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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

May 25, 2005 - 10:12 a.m.
Concord, New Hampshire

RE: **DT 05-083**
VERIZON NEW HAMPSHIRE:
Wire Center Investigation.
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Michael D. Harrington

Jody Carmody, Clerk

APPEARANCES: **Reptg. Verizon New Hampshire:**
Victor D. Del Vecchio, Esq.

Reptg. BayRing Communications:
Douglas L. Patch, Esq.

Reptg. Conversent Communications of N.H.:
Gregory M. Kennan, Esq.

Reptg. Great Works Internet:
Frederick S. Samp, Esq.
Office of Consumer Advocate

Reptg. segTEL:
Jeremy I. Katz, Esq.

Reptg. CTC Comm. & Lightship Telecom:
David Berndt, Esq.

Court Reporter: Steven E. Patnaude, CCR

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APPEARANCES: (c o n t i n u e d)

Reptg. N.H. ISP Association:
John Leslie

Reptg. Destek:
Brian Susnock

Reptg. Residential Ratepayers:
F. Anne Ross, Esq.

Reptg. the NHPUC Staff:
Lynn Fabrizio, Esq.

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P R O C E E D I N G S

1
2 **CHAIRMAN GETZ:** Good morning. We'll
3 open the prehearing conference in docket DT 05-083
4 concerning Verizon New Hampshire. An order of notice was
5 issued on April 22nd, opening this investigation pursuant
6 to RSA 365:5, in connection with certain provisions of
7 Tariff Number NHPUC 84, with respect to provisions filed
8 by Verizon on February 22nd, in docket DT 05-034. The
9 order of notice indicates that the Commission will
10 investigate issues related to Verizon's obligation with
11 respect to certain unbundled network elements at some of
12 its wire centers, but not others. The purpose of the
13 investigation is to determine which wire centers in New
14 Hampshire are affected and what procedures the Commission
15 should adopt for future determinations with respect to
16 affected wire centers.

17 I'll note for the record that an
18 affidavit of publication was filed on May 16 with the
19 Commission. And, at this point, if we can take
20 appearances please.

21 **MR. DEL VECCHIO:** Good morning, Mr.
22 Chairman, Commissioner Morrison, Commissioner Harrington.
23 Victor Del Vecchio, representing Verizon. And, with me
24 this morning is Lisa Thorne, Robert Meehan, and Lynelle

1 Reney.

2 **CHAIRMAN GETZ:** Good morning.

3 **CMSR. HARRINGTON:** Good morning.

4 **CMSR. MORRISON:** Good morning.

5 **MR. PATCH:** Good morning, Mr. Chairman,
6 members of the Commission. My name is Doug Patch, with
7 the law firm of Orr & Reno. I am here this morning
8 appearing on behalf of BayRing Communications. And, with
9 me this morning is Steve Wengert, who is the Director of
10 Operations at BayRing.

11 **CHAIRMAN GETZ:** Good morning.

12 **MR. KENNAN:** Good morning, Mr. Chairman,
13 Commissioners. Gregory Kennan, for Conversent
14 Communications of New Hampshire.

15 **MR. SAMP:** Good morning. My name is
16 Eric Samp, representing Great Works Internet.

17 **CMSR. HARRINGTON:** Good morning.

18 **CHAIRMAN GETZ:** Good morning.

19 **MR. KATZ:** Good morning. My name is
20 Jeremy Katz, representing segTEL.

21 **CHAIRMAN GETZ:** Good morning.

22 **MR. BERNDT:** Good morning. David
23 Berndt, representing CTC and Lightship.

24 **CHAIRMAN GETZ:** Good morning.

1 **MR. LESLIE:** I'm John Leslie for the New
2 Hampshire ISP Association.

3 **CHAIRMAN GETZ:** Good morning.

4 **MR. SUSNOCK:** Good morning. Brian
5 Susnock, representing Destek.

6 **CHAIRMAN GETZ:** Good morning.

7 **MS. ROSS:** Good morning, Commissioners.
8 Anne Ross, with the Office of Consumer Advocate. And,
9 with me today is Ken Traum.

10 **CHAIRMAN GETZ:** Good morning.

11 **MS. FABRIZIO:** Good morning. I'm Lynn
12 Fabrizio, Staff Attorney here at the Commission. And,
13 with me today are Kath Mulholland, Utility Analyst for the
14 Commission's Telecom, and Kate Bailey, Director of the
15 Telecom Division for the Commission.

16 **CHAIRMAN GETZ:** Good morning. I believe
17 we have motions to intervene by most, but not everyone
18 that is here today. Is everyone who's made an appearance
19 intending to move to intervene?

20 **MR. LESLIE:** It's the intent of the ISP
21 Association --

22 **MR. MACRES:** Phil Macres --

23 **CHAIRMAN GETZ:** I'm sorry, --

24 **MR. MACRES:** -- of Swidler Berlin, and

1 representing Covad Communications, along with CTC, CTC and
2 Lightship.

3 **CHAIRMAN GETZ:** I'm sorry, could we --

4 **MR. MACRES:** Yes, and we also have
5 Richard Fippen of MCI, and Laura Gallo will be --

6 **CHAIRMAN GETZ:** Gentlemen, hold up.
7 Normally, we're advised in advance, maybe I should have
8 noticed the phone. Who's -- because the court reporter is
9 having a tough time picking this up. Ms. Fabrizio, can
10 you just record for the record who's on the phone, counsel
11 and which parties?

12 **MS. FABRIZIO:** Mr. Chairman, we have
13 Phil Macres, from Swidler Berlin, on the phone, and it's
14 our understanding that he --

15 **MR. MACRES:** I'm sorry, Chairman. This
16 is Phil Macres, with Swidler Berlin. We're having a --
17 I'm having a difficult time hearing you on my end.
18 Apparently, the microphone on your end, I mean, it's
19 coming through on my end a little bit distorted. But I am
20 Phil Macres. I'm from the law firm of Swidler Berlin, and
21 represent Covad Communications, CTC and Lightship.

22 **MS. FABRIZIO:** It was our understanding
23 that Mr. Macres will be listening, but not participating,
24 as an intervenor in this proceeding, on the phone.

1 **CHAIRMAN GETZ:** Okay. All right. Thank
2 you. Mr. Del Vecchio.

3 **MR. DEL VECCHIO:** The other person who
4 announced is Richard Fippen, from MCI, Mr. Chairman.
5 Laura Gallo he said will be joining him shortly.

6 **CHAIRMAN GETZ:** And, let me get back to
7 Mr. Susnock and Mr. Leslie.

8 **MR. SUSNOCK:** I was just informed of
9 this docket two days ago and I haven't had time to
10 formally intervene. If it is possible, I'd like to. If
11 not, then I'd like to just sit in.

12 **CHAIRMAN GETZ:** Well, I guess, at this
13 point I will take it as an oral intervention on behalf of
14 Destek. And, Mr. Leslie, an oral motion to intervene on
15 behalf of yourself or the --

16 **MR. LESLIE:** NHISPA.

17 **CHAIRMAN GETZ:** Okay.

18 **MR. LESLIE:** Thank you.

19 **CHAIRMAN GETZ:** The NHISPA. Okay. Are
20 there any objections to any of the motions to intervene?

21 (No verbal response)

22 **CHAIRMAN GETZ:** I'll record for the
23 record there are no objections to the motions to
24 intervene. So, at this point then, let's start with

1 statements of positions of the parties. Mr. Del Vecchio.

2 **MR. DEL VECCHIO:** Thank you, Mr.
3 Chairman. The Commission opened this proceeding to
4 determine which wire centers in New Hampshire meet the
5 Federal Communications Commission's criteria for
6 determining non-impairment for high-capacity loops and
7 dedicated transport, pursuant to the TRRO, the Triennial
8 Review Remand Order. In that order, as the Commission is
9 aware, the FCC provided a formula and method for how to
10 determine which wire centers qualify. I believe, as the
11 Commission is aware, the criteria are set forth in the
12 TRRO, and I think it might be helpful just to identify
13 what they are briefly.

14 With respect to DS1 loops at any
15 building served by a wire center with at least 60,000
16 business lines and four fiber-based collocators, CLECs are
17 not impaired without access in that circumstance. Once a
18 wire center exceeds both of these thresholds, no future
19 DS1 loop unbundling will be required in that wire center,
20 according to the FCC's rules.

21 Secondly, with respect to DS3 loops at
22 any building location served by a wire center with at
23 least 38,000 business lines and four fiber-based
24 collocators, no impairment exists. Again, once a wire

1 center exceeds both of these thresholds, no future DS3
2 loop unbundling will be required in that wire center per
3 the FCC's rules.

4 Third, with respect to DS1 transport
5 now, as opposed to loops, the DS1 transport between what
6 are called "Tier 1", according to the FCC, wire centers
7 that contain at least four fiber-based collocators or, now
8 we have a disjunctive with respect to transport, or at
9 least 38,000 business lines, no impairment exists. Tier 1
10 wire centers also include tandem switching locations per
11 the FCC's rules. Again, once a wire center is determined
12 to be a Tier 1 wire center, that wire center is not
13 subject to a later reclassification as a Tier 2 or Tier 3,
14 and "Tier 3" means impairment still exists, wire center,
15 again, according to the FCC's rules.

16 And, finally, with respect to the
17 criteria, with respect to DS3 and dark fiber transport,
18 again, still in the "transport" category, between Tier 2
19 wire centers, as described by the FCC, that contain at
20 least three fiber-based collocators or at least 24,000
21 business lines. Again, once a wire center is determined
22 to be a Tier 2, that wire center is not subject to later
23 reclassification as a Tier 3, per the FCC's rules.

24 Based on these criteria, Verizon filed a

1 public list with the FCC identifying in New Hampshire the
2 central offices that satisfy the TRRO's non-impairment
3 criteria for high-capacity loops and dedicated transport.
4 And, that list those shows that no New Hampshire wire
5 centers qualify for relief from DS1 loop unbundling, and
6 only one wire center, Manchester, qualifies for DS3 loop
7 unbundling relief, under the FCC's non-impairment
8 criteria. As of March 11, 2005, which is the date that
9 this Commission is aware that the FCC prescribed that
10 these changes were to take effect, transport routes
11 between four wire centers qualify for relief from DS1, DS3
12 and dark fiber transport unbundling as a Tier 1 wire
13 center. And, those are Keene, Manchester, Nashua and
14 Portsmouth. And, one additional wire center, Dover, meets
15 the criteria for relief from DS3 and dark fiber transport
16 unbundling, but not DS1 transport, that makes it a Tier 2
17 wire center.

18 Therefore, as a practical matter,
19 unbundling -- unbundled access to high-capacity loops and
20 transport will remain available in New Hampshire now in
21 most cases where they're available today. If and when
22 additional offices qualify for relief, Verizon will notify
23 the CLECs and the Commission promptly.

24 In applying the FCC's criteria,

1 Commissioners, I would also note that the Company
2 undertook a visual inspection of its central offices, the
3 relevant central offices in particular, to identify that
4 the COs met these criteria. They did so in 2003, and then
5 they updated this review in the beginning of 2005, to
6 visually inspect and determine that fiber collocators were
7 present as we've represented.

8 And, next, Commissioners, with respect
9 to the issue of what kinds of proceedings in the future
10 might be appropriate, I would submit that the Commission
11 need not conduct a proceeding to determine which wire
12 centers presently satisfy the FCC's non-impairment
13 criteria. And, the reason for that simply is that the
14 Commission can leave disputes over whether particular
15 central offices qualify for unbundling, if there are any
16 such disputes, to a dispute resolution mechanism, which
17 this Commission has approved in the tariff, that is NHPUC
18 Number 84, Part A, Section 1.12.1, or in a CLEC
19 Interconnection Agreement. Indeed, that's the procedure
20 that the FCC prescribes.

21 Specifically, the FCC established a
22 process by which CLECs may order and obtain access to UNE
23 loops and transport consistent with these new unbundling
24 rules. Paragraph 234 of the TRRO requires a requesting

1 carrier to undertake a reasonably diligent inquiry before
2 ordering a UNE loop or transport, and then based on that
3 inquiry to self-certify that the order is consistent with
4 the TRRO's requirements. Moreover, because Verizon must
5 immediately process a CLEC-certified order for such an
6 element, the existence of a dispute between Verizon and
7 the requesting carrier over the availability of the
8 element on an unbundled basis will not prevent the CLEC
9 from obtaining the facility at existing, i.e., pre-TRRO
10 surcharge, TELRIC rates in the first instance. Thus, the
11 CLECs will suffer no harm in the absence of tariff
12 language specifically listing the wire centers that
13 satisfy the various criteria for unbundling of loops and
14 transport.

15 If specific disputes do arise in the
16 future, they can be resolved under the dispute resolution
17 procedures that I've identified, both by way of the tariff
18 or by way of an Interconnection Agreement. And, such an
19 approach, which only could be initiated after the network
20 element was provisioned, would be more efficient than
21 forcing litigation at this point before any dispute
22 arises. Moreover, the case-by-case dispute resolution
23 process set forth in Paragraph 234 of the TRRO is
24 sufficiently flexible to account for changes in facts

1 affecting central offices, such as new collocation
2 arrangements.

3 That said, however, Verizon will
4 cooperate in good faith with this investigation if this is
5 how the Commission wishes to proceed at this time. But we
6 are simply providing to you a road map for how these
7 matters might be addressed in the future, to the extent
8 that additional central offices qualify.

9 And, finally, as for the potential
10 application of Section 271 to these delisted UNEs, Verizon
11 respectfully disagrees with the Commission's principle
12 adopted in docket 03-201, I think the Commission is aware
13 of that, and that issue is presently under review in the
14 Federal District Court for the District of New Hampshire,
15 and this piece of the Commission's decision with respect
16 to this order of notice has also been incorporated in that
17 proceeding by virtue of our amended complaint. That's
18 pretty much all I would say on that matter, Mr. Chairman.
19 I think that that forum will determine whether the
20 Commission is correct or Verizon is correct.

21 That all said, though, we look forward
22 to expeditiously resolving this investigation, because we
23 believe that it's fairly easy to determine whether or not
24 there are fiber-based collocators in central offices.

1 And, the business lines are ARMIS FCC filed data. So,
2 that also can be fairly easily determined. Thank you, Mr.
3 Chairman.

4 **CHAIRMAN GETZ:** Thank you. Mr. Patch.

5 **MR. PATCH:** Thank you, Mr. Chairman.
6 BayRing Communications is, as I'm sure the Commission
7 knows, a competitive local exchange carrier in New
8 Hampshire, and has been since 1996, and serves customers
9 with state-of-the-art voice and data services throughout
10 the Seacoast and in other areas of the state. The
11 services that are specifically mentioned in the
12 Commission's order of notice are ones that are important
13 to BayRing. And, so, BayRing is very interested in the
14 outcome of the determinations that the Commission makes in
15 this docket.

16 We respectfully disagree with Verizon.
17 We're happy to note that the Commission reserved the right
18 in the order notice, on Page two, to determine whether
19 Verizon remains obliged to provision the affected UNEs at
20 any New Hampshire wire centers by virtue of their status
21 as an RBOC. It has obtained authority under Section 271
22 of the Telecom Act. We, obviously, agree with the
23 Commission's order in 24 -- Order Number 24,442, issued
24 back in March, in docket DT 03-201, and think that's an

1 important issue for the Commission to address in the
2 context of this proceeding. And, I guess that's sort of
3 basically our position in this proceeding.

4 **CHAIRMAN GETZ:** Thank you. Mr. Kennan.

5 **MR. KENNAN:** Thank you, Mr. Chairman.

6 Please excuse my scratchy throat. Most people consider it
7 a blessing when I can't talk, and I'll have to ask you to
8 bear with me today. Mr. Chairman, Commissioners, we
9 commend the Commission for opening this investigation, and
10 we believe that it is appropriate and important for the
11 Commission to look closely at the classifications that
12 Verizon has offered as to the particular wire centers that
13 may qualify for unbundling relief under the different
14 criteria for the different UNEs that Mr. Del Vecchio
15 described.

16 We think that it is more efficient and a
17 better use of everyone's time to look at this issue now
18 and resolve it comprehensively at this stage of the
19 proceeding, rather than waiting for piecemeal dispute
20 resolution disputes to rise to the Commission. We think
21 that just makes more sense to get it all done now. And,
22 it's important to get it right at this stage. Because, as
23 Mr. Del Vecchio correctly suggested, once a wire center is
24 on the non-impaired list, that is, you know, once it is

1 granted relief from certain of the unbundling
2 requirements, you can't get it off that list. So, we
3 think it's important that we look at this question now, be
4 sure we get it right. And, getting it right means making
5 sure that Verizon, in its clarifications, has correctly
6 applied the various criteria that the FCC has set forth.

7 In particular, there are a few issues
8 that we believe that the Commission should look at
9 closely. One is to ensure the accuracy of the fiber-based
10 collocator count. A fiber-based collocator has to meet
11 certain criteria. There has to be, for example, there has
12 to be active electrical power, the fiber transport has to
13 be provided by someone other than Verizon, other than the
14 ILEC, and this transport has to terminate at a collocation
15 agreement owned by a non-affiliated carrier, a carrier not
16 affiliated with the ILEC, and leave the wire center. So,
17 it's not clear that a visual inspection of these
18 collocation arrangements is sufficient to ensure that
19 these criteria are satisfied.

20 We believe that MCI should not be
21 counted as a fiber-based collocator in any of these wire
22 centers. To be a "fiber-based collocator", a company has
23 to be not affiliated with the ILEC. And, as we all know,
24 MCI is on the road to being merged with Verizon. Again,

1 if MCI is counted now, and a wire center gets removed from
2 the list of wire centers that has to be or that gets --
3 that has to unbundle, in other words, if it's put on the
4 non-impaired classification, it never comes off. So, to
5 us it doesn't make sense to count MCI now, have that
6 possibly push a wire center off of the unbundling list or
7 have it no longer required to unbundle something, and
8 then, in a few months, when the merger is approved,
9 presumably, where do we stand?

10 Similarly, all affiliates of SBC and
11 AT&T in a given wire center should count as only one
12 fiber-based collocator. I don't know if those criteria
13 are met anywhere here in New Hampshire, but SBC and AT&T
14 have a number of affiliates. Under the rules, an
15 affiliate -- all affiliates are counted as one fiber-based
16 collocator, for the same reason, given the progress of
17 that merger, we think that, if there are affiliates of any
18 -- of either SBC or AT&T, they all should be counted
19 collectively as no more than one fiber-based collocator.

20 Similarly, with respect to the business
21 line count, the FCC has set forth more detailed criteria.
22 They have to be business lines. They have to be all for
23 switched services. In other words, special access cannot
24 count toward the business line count. And, we also have

1 to make sure that high-capacity facilities are actually
2 being used as loops and not transport or entrance
3 facilities. Business lines are switched access loops.
4 And, so, we have to be sure that, particularly in the case
5 of high-capacity facilities, that they really are being
6 used for those purposes.

7 You know, a difference of one
8 fiber-based collocator or one high-capacity facility could
9 be the make-or-break difference in whether a wire center
10 is classified for relief or not. A DS3 counts as 672
11 business lines under the FCC criteria; 24 lines per DS1,
12 28 DS1s per DS3s. So, miscounting only one or two DS3s,
13 miscounting only one fiber-based collocator, could make a
14 difference between whether a wire center is on or off the
15 list. So, it's important to get it right at this stage of
16 the proceeding.

17 Verizon is uniquely in possession of
18 this information. What we would like to see as we move
19 forward is Verizon making a disclosure at the beginning of
20 the proceeding. Something along the lines of what, you
21 know, in federal court, might be a prehearing exchange or
22 a Rule 16 initial disclosure. Let's put the information
23 on the table and take a look at it. Rather than having to
24 go through arguing about discovery and what Verizon might

1 have to provide or not. I think it probably makes sense
2 just to get that information before the Commission. If
3 there are confidentiality concerns, those can be dealt
4 with, or the Staff can take the first look at it. But I
5 think Verizon is uniquely in possession of that
6 information and ought to be disclosing it so that people
7 -- so we can take a look at it. Thank you very much.

8 **CHAIRMAN GETZ:** Thank you. Let me just
9 note, consistent with our practice and rule that allows
10 the party that opens the stage of a proceeding to close
11 the stage of that proceeding. And, that, Mr. Del Vecchio,
12 you'll have a chance to respond. Mr. Samp.

13 **MR. SAMP:** We, too, are pleased that the
14 Commission initiated this investigation, and we think it's
15 the most efficient way to resolve potential disputes here.
16 We understand that Verizon is claiming a total of five
17 wire centers eligible for exemption one way or another in
18 New Hampshire. And, we think, to resolve any factual
19 disputes in this kind of proceeding, as opposed to trying
20 to resolve them piecemeal as they arise, is the most
21 efficient way to do it.

22 Likewise, we believe, as noted in the --
23 as a potential in the notice of investigation, that
24 Verizon will continue to have obligations under Section

1 271 with respect to all the services at issue in this
2 proceeding. And, our position would be that, regardless
3 of how the counts finally come out, that Verizon will
4 continue to be obligated to provide access to all these
5 services.

6 **CHAIRMAN GETZ:** Thank you. Mr. Katz.

7 **MR. KATZ:** Without repeating several of
8 the other comments, segTEL agrees with the comments of
9 BayRing, Conversent, and Great Works. The only two things
10 that I would add is that there is a substantial amount of
11 harm in regulatory uncertainty that small providers can be
12 subject to, for instance, back billing procedures in the
13 TRO Remand, and we think that both Verizon and competitors
14 could only benefit from having regulatory certainty of
15 what Verizon is and is not required to provide, and what
16 are or are not entitled to purchase under Section 251.

17 At the time of the TRO Remand, segTEL
18 engaged in a visual inspection of our own in every single
19 one of the COs that are listed here, because we are
20 collocated not as a fiber-based collocater in these five
21 COs. And, the data that we received from our visual
22 inspection was substantially different than Verizon's.
23 So, we also would like to have the opportunity to review
24 Verizon's data at some point. Thank you.

1 **CHAIRMAN GETZ:** Mr. Berndt.

2 **MR. BERNDT:** Likewise, I would echo from
3 my associate competitive carriers. And, we are very
4 pleased with the proceeding and the opportunity to
5 hopefully get some open disclosure around the
6 self-certification process that Verizon has engaged in in
7 these efforts. The one thing I would add to point out,
8 and I think supports the proceeding that we're engaged in
9 here, that the incumbent LECs throughout the country
10 listed their list of sites that should be classified as no
11 longer being impaired. And, throughout many of these
12 states, Verizon and SBC ended up having to send out
13 corrections within a month, stating that "Oh, we made a
14 mistake. This actually shouldn't have been on the list."
15 So, I think that just supports the need to have disclosure
16 and to have additional eyes looking at this information,
17 so that we can make sure that these are sites that are
18 taken off of the impairment list are truly not impaired
19 anymore. Thank you.

20 **CHAIRMAN GETZ:** Mr. Leslie.

21 **MR. LESLIE:** The ISP Association is
22 mainly concerned about the 271 issues here. And, I think
23 other people have said enough about that already.

24 **CHAIRMAN GETZ:** Thank you. Mr. Susnock.

1 **MR. SUSNOCK:** Thank you. We're --
2 Destek is keenly aware of the need for the availability of
3 UNEs throughout the state. And, we're here in support of
4 the CLECs in their efforts to maintain the competitive
5 environment.

6 **CHAIRMAN GETZ:** Ms. Ross.

7 **MS. ROSS:** Yes. The Office of Consumer
8 Advocate represents residential ratepayers. So, we do not
9 have a direct interest in this docket, but we monitor
10 wholesale dockets to attempt to ensure that the wholesale
11 markets are working as intended. And, that's what we will
12 be doing in this docket.

13 **CHAIRMAN GETZ:** Ms. Fabrizio.

14 **MS. FABRIZIO:** Thank you, Mr. Chairman.
15 The FCC's TRO Remand Order made clear that Verizon remains
16 obliged to provision certain UNEs, namely DS1 loops, DS3
17 loops and dedicated high-capacity transport facilities,
18 including dark fiber transport, to CLECs, pursuant to
19 Section 251 of the Telecom Act of '96. This obligation to
20 continue to provide certain UNEs applies to certain of
21 Verizon's wire centers, as you now know, but may not apply
22 to others.

23 As noted earlier, Paragraph 234 of the
24 Remand Order requires the CLECs to self-certify as to

1 which UNEs continue to be available to them. For those
2 wire centers where CLECs are no longer entitled to UNEs,
3 the Remand Order directs parties to negotiate any
4 applicable changes through their interconnection
5 agreements.

6 In New Hampshire, Verizon has a
7 wholesale tariff that sets out the schedule of rates,
8 charges, terms and conditions under which services are
9 provided to customers, *in lieu* of individually negotiated
10 interconnection agreements. The Commission must approve
11 any changes to Verizon's tariff arising from the TRO
12 Remand Order.

13 It is the opinion of Staff that, to
14 effectively meet the filing and transparency requirements
15 of RSA 378:1 and Puc Rule 402.51, Verizon's tariff must
16 include clear identification of the wire centers whose
17 rates may be affected by the TRO Remand Order.

18 Our goals in this investigation are to
19 review Verizon's methodology for identifying wire centers
20 that meet the threshold requirements set by the TRO Remand
21 Order; to determine whether Verizon's list of wire centers
22 complies with FCC rules; and to ensure that Verizon's
23 tariff accurately identifies which rates apply in each
24 wire center. It is also our goal to clarify what

1 procedure the Commission should adopt for future
2 determinations with respect to affected wire centers.

3 And, finally, it is the opinion of Staff
4 that, if the Commission determines that in certain wire
5 centers Verizon is no longer required to provide certain
6 unbundled network elements, then a case-by-case analysis
7 needs to be conducted to determine if the elements are
8 required to be unbundled pursuant to Section 271. Thank
9 you.

10 **CHAIRMAN GETZ:** Before we give you an
11 opportunity to reply, Mr. Del Vecchio, Commissioner
12 Harrington has some remarks.

13 **CMSR. HARRINGTON:** Yes. And, just
14 generally, I guess --

15 **MR. MACRES:** This is Phillip Macres.
16 Will I have an opportunity to speak or has everybody who's
17 at the -- in the hearing room has spoken yet?

18 **CHAIRMAN GETZ:** Our practice is, in
19 these proceedings and prehearing conferences, if a party
20 wants to, who is not physically present, wants to
21 monitor, then we allow them that opportunity to monitor,
22 and that we will not take a public statement on the record
23 via telecommunications, unless there's been some prior
24 motion and a ruling on that motion. So, the short answer

1 is "no".

2 **MR. MACRES:** Okay. Thank you. I just
3 wanted to ask.

4 **CMSR. HARRINGTON:** And, I guess my
5 comment would be to all parties, that one way or the
6 other, regardless of how this gets -- this issue gets
7 resolved, whether we do it on a case-by-case basis, as
8 approved by Verizon, or we set down a set of criteria
9 that's established for how that determination will be made
10 as to which wire centers apply, that criteria is going to
11 have to be established. And, so, I'd like to have all the
12 parties try to work together as much as possible to come
13 up with the criteria that you can agree on. And, if
14 there's ones that you don't agree on, you know, then the
15 individual party then should be able to present why their
16 criteria -- what it is and why it's correct. So that,
17 eventually, the Commission's going to have to rule as to
18 what is the appropriate criteria to use. So, I'd like to
19 see, in the tech session, they work on that to the extent
20 possible, on mutual agreement; where there isn't any,
21 clearly state why your position you feel is correct.

22 **CHAIRMAN GETZ:** Mr. Del Vecchio.

23 **MR. DEL VECCHIO:** Mr. Chairman, I would
24 just briefly note just a couple of things. I think, as

1 the consensus, whether spoken or not, suggests, once we
2 make a determination as to a wire center's qualification
3 under these tiers with respect to transport and as to
4 numbers and collocators with respect to loops, that
5 determination applies thereafter. So, we recognize that
6 it's of some importance. I would also note, however, that
7 this, again, is not something that should surprise
8 competitive providers, because Verizon has sought, as it
9 does as a matter of practice with these wholesale
10 customers, which is what they are, in addition to being
11 competitors, gave them notice in March, I believe, early
12 March, of the listing of the various central offices in
13 New Hampshire and elsewhere, and the identification of
14 which of the affected services were no longer impaired.
15 And, in addition at that time, Verizon specifically stated
16 for the competitive carriers that, and I'll read what we
17 said, "Verizon is prepared to provide to you, under an
18 appropriate nondisclosure agreement, the backup data that
19 was used by Verizon to develop and update the list of wire
20 centers. If you have actual, verifiable data that you
21 believe demonstrates that any wire center identified on
22 the list filed by Verizon should not be included on these
23 lists or those lists, you are requested to provide such
24 data to your Verizon account manager before March 11,

1 2005."

2 It's not as if this is something we're
3 seeking to sweep under the rug here. We said, "if you'd
4 like to see the backup data we have, and you're willing to
5 execute a -- because this does effect other competitive
6 providers, identify who is doing what in central offices,
7 and we're obligated to maintain that in a confidential
8 fashion, we're willing to discuss that with you." And,
9 I'm not sure how many of the competitive providers in this
10 room actually have sought to avail themselves of that.

11 That said, we don't disagree, again, in
12 this proceeding, to provide the backup data, I think as
13 Commissioner Harrington is suggesting, so we get this
14 resolved. This should not, in this particular hearing
15 room, be a federal case. There are federal courts that
16 are perhaps more suited for addressing the so-called
17 "federal cases", and, ultimately, maybe the 271 issue may
18 be resolved by that court with respect to that issue in
19 this instance. But, with respect to verifying that these
20 offices qualify, we have the criteria, the FCC has
21 prescribed it. We simply seek to and I think need to
22 establish that these central offices qualify. And, there
23 may be some disagreement as to one point or another as to
24 implementing that criteria, but shouldn't be something

1 that takes us months and months and months. We should get
2 this resolved relatively easily, at least that's my naive
3 first impression, having reviewed this now recently. And,
4 that's what we hope to do. And, we will take the
5 Commission up at its request and try to see if we can
6 resolve this by way of discussion, as opposed to creating
7 an unnecessarily controversial docket.

8 And, with respect to the 271 issue, we
9 know the positions, the Commission's position, and the
10 Commission understands our position. So, I think those
11 two sides are unlikely to change in this particular
12 instance. And, we'll have to wait for, at least not
13 necessarily smarter than the Commissioners, but smarter
14 than I, as to some form above us as to who's right. Thank
15 you.

16 **CHAIRMAN GETZ:** Okay. With Mr. Del
17 Vecchio's optimistic note on the wire center issue, if not
18 the 271 issue, we will close the prehearing conference and
19 let the parties move into a technical session, and we'll
20 await a recommendation. Thank you very much.

21 **(Prehearing conference ended at 10:47**
22 **a.m.)**