the Joint CLECs claim, requiring Verizon to comply with this requirement is not extraordinary or exceptional, since Verizon already considers CLECs' forecasted demand when deploying lit fiber facilities for interconnection trunking purposes. Hence, the same requirement for Dark Fiber will not create an onerous burden.

3. Staff

Staff argues Dark Fiber is not sufficiently available, as evidenced by Verizon's low provisioning rate. Although Staff apparently agrees with Verizon that the Company need not build additional new facilities at the direct request of a CLEC, Staff recommends that Verizon take the CLEC demand for Dark Fiber into account when planning to build new fiber segments or fiber augments for itself. As justification for ordering Verizon to take CLEC demand into account, Staff argues that the demand is known or knowable. Staff goes on to say that this is a revenue-producing product for Verizon, and provision of the product enhances competition in New Hampshire. As an analogy, the Staff believes that while the Commission could not and does not expect that Verizon would add space to an existing central office for collocation, if Verizon were to abandon a central office, and make plans for a new one, the

Commission would frown on a Verizon decision to build a new CO that did not accommodate the wholesale demand for collocation.

In further support of its position, Staff avers that Verizon has stated in previous proceedings that the labor to install fiber optic cable represents the majority of the costs, and that adding additional fibers during construction would represent a small incremental cost. Staff posits that common sense leads to a conclusion that Verizon should take wholesale fiber demand into account at the same time it is adding plant to meet other demand.

4. Facilitator

The Facilitator makes no recommendation on this issue.

5. Commission Analysis

The resolution of this issue requires consideration of federal as well as state law. The TAct, at §§251(c)(2) and (c)(3) respectively, requires ILECs to interconnect with CLECs and to provide access to UNEs. Underlying the requirement for sharing the ILEC's network is a conclusion that UNEs permit CLECs to enter the market by using ILEC facilities at the ILEC's economies of scale and scope. The quality of interconnection provided by the ILEC, pursuant to Section 251(c)(2), must be at least equal in quality to that the ILEC provides itself. As to the provision of new facilities, the

TAct is silent on the issue of whether or to what extent ILECs must consider CLEC needs in planning and/or building new facilities.

Interpreting the TAct, the FCC has held that ILECs are not required to construct new facilities for the purpose of meeting a request from a competitor:

In the *Local Competition First Report and Order*, the Commission limited an incumbent LEC's transport unbundling to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities **to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.**

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. November 5, 1999) (*UNE Remand Order*) at ¶ 324 (footnotes omitted)(emphasis added).

To the same effect, the FCC stated in its Notice of Proposed Rulemaking, CC Docket Nos. 01-339, 96-98 and 98-147 (rel. December 20, 2001), at ¶ 23, n. 48, that the FCC had not required "construction of new transport facilities that the incumbent LECs had not deployed for its own use."

Consistent with that statement, in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997)(*Iowa I*)(reversed on other grounds *sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366)(1999), the 8th Circuit rejected the FCC's rule obliging ILECs to provide UNEs at levels of quality superior to those levels at which the ILECs provide these services to themselves. The FCC argued that the phrase "at least equal to" in §251(c)(3) permits an interpretation that while ILECs may not provide inferior quality access they must, when requested, provide CLECs with superior quality access to network elements. According to the 8th Circuit Court, §251(c)(3) "implicitly requires access only to an ILEC's existing network, not to a yet unbuilt superior one." *Id.*, at 812. See also, *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 751 (8th Cir. 2000)(*Iowa III*)(order on remand).

We find noteworthy that in footnote 33 of *Iowa I*, the 8th Circuit makes clear that, although it would not require ILECs to substantially alter their networks to provide superior quality interconnection and access, it approves of the FCC's position that some modifications to ILEC facilities are necessary to accommodate CLEC needs.

The FCC has consistently held that modifications to an existing network may be required. Modifications that have

been explicitly required include construction of facilities for "meet point" arrangements, *First Report and Order*, at ¶ 553; expansion of collocation space where space is available, *id.* at ¶ 585; and conditioning of loops, *id.* at ¶ 382 (expressly rejecting RBOC claim that CLECs "take the LEC networks as they find them"). In the case of switch investments, the FCC explicitly contemplated that ILECs would take forecast CLEC demand into account in sizing their future switches:

If incumbent LECs and competing providers believe that they would benefit by quantifying their anticipated demand for switch resources, they are free to do so in the negotiation and arbitration processes. **Such planning may be necessary when a competitor anticipates that usage of the local switching element by its customers will place demands on the incumbent LEC's switch that exceed the usage levels anticipated by the incumbent LEC.**

First Report and Order, at ¶ 417 (emphasis added, footnote omitted).

In considering a build-out issue concerning collocation, the FCC made it clear that states could take steps to ensure that incumbents took future CLEC demand into account in sizing new or replacement Central Offices:

Consistent with the requirements and findings of the Expanded Interconnection proceeding, we conclude that **incumbent LECs should be required to take collocater demand into account when renovating existing facilities and constructing or leasing new**

facilities, just as they consider demand for other services when undertaking such projects. We find that this requirement is necessary in order to ensure that sufficient collocation space will be available in the future. We decline, however, to adopt a general rule requiring LECs to file reports on the status and planned increase and use of space. State commissions will determine whether sufficient space is available for physical collocation, and we conclude that they have authority under the 1996 Act to require incumbent LECs to file such reports. We expect individual state commissions to determine whether the filing of such reports is warranted.

First Report and Order, at ¶ 585 (emphasis added).

The FCC acknowledges that the network is dynamic, not static, and leaves room for the states to supplement specific interconnection standards with additional requirements so long as they are consistent with the federal scheme of opening incumbent LEC networks to the fullest competition.

Verizon interprets the case law and FCC rulings as producing an established principle that ILECs need never build new facilities that CLECs require. We disagree. The Telecommunications Act of 1996 expressly reserves to the states their ability to impose "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." 47 U.S.C.A. §253(b). The Commission's authority to impose such requirements is derived from RSAs 374:3 and

374:1. Under RSA 374:3, the Commission possesses the general supervisory authority over all public utilities and their plant so far as necessary to carry into effect the provisions of applicable state law. One such provision includes the requirement that a public utility must "furnish service **and facilities** as shall be reasonably safe and adequate and in all other respects **just and reasonable.**" RSA 374:1 (emphasis added). Thus, when read together, the above-referenced state and federal statutory scheme empowers the Commission to ensure the continued quality of telecommunications service in New Hampshire and to safeguard the rights of consumers by exercising our supervisory authority over Verizon and its plant in a manner that enables Verizon to meet its obligation to furnish service and facilities that are safe, adequate, just and reasonable.

Verizon's apparent inability to provision sufficient Dark Fiber today on routes requested by CLECs gives us concern. We note that Staff's investigation into Dark Fiber availability in DT 01-151 shows that Verizon's current guidelines for installing fiber include a direction to size cable for all possible future demand except for wholesale demand. We find that this is inconsistent with Verizon's obligations under RSA 374:1 and undermines Verizon's obligation to furnish safe,

adequate, just and reasonable service. In part to assure that this situation is not one that is capable of repetition yet evading review, we expect Verizon to consider future wholesale demand for fiber at the time it is sizing a build-out of its facilities for its retail customers.

As Verizon notes, we found in our *Dark Fiber Order* that ILECs need not build out or deploy fiber where it has not yet been installed. However, the inclusion of reasonable wholesale demand in the planning and construction of facilities that Verizon would construct in the absence of any CLEC demand is not the same as building out or deploying fiber where Verizon has not deployed such facilities in its own network. The forecasting and augmentation of Verizon's planned builds that are contemplated by our Order here are unlike the particular build-outs of SONET rings or other transport facilities to meet the isolated demands of a particular CLEC, discussed in the cases cited above. We do not here require Verizon to construct a specific Dark Fiber facility at a specific CLEC's request, where Verizon has no plans to add to its own network.

However, in its planning, Verizon must prudently take into consideration its wholesale customers' expected needs for Dark Fiber along routes where Verizon has deployed or plans to

deploy fiber for its own network needs. Without such a requirement, the current unsatisfactory condition is likely to persist, i.e., CLECs will have a theoretical right to access Dark Fiber where Verizon has deployed it for itself, but no realistic chance of access to such facilities, thus depriving New Hampshire customers of quality telecommunications services.

D. Loop Qualification - Mechanized

1. Verizon

Verizon charges a monthly recurring charge for loop qualification. Mechanized loop qualification is the electronic process, via database queries, of determining whether a particular loop is capable of carrying DSL service, and of identifying what needs to be done to enable the loop to provide DSL service. Collectively, the steps taken to enable the loop to provide DSL are called conditioning, addressed in Section E. below.

According to Verizon, the mechanized loop qualification charge is structured as a recurring rate for administrative ease and simplification. The charge recovers Verizon's initial, or up-front, costs of building the necessary database and its ongoing maintenance costs. CLECs may make single or multiple queries into the database but Verizon states that it

only applies the mechanized loop qualification charge when a loop is actually ordered. In this manner, Verizon claims, CLECs benefit by having a researchable database at their disposal to conduct market research at no charge. The monthly recurring charge for mechanized loop qualification, as filed, is \$1.22 cents.

2. Joint CLECs

The Joint CLECs argue against any mechanized loop qualification charge as neither qualification nor conditioning would be necessary in a truly forward-looking network. Notwithstanding that position, the Joint CLECs go on to claim that Verizon's proposed monthly recurring mechanized loop qualification charge improperly recovers and subsidizes Verizon's cost of creating and maintaining its automated loop qualification system used by and for Verizon's own potential retail DSL customers.

The Joint CLECs assert that the costs of developing Verizon's retail database should not be borne by Verizon's competitors but should, like other competition onset costs, be recovered in a competitively neutral manner. Insofar as it is appropriate to include any costs in any portion of a forward-looking, long-run cost study, the Joint CLECs recommend they be

treated as recurring costs spread over the entire quantity of loops in Verizon's service territory.

The Joint CLECs also argue that the automated loop qualification system is less useful and more expensive to competitors than "read-only" access to Verizon's underlying database, the Loop Facility Assignment Control System (LFACS), would be. The Joint CLECs therefore ask the Commission to require Verizon to provide direct, read-only access to the LFACS that Verizon's own personnel use, via an electronic interface.

Finally, the Joint CLECs aver that a per-query charge for loop qualification would more accurately match the cost to the cost causer. The Joint CLECs observe that Verizon charges for other database queries on a per-query basis.

3. OCA

The OCA does not disagree with the Facilitator's conclusion, reached by compromise. However, the OCA observes that the Facilitator's mechanized loop qualification charge is not based on any cost study. The OCA also points out the wide divergence of cost points for mechanized and manual loop qualification reached by different state commissions, and contends that the divergence is not reasonable given the regional nature of Verizon's systems.

4. Staff

Staff finds some merit in the CLEC contention that the new cost to Verizon for mechanized loop qualification is limited to its cost of providing that information in electronic format. Therefore, Staff agrees that the proposed charge results in either double counting of the costs to maintain the OSS system, or improperly recouping retail support charges in the recurring charges for qualified loops. Staff recommends two actions. First, the Commission should require Verizon to provide direct, read-only, access to the databases that Verizon's own personnel use, via an electronic interface. Second, the Commission should apply the cost-causation principle to the mechanized loop qualification charge by adopting a per-transaction charge for this service, equivalent to the nonrecurring charge levied for a typical OSS request.

5. Facilitator

The Facilitator states that Verizon's current offerings for access to loop qualification information comport with the FCC's *UNE Remand Order*. Verizon is assessing their charge on a recurring basis, and proposed adding \$1.22 per month to the price for all qualified loops. In the MFR, the Facilitator recommended that the Commission reduce Verizon's proposed

recurring charge of \$1.22 to a regionally moderate rate of 61 cents per month.

6. Commission Analysis

We find that the CLECs' request to have access to a more useful and cost-effective source of information for DSL inquiries is reasonable. We are persuaded that the existing automated loop qualification system was designed for retail use, and is not particularly useful for CLEC purposes in providing DSL services. The LFACS is a legacy system that could be made available to CLECs and provide higher quality information than the automated loop qualification system, thus enhancing the provision and deployment of broadband. We will require that Verizon make direct read-only access to LFACS available to CLECs by August 1, 2002. As a legacy system, the development cost for LFACS has already been paid for. We find that pricing for loop qualification should be based on the incremental costs for maintenance and access to the database. Therefore, we will require a per-transaction charge for database access. Given the parallel between access to LFACS and access to the OSS, we set the per transaction charge at the current OSS access charge of 21 cents per query.

E. Loop Conditioning

1. Verizon-NH

Loop conditioning services consist in part of removal of bridged taps and load coils. Both bridged taps and load coils must be removed to implement xDSL services.

According to Verizon, ¶193 of the FCC's *UNE Remand Order* explicitly permits charges for conditioning services because, although networks "built today" should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter, existing networks have such devices, and costs are incurred to remove them. Verizon's proposed charges for these services in New Hampshire are therefore compliant with the FCC *UNE Remand Order*, Verizon argues. Verizon points out that the Commission's TELRIC decision comports with the FCC's reasoning by approving pricing that is based in reality. Verizon argues that the Commission has no basis, on this record, for crafting something different than the FCC's *UNE Remand Order*.

In response to the Joint CLECs' reliance on a Massachusetts DTE decision to forbid such charges, Verizon contends that the MA DTE decision assumes a network consisting of 100% fiber feeder and that, since that is a different assumption than New Hampshire's, it should not be dispositive. In New Hampshire, according to Verizon, the Commission assumed a mixed fiber/copper network, with copper loops of 12,000 feet, 12,000 feet being the demarcation point. Verizon also asserts

that it does not seek to recover the cost of load coil removals for loops of under 18,000 feet. Transcript, page 119-120.

Verizon also argues that the MA DTE does permit the recovery of costs for removing bridged taps, because current loop design guidelines permit the continued presence of bridged taps in loops, even for redesigned or newly constructed plant.

Verizon also avers that denying recovery for conditioning, thus unfairly causing Verizon to absorb actual expenses, would create a perverse incentive for CLECs. CLECs might be incited to order a load coil removed in every instance, even when conditioning is unnecessary. Therefore, from a policy perspective, the Commission should not deny recovery of these costs.

Verizon responded to the Facilitator's recommendation that loop conditioning charges be phased out by arguing that the factor used to develop a three-year phase-out was a factor from workpapers in Docket DE 97-171 that compared the rate of new and migrated lines. Verizon points out that the factor does not represent what the Company would experience over a three-year period, as the growth in lines for New Hampshire overall has been stagnant.

2. OCA and Joint CLECs

The OCA and Joint CLECs agree with the FCC's pronouncement that impediments on a loop that obstruct DSL service, such as load coils, would not exist in a forward-looking network. They argue that allowing Verizon-NH to charge CLECs for costs it would not incur in a forward looking network is inconsistent with the FCC's position and with the Commission's rules and orders.

For non-recurring loop conditioning costs, the Joint CLECs and OCA recommend that the Commission require Verizon to use the same loop assumption used for recurring costs. The OCA and Joint CLECs argue that a CLEC's monthly recurring payment, that was set on the basis of a forward-looking network methodology, covers a loop that should already be fully capable of providing DSL service. The recurring rates for UNE loops are based upon the assumption of a mixed fiber/copper network with copper loops no longer than 12,000 feet. With that assumption, the loops do not require conditioning, according to the Joint CLECs and OCA. For example, Verizon-NH's network design assumes that load coils will not be present because they are unnecessary to permit voice service quality and that usage of bridged taps will be minimized.

The OCA and Joint CLECs claim that Verizon has admitted that a forward-looking network would not require conditioning

to provision DSL-capable loops. Therefore, they argue, Verizon can only justify non-recurring conditioning charges by proposing a different, non-forward-looking network architecture. Since this is unacceptable under the TAct, the OCA and Joint CLECs claim Verizon's non-recurring charges are impermissible. In support of that conclusion, the OCA and Joint CLECs cite to the MA DTE *Phase III Order*¹⁰, finding the FCC's conditioning costs recovery directive applicable only to networks assuming the existence of copper feeder.

The OCA and Joint CLECs accuse Verizon of improperly varying its network assumptions based solely on whether higher rates are produced. They urge the Commission to require Verizon to stick to its assumption of a fiber-fed network, that does not require conditioning, for the purposes of calculating both its recurring and nonrecurring loop rates. Properly consistent network assumptions, the OCA and Joint CLECs aver, imply a conditioning rate of zero.

The OCA and Joint CLECs observe that the very loops that require conditioning now are most likely fully or almost fully depreciated by Verizon, the plant having been constructed over several decades. They also observe that appropriate updates to

¹⁰*Investigation as to Propriety of the Rates and Charges set forth in M.D.T.E. No. 17 etc.*, D.T.E. 98-57-Phase III (*Phase III Order*) (Mass. D.T.E. Sept. 29, 2000.)

plant design, in compliance with Carrier Serving Area guidelines, could have avoided the need for conditioning. These points support a conclusion, they contend, that conditioning charges should be disallowed.

According to the OCA and Joint CLECs, Verizon must condition loops in order to provide retail xDSL services. They charge that Verizon's affiliate, VADI, is restricting its provisioning of DSL service to those customers that are within 18,000 feet of a CO in order to avoid creating possible sunk costs by carrying out conditioning services only to lose a customer to another carrier.

In the opinion of the Joint CLECs and the OCA, the FCC requires the Commission to assume a theoretical or hypothetical network to determine forward-looking costs. It follows, they argue, that the network in New Hampshire, will have no load coils and therefore no charges for removing load coils.

3. Staff

Staff did not brief this point. However, at hearing the Staff put forward an argument based on the fact that the New Hampshire TELRIC study assumed copper loops out to 12,000, not to 18,000. Therefore, Staff argued, no load coils would exist on that loop as they would be unnecessary. The resulting network would therefore be the equivalent of a 100% fiber

network as far as the existence of load coils. Assuming 12,000 feet maximum of copper in any one loop, no load coils will exist on the loop and no reason will exist for conditioning the loop. Hence, Staff insists that no charges for conditioning should be included.

4. Facilitator

The Facilitator, pointing out that loop conditioning provides CLECs with the ability to provide xDSL services to end users, opines that the issue here emanates from inconsistent rulings by the FCC. The Facilitator recommends allowing the presumably non-TELRIC loop conditioning charges for a period of three years. Thus, the Facilitator reasons, Verizon would collect its actual costs for a period of time reasonably adequate for updating the affected loops, with the result that, looking forward, such charges are likely to be unnecessary.

The Facilitator also recommends that the Commission adopt Verizon's proposed conditioning charges for the removal of load coils, adjusted to reflect the 36.12% reduction in labor the Commission required for non-recurring costs in the *July 6th Order*. The resulting SGAT rates are shown in the following table, along with the rates that would result using the Facilitator's proposed phase-out:

<i>EFFECTIVE DATE</i>	<i>18k-21k ft</i>	<i>>21k ft</i>	<i>Br.Tap</i>	<i>>1 Br.Tap</i>
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Proposal less 36.12%	574.93	683.76	143.63	346.64
Jan 1, 2002 - Dec 31, 2002	431.20	512.82	107.72	259.98
Jan 1, 2003 - Dec 31, 2003	287.47	341.88	71.82	173.32
Jan 1, 2004 - Dec 31, 2004	143.73	170.94	36.91	86.66
Jan 1, 2005 - beyond	0.00	0.00	0.00	0.00

5. Commission Analysis

We are persuaded by arguments that our network assumptions should be consistent for all aspects of pricing network elements. In our *July 6th Order*, we found that the New Hampshire forward-looking network should assume a fiber-feeder breakpoint of 12,000 feet. Based on NET's incremental cost studies filed in 1993, the average distribution cable length was 4,300 feet. Taken together, this would produce a copper loop of less than 18,000 feet. A network with copper loops of 16,299 (11,999 + 4,300) feet would not require load coils, and would allow for the deployment of DSL.

Although this may imply there is no need for loop conditioning to remove load coils, we also take notice that the FCC has allowed recovery of real conditioning costs even when the hypothetical network assumption would rule out such recovery. In order to accommodate the real costs in those cases where copper distribution cable exceeds the statewide average, or where a combination of copper feeder and

distribution exceeds 18,000 feet, we will adopt a three-year phase out of conditioning charges for the removal of load coils, beginning with a 33.33% reduction in this current year.

In the case of bridged taps, however, we find that, while a network with less copper might have fewer occasions for bridged taps, bridged taps would still exist in such a network. Therefore we will allow recovery for the removal of bridged taps.

The rates we adopt shall be:

<i>EFFECTIVE DATE</i>	<i>18k-21k ft</i>	<i>>21k ft</i>	<i>Br.Tap</i>	<i>>1 Br.Tap</i>
Proposal less 36.12%	574.93	683.76	143.63	346.64
Jan 1, 2002 - Dec 31, 2002	431.20	512.82	(no phase out)	
Jan 1, 2003 - Dec 31, 2003	287.47	341.88	"	"
Jan 1, 2004 - Dec 31, 2004	143.73	170.94	"	"
Jan 1, 2005 - beyond	0.00	0.00	"	"

F. Multiple Loop and Spare Loop Conditioning

1. Positions of the Parties

Verizon's filing proposes per loop unit prices for load coil and bridged tap removals. Verizon does not address multiple loop conditioning, which is the process of conditioning more than one loop for the same customer at the same time, nor spare loop conditioning, which is the process

of conditioning spare loops in a binder when the binder is being opened for conditioning loops already in use.

The Joint CLECs and OCA argued that, if Verizon is permitted to charge for conditioning at all, rates should be based on each field dispatch, assuming multiple loops can be conditioned at the same time. According to the Joint CLECs and OCA, Verizon's single loop conditioning is inefficient, and inconsistent with Plant Engineering Guidelines. Verizon argues that spare loop conditioning for xDSL could degrade existing voice services, but agreed that it would address the issue of multiple loop conditioning by conducting a cost study to determine the cost of multiple loop conditioning for loops that are in the same cable and binder group, identified on the same order, and intended to serve the same customer.

The Joint CLECs and OCA point out that Verizon's offer amounts to a recognition that efficiencies can be gained in a particular instance and continue to hold to the position that Verizon can and should achieve greater efficiency by systematically conditioning spare loops as well. The Joint CLECs and OCA support their argument with decisions by state commissions in Texas, Illinois, Nevada, and New York. New York, they aver, ordered that loops be conditioned ten at a time, while other states have ordered 25 or 50 at a time. To

do otherwise, they argue, will raise a price barrier that will prevent CLECs from provisioning DSL to customers by necessitating large, up-front non-recurring costs.

In addition, to the extent the Commission allows any recovery of conditioning costs, the Joint CLECs and OCA recommend that recovery occur by recurring cost charges rather than non-recurring. For its part, Staff indicates a willingness to have Verizon prepare its cost study on the basis of ten loops at a time. Staff does not address whether the multiple loop conditioning study should be restricted to the "sameness" parameters that Verizon proposes. The Facilitator recommends adoption of Verizon's proposed cost study plan.

2. Commission Analysis

Verizon's proposal to submit terms and conditions for multiple loop conditioning when a CLEC is requesting conditioning for the same customer, at the same time, where the loops involved are in the same cable, is acceptable.

The CLECs further request, however, that Verizon make provision for conditioning spare loops when the opportunity arises, thus creating a copper network with a reduced need for order-by-order conditioning. Having reviewed the record, we find that spare loop conditioning is reasonable, forward-

looking, and efficient. When Verizon's field technicians are dispatched to condition even a single loop, a percentage of the spare loops in the same facility should also be conditioned. We find that a significant part of the conditioning costs are contained in the dispatch itself and not in the tasks performed on the loops. We do not believe, however, without more information about the existing network, that our ordering Verizon to offer spare loop conditioning at a particular increment will produce a useful or reasonable pricing increment.

Accordingly, we will order that Verizon prepare and file a proposal for spare loop conditioning in a manner and using an increment that Verizon itself determines is reasonable, with an explanation of the basis for its proposal. We suggest that the costs for conditioning spare loops as described above would be most appropriately recovered via a recurring cost increment on qualified loops. This recurring charge should take into account our three-year phase-out of recovery for loop conditioning as ordered herein.

G. Merger Savings and Cost of Capital

1. Verizon

According to Verizon, neither merger savings nor cost of capital should be an issue in this case, because merger

savings related to the NYNEX/Bell Atlantic merger were considered on the record in DE 97-171, and cost of capital was directly addressed on pages 72 and 84 in the Commission's *July 6th Order* in that docket. Verizon also advises that the terms of the *July 6th Order* should not be changed in this UNE Remand proceeding by revising the approved cost of capital. The effect would be to use different costs of capital for different UNEs.

2. OCA and Joint CLECs

In order to make local telecommunications competition a reality, New Hampshire's TELRIC rates, as approved in the *July 6th Order*, should be recalculated so as to fall within a lower portion of the range of permissible TELRIC rates, according to the Joint CLECs and OCA. To achieve that goal, the Commission should recognize Verizon's merger savings and also lower the cost of capital permitted to Verizon. Merger savings should be recognized because Verizon realized significant savings as a result of the merger between NYNEX and Bell Atlantic and the merger between the resultant Bell Atlantic with GTE. The Joint CLECs and OCA urge the Commission to follow the reasoning of Rhode Island recently when it reduced Verizon's UNE rates by a total of 7.11% to account for forward-looking cost savings for annual operating expenses and Rhode Island's

share of system-wide process re-engineering savings. In New Hampshire, the OCA and Joint CLECs assert, the total savings amount to 6.43%. They argue that the Commission should therefore multiply the UNE rates by 0.9357 (1 minus 0.0643).

A lower cost of capital should be recognized, according to the OCA and Joint CLECs, because the current 10.46% cost of capital is based upon a pre-recessionary growth cycle in which high returns could be expected. Today, as reflected by the recent contested proceedings in New Jersey, an 8.8% weighted cost of capital is more reasonable. The New Jersey Board of Public Utilities approved an 8.8% cost of capital, based upon a 10% cost of equity, on November 20, 2001. The New Jersey cost of equity, the OCA and Joint CLECs aver, is more sensible than the 12.7% approved in New Hampshire and demonstrates that Verizon's New Hampshire UNE rates are inflated.

3. Staff

Staff recommends that the Commission defer these two issues to an upcoming docket dealing with Verizon's rates in general. That docket will provide the factual underpinnings for revising rate design and present an opportunity to examine the New Jersey process in greater detail.

4. Facilitator

The Facilitator abided by the Commission's *July 6th Order* as to cost of capital, finding Verizon's filing in compliance. As to merger savings, the Facilitator observes that savings resulting from the NYNEX/Bell Atlantic merger were discussed on the record in DE 97-171 and recommends no adjustment thereto.

5. Commission Analysis

We view this docket as being in the nature of a compliance proceeding. Therefore, we find that re-determination of cost of capital and/or of merger savings would be inappropriate, and decline to rule on the questions raised here.

H. Procedural Issues

The Joint CLECs and OCA urged the Commission to apply a heightened level of scrutiny to Verizon's filing, arguing that the process should have provided for testimony, cross-examination, and discovery responses from Verizon. The Joint CLECs also urged the Commission to look at the determinations made by other state commissions for guidance in evaluating the propriety of Verizon's filing.

As we stated at the beginning of this proceeding, the nature of the filing permitted its treatment as a compliance matter. We are unaware of any requirement that a full adjudicative process be utilized in evaluating a compliance filing. In light of that, we utilized a Facilitator and other measures to enable administratively efficient treatment of the issues, including discovery through technical sessions by teleconference. While we did not utilize a traditional adjudicative model, nevertheless we have developed an extensive record and examined all of the issues fully. We have, as is often our practice, taken notice of the determinations made by other state commissions and, of course, of our own prior decisions. The process here, while different in some respects from other dockets, provides adequate due

process and a reasonable basis for our determination of the issues raised.

Based upon the foregoing, it is hereby

ORDERED, that Verizon shall reduce its labor time estimates by 36.12% for non-recurring cost calculations; and it is

FURTHER ORDERED, that Verizon shall utilize an 80% fill factor for cable and equipment for Dark Fiber cost studies; and it is

FURTHER ORDERED, that Verizon shall recalculate the cost of lit interoffice facility fiber using an 80% fill factor and adjust its SGAT accordingly; and it is

FURTHER ORDERED, that the rate for unusable Dark Fiber is set at \$0.00; and it is

FURTHER ORDERED, that Verizon shall set its Dark Fiber service order charge at \$22.50 per service order for a single pair, and \$20.45 for each additional pair as described herein; and it is

FURTHER ORDERED, that Verizon shall conduct Dark Fiber Field Surveys at its proposed charges except in the circumstances detailed herein; and it is

FURTHER ORDERED, that Verizon network planners for Dark Fiber need not be made available to CLECs for consultation; and it is

FURTHER ORDERED, that, for computing costs for Dark Fiber jumper cables and for Line Sharing, Verizon shall employ the same Engineer, Furnish and Install factor it uses for Smart Jacks; and it is

FURTHER ORDERED, that Verizon shall provide Dark Fiber initial availability information as specified herein within 15 business days of a CLEC request, and full information per our *Dark Fiber Order* within 30 calendar days; and it is

FURTHER ORDERED, that Verizon shall add a negative check-off box to its Dark Fiber order form, allowing CLECs to choose not to receive the 30-Day information, as detailed herein; and it is

FURTHER ORDERED, that Verizon may continue to reserve Dark Fiber pursuant to our Order No. 22,942; and it is

FURTHER ORDERED, that Verizon shall allow access to Dark Fiber at existing splice points to be performed by Verizon personnal upon CLEC request, at Verizon time and material rates; and it is

FURTHER ORDERED, that, if and when the current trial in Pennsylvania is concluded successfully, Verizon shall

provision Dark Fiber in parallel to collocation requests; and it is

FURTHER ORDERED, that Verizon shall repair and maintain CLEC-utilized fibers using the same methods, procedures and practices it uses for Verizon-utilized fibers contained in the same sheath; and it is

FURTHER ORDERED, that Verizon shall maintain sheaths of fiber in the same manner it does for itself, even if the entire ribbon or sheath consists entirely of CLEC fibers;

FURTHER ORDERED, that Verizon shall consider wholesale demand when planning its own fiber build-out and deployment; and it is

FURTHER ORDERED, that Verizon shall use the amount and methodology adopted by the MA DTE when determining the Application Augment Fee and Engineering and Implementation Fee for Line Sharing, subject to true-up as described herein; and it is

FURTHER ORDERED, that Cooperative Testing costs shall be set at \$0.00; and it is

FURTHER ORDERED, that by August 1, 2002, Verizon shall provide read-only access to the Loop Facility Assignment Control System (LFACS) loop qualification database at a rate, per transaction, of 21 cents; and it is

FURTHER ORDERED, that the rate for manual loop qualification shall be set at \$72.37 per link; and it is

FURTHER ORDERED, that the rate for loop qualification engineering query rate shall be set at \$105.22 per link; and it is

FURTHER ORDERED, that Verizon shall charge and phase out load coil removal services, at the rates and in accordance with the schedule set out in this order; and it is

FURTHER ORDERED, that Verizon shall reduce its proposed charge for bridged-tap removal by 36.12%; and it is

FURTHER ORDERED, Verizon shall file cost studies for multiple loop conditioning within 75 days; and it is

FURTHER ORDERED, Verizon shall file cost studies for spare loop conditioning within 75 days; and it is

FURTHER ORDERED, that Verizon's rate for subloop unbundling shall be revised to reflect a 36.12% labor time estimate reduction; and it is

FURTHER ORDERED, that, at the time that mechanized EEL conversions are available in Massachusetts, Verizon shall make them available in New Hampshire; and it is

FURTHER ORDERED, that a CLEC may convert a special access circuit to a UNE without penalty anytime after the special access initial minimum service period; and it is

FURTHER ORDERED, that Verizon shall begin billing a requesting CLEC at EEL rates rather than special access rates after the expiration of the 30-day provisioning interval, whether or not the conversion is actually completed; and it is

FURTHER ORDERED, that if and when Verizon voluntarily provides new individual EEL components, it shall file an SGAT with proposed terms and conditions for Commission approval and shall provide a copy of the filing to the service list in this docket at the same time it files with the Commission; and it is

FURTHER ORDERED, that charges for EEL Link Tests shall be as set out herein; and it is

FURTHER ORDERED, that issues regarding merger savings and cost of capital shall not be addressed in this docket; and it is

FURTHER ORDERED, Verizon shall submit revised tariff pages and supporting cost studies that reflect these ordered changes no later than 30 days from the date of this order; and it is

FURTHER ORDERED, that Verizon's rates, terms and conditions in this docket, which have not been modified by this order, are approved, and that all rates, terms and conditions determined by this docket are effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary