DT 05-083
DT 06-012

VERIZON NEW HAMPSHIRE
WIRE CENTER INVESTIGATION

VERIZON NEW HAMPSHIRE
REVISIONS TO TARIFF 84

Order Classifying Wire Centers and Addressing Related Matters

O R D E R N O. 24,598

March 10, 2006

I. INTRODUCTION

These consolidated proceedings before the New Hampshire Public Utilities Commission (Commission) concern the extent to which incumbent local exchange carrier (ILEC) Verizon New Hampshire (Verizon) remains obligated under section 251 of the Telecommunications Act of 1996, Pub. L 104-104, 110 Stat. 56 (1996) and subsequent amendments, codified as 47 U.S.C. § 151 *et seq*. (Telecommunications Act), to make certain network elements available on an unbundled basis, and at cost-based rates, to competitive local exchange carriers (CLECs) in New Hampshire. Section 251(d)(2) authorizes the Federal Communications Commission (FCC) to require such unbundled access when the failure to provide it would "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

The extent to which the lack of such impairment relieves Verizon's unbundling obligations has been in a state of flux, in part because of industry changes and in part because of appellate challenges to FCC impairment determinations. The FCC's most recent determinations

with respect to impairment are contained in an order formally entitled *In the Matter of Unbundled Access to Network Elements,* 20 F.C.C.R. 2533 (Feb. 4, 2005), commonly referred to as the *Triennial Review Remand Order* (*TRRO).*[1]

In the *TRRO*, the FCC determined that the continuing obligation of Verizon and other ILECs to provision CLECs with certain unbundled network elements (UNEs), *i.e.*, high capacity transport, dark fiber transport and high capacity loops, would vary by wire center,[2] according to the extent to which "requesting carriers have undertaken their own facilities-based investments and will be using UNEs in conjunction with self-provisioned facilities." *See TRRO* ¶ 3. The FCC's determinations are not based, however, on the extent to which real alternatives to the ILEC may exist, but to whether "entry is economic by a hypothetical carrier acting reasonably efficiently." *See TRRO* ¶¶ 26, 43 and 96. Thus the analysis is one of market strength and the economics of self-deployment by competitors of transport and loop facilities. To that end, the FCC established formulae to determine when CLECs are no longer impaired without access to dedicated transport and high-capacity loops in an ILEC wire center if the ILEC were to be relieved of its obligation to provision those UNEs. Those formulae were codified at Part 51 of Title 47 of the Code of Federal Regulations.

For high-capacity loops, two thresholds establish when impairment no longer exists. Impairment will not exist with regard to DS-3 loops to any customer served by a wire center with at least 38,000 business lines and four fiber-based collocators. Impairment will not

[1]In 2003, the FCC issued its *Triennial Review Order, In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 F.C.C.R. 16,978 (2003) *(TRO).* The *TRO* was vacated in part, remanded in part and affirmed in part by *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), prompting the issuance of the *TRRO*.

[2]A "wire center" is "the location of [an ILEC] local switching facility containing one or more central offices." 47 CFR § 51.5.

exist with regard to DS-1 loops to any customer served by a wire center with at least 60,000 business lines and four fiber-based collocators.

For dedicated transport, the FCC identified tiers of wire centers, between which competitors are deemed to be not impaired in certain circumstances. A "tier 1" wire center is one that has at least 38,000 business lines or at least four fiber-based collocators. A "tier 2" wire center is one that has at least 24,000 business lines or at least three fiber-based collocators. All ILEC wire centers that do not meet the criteria above are "tier 3" wire centers. The FCC found that CLECs are not impaired without access to DS-1, DS-3 and dark fiber transport between tier 1 wire centers, and that CLECs are not impaired without access to DS-3 and dark fiber transport between tier 2, or between tier 2 and tier 1, wire centers. According to the *TRRO*, once a wire center is determined to be a tier 1 wire center it is not subject to later reclassification as a tier 2 or tier 3 wire center, and, similarly, once a wire center is determined to be a tier 2 wire center it is not subject to later reclassification as a tier 3 wire center.

A key element in the classification process is the identification of fiber-based collocators in a wire center. The FCC promulgated certain final rules that appear as Appendix B to the *TRRO*. The definition of fiber-based collocator is codified at 47 C.F.R. § 51.5 Terms and Definitions (Rule 51.5):

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

> an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

Also at issue in the classification process is the count of business lines in a wire center. The definition of business lines is codified at 47 C.F.R. § 51.5 Terms and Definitions:

> Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."

The *TRRO* requires CLECs to self-certify, after undertaking a "reasonably diligent inquiry," that their requests for high-capacity loops or dedicated transport UNEs are consistent with the requirements of the *TRRO*, and that they are therefore entitled to unbundled access to the particular network elements sought pursuant to section 251 of the Telecommunications Act. In those wire centers where CLECs self-certify that they are no longer impaired without access to those UNEs, the *TRRO* directs carriers to negotiate applicable changes through their interconnection agreements. In New Hampshire, however, Verizon has a wholesale tariff, NHPUC Tariff No. 84 (Tariff 84), that sets out the rates, terms and conditions of services to be provided to CLECs. In Docket No. DT 05-083, we seek to verify whether Verizon's classifications of its wire centers for the purpose of inclusion in its wholesale tariff pursuant to the *TRRO*, FCC rules and RSA 378:5 are reasonable and to clarify the appropriate

guidelines and procedures for determination of any future changes in wire center impairment classifications.

Also in this order, we address revisions to Tariff 84 proposed by Verizon and docketed in Docket No. DT 06-012. Tariff 84 currently provides for the disconnection at the end of the defined transition period of any "delisted" high-capacity loop or transport unbundled network elements (UNEs) (*i.e.*, UNEs which are no longer required to be unbundled) under certain circumstances. As an alternative to disconnecting delisted loops or transport, the proposed revisions would grant Verizon the sole discretion to determine what replacement circuits are analogous to the delisted UNE transport and loops, and to re-price the transport and loop circuits accordingly, based on FCC-tariffed interstate special access rates. In Docket No. DT 06-012, we seek to verify whether the proposed revisions are just and reasonable pursuant to RSA 374:2 and 378:5.

II. PROCEDURAL HISTORY

Docket No. DT 05-083 originated out of Docket No. DT 05-034, in which Verizon submitted tariff revisions on February 22, 2005, to implement changes in its offerings of dedicated transport and high capacity loops that, in accordance with the *TRRO*, would be affected if wire centers in New Hampshire meet the FCC's non-impairment thresholds. Verizon did not submit a list of wire centers for inclusion in its proposed tariff. On February 22, 2005, Verizon notified Staff and the CLEC industry of its wire center classifications. The Commission accepted in part and rejected in part Verizon's tariff revisions by Secretarial Letter dated April 22, 2005.

Also on April 22, 2005, the Commission opened Docket No. DT 05-083, issuing an Order of Notice and scheduling a prehearing conference and technical session. The Commission invoked its investigative authority under RSA 365:5 and 374:4, to determine whether Verizon's classifications are appropriate and what procedures should govern any future wire center classification determinations undertaken by Verizon.[3] The Commission additionally reserved the right, if necessary, to determine whether, notwithstanding the requirements of section 251, Verizon remains obligated to provision the affected UNEs at any New Hampshire wire centers by virtue of Verizon's status as a regional Bell operating company (RBOC) that has obtained authority under section 271 of the Telecommunications Act to provide interLATA long-distance service in New Hampshire.

The Commission designated Verizon a mandatory party to the proceeding. The prehearing conference was duly held on May 25, 2005. Thereafter, Staff and the parties worked in technical sessions held on June 15, 2005, and July 13, 2005, and through discovery to fully understand the configuration of the wire centers, the identity of the competitors with facilities located therein, and the ways in which their connections were engineered. There was concern on the part of Parties and non-party CLECs regarding the confidentiality of such competitively-charged information. As a compromise, it was agreed that Staff would review the information under seal and file a report of its conclusions, without identifying the name of any competitor.

On August 19, 2005, the Commission issued Order No. 24,503, setting a procedural schedule and granting intervention to the following Parties: BayRing

[3]In addition, on November 17, 2005, Verizon notified CLECs of classification changes to wire centers in Concord, Dover and Salem, New Hampshire. The matter was docketed as DT 06-020 and is not addressed herein.

Communications, LLC (BayRing); Biddeford Internet Corporation d/b/a Great Works Internet; Broadview Networks, Inc. (Broadview); Conversent Communications of New Hampshire, LLC (Conversent); CTC Communications, Inc. and Lightship Telecom, LLC, filing jointly; DIECA Communications, Inc. d/b/a Covad Communications Company; MCI, Inc. (MCI); and segTEL, Inc. (segTEL). The Office of Consumer Advocate (OCA) also participated on behalf of residential ratepayers. A revision to Order No. 24,503 was issued on August 30, 2005, and the Commission amended the procedural schedule by Secretarial Letter on November 3, 2005. On January 18, 2006, Staff filed a memorandum to the Commission, recommending that the Commission determine whether the dedicated transport and high capacity loop elements at issue in this docket are required by section 271 of the Telecommunications Act.

On January 11, 2006, Verizon filed proposed revisions to Tariff 84, which were docketed as Docket No. DT 06-012. That filing raises, *inter alia*, the following issues: (1) whether it is appropriate for Verizon to determine, at its sole discretion, to disconnect a service or convert that service to a special access arrangement; (2) whether it is appropriate for Verizon to determine what the analogous replacement circuit shall be; and (3) whether the proposed revisions are reasonable. *See* RSA 374:2 and 378:5.

An Order of Notice was issued for Docket No. DT 06-012 on January 23, 2006, scheduling a prehearing conference, which was duly held on January 31, 2006. Intervention was granted to BayRing and segTEL. At the January 31, 2006 technical session following the prehearing conference the Parties agreed Staff would request consolidation of dockets DT 05-083 and DT 06-012 and ask the Commission to render a decision applicable to both by March 11, 2006. On February 2, 2006, Staff filed a report of the technical session, placing the Parties'

requests before the Commission. The Commission granted the requests by Secretarial Letter dated February 3, 2006. Participants further agreed that OCA Analyst Stephen Merrill would verify a factual affidavit prepared by Staff, which would then be distributed to the Parties no later than February 8, 2006, and that Staff would provide a suggested outline of legal issues to be briefed by the Parties no later than February 17, 2006. Parties and Staff agreed that the issues could advance to a decision in both dockets without the need for further technical sessions, reply briefs, or a hearing on the merits.

On February 8, 2006, Stephen Merrill of the OCA filed his third-party verification of Staff's analysis of the wire centers, together with the Factual Affidavit of Kath Mullholand of Staff (Staff's Affidavit). Staff's Affidavit includes a summary of facts and five wire center diagrams. BayRing and segTEL, filing jointly, submitted a brief on February 17, 2006 (BayRing and segTEL Brief), as did Conversent (Conversent Brief). Verizon filed comments on February 17, 2006 (Verizon Comments). On February 24, 2006, Broadview filed a letter concurring with the Conversent Brief.

On February 22, 2006, Verizon filed a letter taking issue with certain assertions of BayRing and segTEL regarding the merger between Verizon and MCI, and provided a copy of Verizon's Industry Notice to CLECs dated February 21, 2006 (February 21 Industry Notice). BayRing and segTEL responded to Verizon's letter on February 27, 2006. On March 1, 2006, Verizon filed a copy with this Commission of its February 24, 2006 FCC filing of the February 21 Industry Notice.

On March 7, Staff filed new versions of the five wire center diagrams that accompany Staff's Affidavit, correcting typographical errors on the diagrams representing

Keene, Manchester, Nashua and Portsmouth, and updating the diagram for Manchester to reflect Staff's confirmation of the status of CLEC 3's deployment of fiber. On March 9, the Commission issued a Secretarial Letter and post-hearing data request to Staff pertaining to MCI's collocation arrangements in Manchester and Nashua as obtained through discovery. On March 9, Staff provided the requested information in a Supplemental Affidavit.

III. POSITIONS OF THE PARTIES AND STAFF

A. Verizon's List of Wire Centers

Verizon asserts that competitors in Manchester are not impaired without access to DS-3 loops because, according to Verizon, Manchester has at least four fiber-based collocators and 38,000 business lines. Verizon also asserts that Keene, Manchester, Nashua and Portsmouth are tier 1 wire centers, and that Dover is a tier 2 wire center.

Verizon provided Staff with a list of the CLECs it believes meet the FCC's criteria for fiber-based collocators pursuant to Rule 51.5 in each of the five identified wire centers. In Dover, Verizon asserted three fiber-based collocators. The number of business lines in Dover is not at issue at this time. In Keene, Verizon asserted four fiber-based collocators. The number of business lines in Keene is not at issue at this time. In Manchester, Verizon asserted seven fiber-based collocators (including MCI)[4], and asserted that Manchester had more than 38,000 business lines. In Nashua, Verizon asserted seven fiber-based collocators (including MCI). The number of business lines in Nashua is not at issue at this time. In Portsmouth,

[4]Although the wire centers in which MCI is collocated were initially provided to Staff by Verizon under confidential seal, Verizon listed the wire centers in which it deemed MCI to be a fiber-based collocator in its comments, without an assertion of confidentiality.

Verizon asserted six fiber-based collocators. The number of business lines in Portsmouth is not at issue at this time.

B. Verizon's DT 06-012 Tariff Filing

In its filing in Docket No. DT 06-012, Verizon explained that Tariff 84 currently provides for the disconnection at the end of the transition period defined in the tariff for those delisted UNEs for which a CLEC does not submit an order for disconnection or conversion to alternative arrangements pursuant to existing tariffs or agreement with Verizon. Verizon represents that its filing revises the tariff to add an alternative to disconnection, giving Verizon the option to convert the delisted circuits to special access arrangements pursuant to federally tariffed rates, terms and conditions. Verizon's filing would amend Part B, Section 2 "Unbundled IOF Transport" and Part B, Section 5.3 "Links (Local Loops): High Capacity Links" by adding language that would allow Verizon, at its sole discretion, to elect to convert delisted UNE high capacity transport and loops to non-UNE arrangements, in this case, federally tariffed interstate special access. The proposed revisions would also grant Verizon the sole discretion to determine what replacement circuits are analogous to the delisted UNE transport and loops, and to re-price the transport and loop circuits accordingly.

C. Staff's Factual Affidavit

Verizon identified a total of twelve different CLECs as fiber-based collocators; six of those CLECs voluntarily intervened in this docket. In order to honor the confidential treatment requested by the non-party CLECs identified by Verizon, Staff analyzed the available information and created a factual summary of the conditions in each wire center. Staff's Affidavit included a summary and diagrams that depict the various collocation configurations in

each wire center at issue here. Individual collocators were identified anonymously as CLEC 1, CLEC 2, etc. Stephen Merrill of the OCA reviewed the source documents and Staff's summary and diagrams to ensure that they were correct and complete. BayRing and segTEL accepted, for purposes of this proceeding only, the information reflected in the wire center diagrams appended to Staff's Affidavit. Verizon accepted Staff's Affidavit as well, except for Staff's decision not to include MCI collocation arrangements in Manchester and Nashua.

D. Implementation of Wire Center Impairment Determinations

1. Effective Date of Impairment Determinations

a. Verizon

Verizon asserts that the effective date for the wire center impairment determinations in this proceeding should be March 11, 2005, and that as of that effective date, CLECs can no longer order as UNEs high capacity loops in wire centers that meet the FCC's thresholds, or dedicated transport between certain tiers of wire centers. Verizon claims that the FCC specifically chose objective criteria such as the number of fiber-based collocators and business lines as reported in ILEC-provided ARMIS data to establish its non-impairment criteria in order to avoid complex and lengthy proceedings. In arguing its position, Verizon cites to paragraph 100 of the *TRRO*, which states that "…incumbent LEC counts of fiber-based collocations can be verified by competitive LECs, which will also be able to challenge the incumbent's estimates in the context of section 252 interconnection agreement disputes."

Consistent with that view, according to Verizon, the FCC did not provide for state commission review of ILEC wire center determinations, except where a CLEC specifically challenges an ILEC wire center classification. Verizon insists that disputes regarding the validity

of any wire center classification asserted by the ILEC were intended to be addressed through dispute settlement procedures between ILECs and CLECs. Verizon notes that it filed its initial wire center list with the FCC on February 13, 2005, in response to the FCC's request that it do so, and provided the same to CLECs on March 2, 2005. While the FCC did not authorize state commissions to review wire center classifications in the absence of a specific CLEC complaint, says Verizon, when a state commission such as this one undertakes to do so, it must do so in accordance with the *TRRO*. Therefore, the effective date of the instant determinations must be March 11, 2005, Verizon claims.

b. BayRing/segTEL

BayRing and segTEL contend that the question at issue in this proceeding is exactly when Verizon is relieved of its section 251 obligation to provide the UNEs at issue in this docket at TELRIC rates. BayRing and segTEL argue that Verizon must provision UNE orders made by requesting carriers until this Commission determines otherwise. Since this Commission is authorized by the *TRRO* to resolve impairment disputes in these wire centers, the date of the Commission's order should be the effective date on which UNEs are no longer available.

c. Conversent

Conversent asserts that a wire center impairment determination is effective on the date this Commission approves or allows the relevant amendment to Tariff 84 to go into effect. In Conversent's view, the tariff process provides an efficient mechanism for the Commission to oversee this and future amendments to the wire center list. It is a desirable goal, claims Conversent for there to be a unitary list of wire centers to which all interested persons have

access. Conversent further notes that this docket will set ground rules for future determinations, ensuring that the process to amend the tariff in the future can be limited to thirty days.

2. Effect of one CLEC's self certification of non-impairment on other CLECs

a. Verizon

Verizon contends that it has made its identification of non-impaired wire centers as well as back-up information available to CLECs and that any reasonably diligent inquiry would include review of such information. According to Verizon, if a CLEC confirms a Verizon wire center classification it should not order UNEs from that wire center. Finally, Verizon avers that where the Commission has verified Verizon's classification of a particular wire center, no CLECs would be permitted to order UNEs from that wire center in the future.

b. BayRing/segTEL

BayRing and segTEL argue that the FCC's requirement for self certification provides for each CLEC to conduct its own reasonably diligent inquiry to determine if impairment exists before ordering section 251 UNEs. BayRing and segTEL suggest that an anti-competitive CLEC could make a bogus self-determination that might block other CLECs from ordering section 251 UNEs in the wire center and thus hinder competition. Accordingly, say BayRing and segTEL, one CLEC's determination that it is not impaired without access to UNEs in a wire center should have no effect on other CLECs.

c. Conversent

Conversent notes that it is unlikely that a CLEC will find non-impairment with respect to a particular wire center where Verizon does not. According to Conversent, Verizon has all the relevant line count data and, since a CLEC cannot establish fiber connections without Verizon knowing it, Verizon is in the best position to know when there are new fiber-based

collocators in a wire center. Conversent argues that even if a CLEC determines it is non-impaired in a particular wire center, that particular CLEC's determination cannot be binding on other CLECs as other CLECs may not be aware of the determination.

3. Effect of a merger of two CLECs on future determinations

a. Verizon

In Verizon's view, once a wire center has been properly classified through the application of the FCC's non-impairment criteria as a tier 1 or tier 2 wire center, it cannot be subsequently reclassified into a lower tier even if CLECs counted individually subsequently merge, leaving fewer fiber-based collocators than required for an initial tier 1 or tier 2 classification. Verizon goes on to say, however, that if CLECs are counted individually as two separate fiber-based collocators resulting in a tier 2 classification and those two CLECs later merge, they should be counted as a single fiber-based collocator for a subsequent tier 1 determination. Verizon encourages the Commission to clarify that affiliate relationships that existed at the time Verizon identified its initial wire center classifications are controlling for the purpose of determining the count of fiber-based collocators underlying those classifications.

b. BayRing/segTEL

According to BayRing and segTEL, fiber-based collocators should be counted as they exist at the time the Commission makes its determination of any wire center's classification. BayRing and segTEL argue that if carriers have merged since March 11, 2005, when Verizon claims its initial filing should be effective, they should not be counted as separate fiber-based collocators because the Commission has not yet made its determination. BayRing and segTEL add that mergers cannot change past determinations, but merging CLECs should be counted as a single fiber-based collocator for future or upgrade determinations.

c. Conversent

Conversent takes the position that the FCC rule is clear and, consequently, while a merger of CLECs cannot change past determinations, the affected CLECs should be counted as a single fiber-based collocator for future or upgrade determinations.

4. Effect of the Verizon-MCI merger

a. Verizon

With respect to the Verizon-MCI merger, Verizon argues that the Commission should clarify that since MCI had not merged with Verizon when Verizon first notified the CLEC industry of its initial wire center classifications, MCI should count as a fiber-based collocator. Verizon adds that its merger commitment to the FCC was to update its non-impaired wire center lists within 30 days of merger closing to remove MCI fiber-based collocation arrangements from the threshold counts on a prospective basis as of February 3, 2006. MCI, claims Verizon, was properly counted as a fiber-based collocator in Manchester and Nashua for the period of March 11, 2005, through February 2, 2006. In response to BayRing and segTEL's assertion to the contrary, Verizon issued and submitted to this Commission its February 21 Industry Notice, which included an updated list of wire centers (with MCI removed) and which stated, "effective on and after 2/3/06, this list supersedes the list that was effective from 3/11/05 through 2/2/06."

b. BayRing/segTEL

BayRing and segTEL contend that MCI should not be counted as an unaffiliated fiber-based collocator in the initial classification of wire centers because of Verizon's commitment to the FCC not to count MCI. BayRing and segTEL claim that the merger commitment required Verizon to recalculate its wire center determinations as of March 11, 2005,

and to exclude MCI from the count from that point forward. In support of their contention, BayRing and segTEL cite to the document Verizon filed at the FCC, which states that its new list is "effective March 11, 2005: last updated 02/03/06 to reflect status as of 3/11/05." In response to Verizon's revised industry notice, BayRing and segTEL contend that Verizon's clarification to the CLEC industry does not represent an update to its filing at the FCC, and that Verizon has filed no update with the FCC since its filing of February 6, 2006, that indicated its list was effective March 11, 2005.[5]

c. Conversent

At the prehearing conference, Conversent pointed out that MCI and Verizon's merger was pending, and contended that MCI should not be counted as a fiber-based collocator in any of the five wire centers, because to be a fiber-based collocator, a company must not be affiliated with the ILEC.

E. Definition and Scope of Fiber-Based Collocation

1. Interpretation of the term "operate" as used in Rule 51.5

a. Verizon

Verizon offers the definition "to put or keep in operation" from *Merriam Webster's Collegiate Dictionary* (10th ed. 1999). According to Verizon, when a CLEC puts or keeps a fiber-optic cable, whether lit or dark, in operation within a collocation arrangement, it should be counted as a fiber-based collocator.

[5] Subsequently, on March 1, 2006, Verizon notified the Commission that it had filed the February 21 Industry Notice with the FCC on February 26, 2006.

b. BayRing/segTEL

Since the FCC did not undertake to define "operate," according to BayRing and segTEL, well-established principles of statutory construction require that the word be given its plain and ordinary meaning. Therefore, say BayRing and segTEL, resort to the dictionary is appropriate, and they cite to *Webster's Third New International Dictionary* (1986) to define "operate" as meaning "to perform a work of labor: exert power or influence." Thus, according to BayRing and segTEL, a CLEC must have the ability to control and do physical work on a cable, including having physical access to perform repairs and alterations at any point along its route. BayRing and segTEL contend that leasing fiber, and having the ability to attach "optronics"[6] to each end of a fiber strand does not constitute operational control of a cable.

BayRing and segTEL also note that the term "cable" is not defined in the FCC rule. BayRing and segTEL provide the definition of telegraphic cable as "several conducting wires enclosed by an insulating and protecting material so as to bring the wires into compact compass for use on poles... ." *Id*. Thus, in BayRing and segTEL's view, individual strands of fiber are not a "cable." BayRing and segTEL contend that the same exterior sheath with the same internal strand count must exist at the termination point in the wire center as outside to constitute a "cable" under the FCC rule. According to BayRing and segTEL, such a definition is consistent with the FCC's intent that calculation of fiber-based collocators be simple and use readily-available information.

[6] Optronics refers to the variety of devices that can be used to convert electrical signals into light waves for transmission over fiber optics.

c. Conversent

Conversent argues that the relevant dictionary definition of operate is "to run or control the functioning of," taken from *The American Heritage Dictionary of the English Language*. Conversent also cites the definition "to cause to function: work, to put or keep in operation," taken from *Merriam-Webster Online available at* http://www.m-w.com. According to Conversent, merely owning or installing a cable does not constitute operating it; further, the fact that a carrier's telecommunications traffic is transmitted over a fiber-optic cable does not, in and of itself, constitute operating it.

2. Elements of an indefeasible right of use (IRU) contract

a. Verizon

Verizon contends that an IRU involves the exclusive right to use a specified amount of dark fiber or dedicated transmission capacity for a specified time period. Verizon cites the *Newton's Telecom Dictionary* 426 (15th ed. 1999), definition of an IRU: "An IRU is to a submarine or fiber optic cable what a lease is to a building." Similar to a building lease, claims Verizon, the term of an IRU may be as short as month-to-month, or it may cover multiple years.

b. BayRing/segTEL

BayRing and segTEL cite a 1992 FCC order regarding calculation of depreciation which states that "[a]n IRU interest in a communications facility is a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use the facility and to include its capital contribution in its rate base, but not the right to control the facility or … any right to

salvage… ."[7] BayRing and segTEL add that the FCC definition implies explicit economic facets -- an IRU agreement must be accounted for as an asset by the purchaser and an asset sale by the seller and not as recurring revenue or a lease. According to BayRing and segTEL, the FCC's test for an IRU must be applied irrespective of what contracting parties call their agreement. BayRing and segTEL further note that an IRU is relevant only as to an agreement between Verizon and a CLEC for the lease of dark fiber, or between two CLECs for the lease of an entire cable.

c. Conversent

Conversent cites the same definition as Verizon from *Newton's Telecom Dictionary*. In addition, says Conversent, in a 1998 FCC order relating to transfer of control of assets between carriers,[8] the FCC states that an IRU is "essentially a perpetual leasehold in a circuit of capacity." Finally, Conversent cites the same 1992 FCC order as BayRing and segTEL.

3. Dark fiber obtained on an IRU basis from an ILEC

a. Verizon

Verizon takes the position that under Rule 51.5, when a carrier obtains dark fiber on an IRU basis from an ILEC, that carrier should be counted as a fiber-based collocator.

[7]BayRing and segTEL Brief at 18, citing *In re Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers,* CC Docket No. 87-45, Report and Order, 7 FCC Rcd. 4561, 4561 n.1 (1992).
[8]Conversent Brief at 5, citing *In re Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.,* CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, ¶ 86 (Sept. 14, 1998).

b. BayRing/segTEL

BayRing and segTEL contend that when a CLEC obtains dark fiber on an IRU basis from an ILEC, the ILEC, *i.e.*, Verizon, would be counted as a fiber-based collocator (as opposed to the CLEC obtaining the IRU fiber) because Verizon is then acting as a competitive fiber provider. In support of its position, BayRing and segTEL point out that section (3) of the fiber-based collocator definition relates to the ownership characteristics of a fiber-optic cable. Accordingly, BayRing and segTEL claim, in order to count as a fiber-based collocator a CLEC must either own the cable or have an IRU to fully operate a cable that belongs to a carrier unaffiliated with Verizon. But when Verizon provides dark fiber on an IRU basis, BayRing and segTEL assert that Verizon's cable should then be counted as non-incumbent LEC fiber-optic cable.

c. Conversent

Conversent submits that when a CLEC obtains dark fiber on an IRU basis from an ILEC, that CLEC should be counted as a fiber-based collocator, assuming that all other criteria in the FCC definition of a "fiber-based collocator" are met.

4. Dark fiber obtained on an IRU basis from another CLEC

a. Verizon

Verizon argues that when a carrier obtains dark fiber on an IRU basis from a CLEC, that carrier should be counted as a fiber-based collocator. Verizon adds, however, that the rules do not require fiber obtained from a CLEC to be obtained on an IRU basis in order for the carrier to be counted as a fiber-based collocator.

b. BayRing/segTEL

BayRing and segTEL argue that a carrier obtaining dark fiber on an IRU basis from another CLEC should not be counted as a fiber-based collocator. BayRing and segTEL take the position that an IRU is relevant only when it is obtained from Verizon. According to BayRing and segTEL, any contrary interpretation would count the same cable multiple times based solely on the number of CLECs using the same cable.

c. Conversent

According to Conversent, when a collocator meets all other elements of the definition of fiber-based collocator and obtains dark fiber from a CLEC that is not an ILEC affiliate, it does not appear to matter whether the fiber is obtained on an IRU basis.

5. Dark fiber obtained from a CLEC on a non-IRU basis

a. Verizon

According to Verizon, when a carrier obtains dark fiber from a CLEC without an IRU, that CLEC should be counted as a fiber-based collocator. Verizon adds that the FCC rule requires an IRU for purposes of counting fiber-based collocators only with respect to obtaining cable from an ILEC.

b. BayRing/segTEL

BayRing and segTEL argue that when a carrier obtains dark fiber from a CLEC without an IRU, the acquiring CLEC should not be considered a fiber-based collocator for two reasons: 1) absent a long term IRU agreement, a CLEC cannot operate the cable in question, and 2) dark fiber counts as a fiber-optic cable only if provided by Verizon on an IRU basis.

c. Conversent

As in item 4, above, Conversent contends that when a collocator meets all other elements of the definition of fiber-based collocator and obtains dark fiber from a CLEC that is not an ILEC affiliate, it does not appear to matter whether the fiber is obtained on an IRU basis.

6. Lit fiber terminating at a CLEC collocation and leaving the wire center

a. Verizon

Verizon takes the position that a CLEC collocator that obtains lit fiber from another CLEC should count as a fiber-based collocator because the FCC rules do not specify that fiber optic cable obtained from a non-ILEC must be unlit, or dark. Verizon argues that the plain language of the rule in this case does not exclude lit fiber; it could have if that had been the intent of the FCC. Counting lit fiber, according to Verizon, is consistent with the FCC's stated objective of eliminating unbundling where competitive alternatives to the ILEC network exist, and that it cannot be disputed that lit fiber obtained from a CLEC constitutes a competitive alternative to the ILEC's network. Verizon points out that both lit and dark fiber obtained from a competitor are depicted in the same basic manner on the diagrams which accompany Staff's Affidavit, and that the same market opportunities exist for the CLEC whether it purchases lit or dark fiber.

b. BayRing/segTEL

BayRing and segTEL contend that lit fiber does not constitute a cable and, furthermore, does not meet any of the tests established in the rule. According to BayRing and segTEL, the FCC expressly stated in *TRO* footnote 1265 that "consideration of transport facilities transferred on an IRU basis is limited to dark fiber and does not include 'lit' fiber IRUs."

c. Conversent

In Conversent's view, a CLEC utilizing lit transport provided by another carrier is not a fiber-based collocator, because it is not operating the fiber facility.

7. Stand-alone competitive alternate transport terminals (CATT) without power

a. Verizon

Verizon explains that a CATT is an interstate tariffed arrangement that provides a shared alternate splice point within a central office at which a competitive fiber provider can terminate its facilities. According to Verizon, a CATT is designed for wholesale providers of high-capacity transport who supply, install and maintain the cable between the cable vault and the CATT area in the wire center. Although a stand-alone CATT itself may not have its own separate power supply, admits Verizon, each of the fiber facilities connected to the CATT makes use of an active power supply to light the fiber.

Verizon calls the Commission's attention to paragraph 102 of the *TRRO* in support of its claim that when the FCC adopted its non-impairment tests, it specifically included less traditional collocation arrangements such as Verizon's CATT. Furthermore, the existence of a CATT indicates an ability to deploy facilities, which, according to Verizon, is consistent with the FCC's stated intention to account for potential as well as actual deployment of fiber-based collocation facilities. To find that a stand-alone CATT should not be counted would be inconsistent, Verizon avers, with this Commission's stated intention not to ignore the FCC's specific findings on a matter when applying the requirements of the Telecommunications Act.[9]

[9]Verizon Comments at 18 citing, *e.g.*, Order No. 24,442 in Dockets No. DT 03-201 and DT 04-176 (March 11, 2005), slip op. at 48-49.

b. BayRing/segTEL

BayRing and segTEL argue that a stand-alone CATT without power does not count. According to BayRing and segTEL, the test under Rule 51.5 for a fiber-based collocation requires power. BayRing and segTEL add that a CATT could meet the test without having an additional collocation arrangement if there were active power, but in the absence of power, the CATT is not a valid collocation arrangement under the rule.

c. Conversent

Conversent contends that the FCC definition is clear, and that to qualify as fiber-based, a collocation arrangement must have "active electrical power."

8. ILEC-provisioned Dedicated Transit Service (DTS) and Dedicated Cable Support (DCS) dark fiber connections between two CLECs

a. Verizon

Verizon avers that fiber facilities that make use of DTS and DCS dark fiber connections should be considered when identifying fiber-based collocators. Verizon explains that DTS is a part of the terms and conditions of collocation and DCS, although no longer offered, has been grandfathered for existing users. According to Verizon, fiber facilities with DTS and DCS dark fiber connections should figure into fiber-based collocator counts because they foster competition by enabling CLECs who collocate to use wholesale fiber from other CLECs to compete against Verizon. To find otherwise, claims Verizon, would penalize Verizon for making available the most direct and efficient way for a carrier to access another carrier's transport facilities. Verizon notes that it did not include DTS-enabled connections between CLECs when making its initial wire center classifications.

b. BayRing/segTEL

BayRing and segTEL argue that a fiber-based facility which includes Verizon's DCS and DTS dark fiber connections between two CLECs should not count as a fiber-based collocation. BayRing and segTEL contend that DCS and DTS are ILEC-tariffed services and therefore are disqualified from a count of fiber-based collocators. Since the rule states a fiber-optic cable must leave the wire center, contend BayRing and segTEL, DCS and DTS arrangements connecting two collocation nodes are not relevant.

c. Conversent

Conversent takes no position on this issue.

F. Telecommunications Act of 1996 – Section 271 Implications

1. High-capacity loops and high-capacity transport under section 271

a. Verizon

While the high-capacity loops and dedicated transport at issue in this investigation fall within the scope of the section 271 checklist, says Verizon, this Commission cannot lawfully require delisted section 251 UNEs to be made available under Verizon's state tariff or at rates, terms and conditions set by the Commission. Verizon has contested the Commission's assertion in its unbundling orders[10] that it has the authority to enforce or regulate section 271 elements, and restates its primary claims in that matter. Furthermore, Verizon adds, there is no need for the states to regulate section 271 elements, even if such regulation were lawful. Verizon contends that interstate special access is available for DS-3 and DS-1 loop and transport at just and reasonable rates, thus satisfying Verizon's obligations under section 271.

[10]Verizon Comments at 23, citing Order No. 24,442; Secretarial Letter dated April 22, 2005 in Docket No. DT 05-034; and Order of Notice dated April 22, 2005 in Docket No. DT 05-083.

b. BayRing/segTEL

BayRing and segTEL assert that high-capacity loops and transport are required elements under the section 271 (c)(2)(B)(iv and v) of the Telecommunications Act, and cites paragraph 653 of the *TRO* in support of its view. Further, BayRing and segTEL say that such a finding would be consistent with this Commission's Order No. 24,564 in Docket No. DT 05-041 (December 15, 2005), slip op. at 11. Finally, BayRing and segTEL assert that Verizon has conceded that these elements are section 271 elements in its recently-filed memorandum of law.[11]

BayRing and segTEL also urge the Commission to make a determination that dark fiber transport is a section 271 element, as it did with dark fiber loops in its April 22, 2005 Secretarial Letter. The carriers call to the Commission's attention that the 18-month transition period for dark fiber will expire September 11, 2006.

c. Conversent

Conversent asserts that section 271 requires that ILECs unbundle local transport and local loop transmission, and that section 271 does not distinguish either transport or loops on the basis of capacity.

G. Transitioning from UNEs to Alternative Facilities

1. ILEC disconnection of circuits pursuant to current Tariff 84 provisions

a. Verizon

Verizon argues that the Commission lacks authority to impose an injunction

[11]BayRing and segTEL Brief at 26, citing *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment* at 8, *Verizon New England, Inc. v. New Hampshire Public Utilities Commission et al,* United States District Court for the District of New Hampshire, Civil No. 05-CV-94-PB.

preventing Verizon from disconnecting circuits it is no longer obligated to provide and, further, such an injunction is unnecessary. According to Verizon, while Tariff 84 authorizes Verizon to disconnect facilities where a CLEC fails to make a timely transition from a delisted UNE arrangement, Verizon has filed proposed tariff revisions in DT 06-012 which would allow Verizon to re-price the delisted UNE services rather than disconnect them. Verizon encourages the Commission to approve its tariff submission in DT 06-012 to provide for the uninterrupted use by CLECs of existing DS-1 and DS-3 facilities beyond the mandatory transition period.

b. BayRing/segTEL

BayRing and segTEL argue that the Commission should declare the existing tariff provisions allowing disconnection to be invalid and unenforceable. Tariff provisions providing for disconnection, contend BayRing and segTEL, are inconsistent with Verizon's responsibility to provide these UNEs at just and reasonable rates under section 271.

c. Conversent

Conversent reiterates its position that a wire center impairment determination should be effective when Tariff 84 is amended. Therefore, according to Conversent, transition periods should begin to run at that time, and no disconnection may occur until the applicable transition period ends.

2. Length of transition period for future newly-identified wire centers

a. Verizon

Verizon argues for a 90-day transition period. Verizon notes that the initial transition periods of 12 months for high-capacity loops and transport and 18 months for dark fiber transport were set by the FCC in recognition of the resulting need for negotiation of transition plans in numerous interconnection agreements. Verizon claims that for wire centers

that are newly identified as meeting the impairment criteria, or that meet a higher tier threshold, such as those identified by Verizon in its November 17, 2005 Industry Notice to CLECs [*See* Docket No. DT 06-020], the effective date should be 90 days from the date of Verizon's notice to the industry. Verizon asserts that 90 days is also consistent with transition time frames established in existing interconnection agreements.

b. BayRing/segTEL

Going forward, according to BayRing and segTEL, future determinations should follow the process outlined in the *TRRO*, such that any wire center not classified as unimpaired in this proceeding will be considered to be unimpaired until Verizon disputes a CLEC order in that wire center and files a complaint with the Commission. BayRing and segTEL add that, after notice and opportunity for comment the Commission would render a determination, and further, that the Commission could maintain a list of classified wire centers on the Commission website.

BayRing and segTEL argue that if an element were delisted under section 251 and were not required by section 271, then the transition should be the same as *TRRO* – 12 months for loops and transport and 18 months for dark fiber. BayRing and segTEL cite recent decisions of the Illinois, Indiana and Ohio state commissions[12] in support of their position.

c. Conversent

Conversent urges the Commission to adopt a rolling transition plan as wire

[12]BayRing and segTEL Brief at 31, citing*:* (1) *Access One, Inc. et al, Petition for Arbitration, etc.*, Illinois Commerce Commission, Arbitration Decision in Docket 05-0442 at 114-115 (November 2, 2005); (2) *In the Matter of the Indiana Utility Commission's Investigation of Issues Related to The Implementation of the Federal Communication Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Cause No. 42857, at 64-65 (Approved January 11, 2006); and (3) *In the Matter of the Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant to the Federal Communications Commission's Triennial Review Order and its Order on Remand*, Public Utilities Commission of Ohio, Case No. 05-887-TP-UNC at 65 (November 9, 2005).

centers are identified. Subsequent transition periods should be the same as the periods set forth in the *TRRO, i.e.*, 12 months for DS-1 and DS-3 loops and transport, and 18 months for dark fiber transport. According to Conversent, the FCC established transition periods to allow for orderly transfers from UNEs to alternative facilities or arrangements, determining that such a period would provide adequate time for carriers to perform the tasks necessary to an orderly transition. Conversent further notes that the tasks required in such transitions include decisions on where to deploy, purchase or lease facilities. In Conversent's view, such decisions will require no less of a transition period going forward.

Conversent adds that transition times become even more important when a wire center determination is based on business line counts. In such a case, Conversent asserts, there may be no alternative fiber provider and Verizon does not offer dark fiber products in its special access tariff. Conversent points to certain decisions by the Ohio and Illinois state commissions, as did BayRing and segTEL, as well as the District of Columbia commission,[13] that support 12- and 18-month transition periods for future wire center determinations. Conversent also cited a Michigan commission decision[14] that supports nine and twelve-month transition periods.

3. ILEC conversion of delisted high-capacity circuits to special access rates in the federal tariff (DT 06-012 tariff filing)

a. Verizon

Verizon contends that it should be permitted to convert delisted high-capacity circuits to special access services pursuant to its federal tariff. Verizon adds that the FCC, in

[13]Conversent Brief at 12, citing *In re Petition of Verizon Washington, DC Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. TAC-19, Recommended Decision at 16, 18 (Sept. 6, 2005).
[14]Conversent Brief at 12, citing *In the Matter, on the Commission's Own Motion, to Commence a Collaborative Proceeding to Monitor and Facilitate Implementation of Accessible Letters Issued by SBC Michigan and Verizon*, Case No. U-14447, Order at 31 (Mich. PSC Sept. 20, 2005).

TRRO paragraph 51, has already held that the interstate special access tariff is just and reasonable. In Verizon's view, whether the special access rate satisfies the just and reasonable pricing standard of sections 201 and 202 of the Telecommunications Act is a fact-specific inquiry for the FCC in an enforcement proceeding pursuant to section 271(d)(6). Verizon claims that Tariff 84 reasonably provides for the disconnection by Verizon, at the end of a transition period, of delisted DS-1 and DS-3 high-capacity loop or dedicated transport UNEs for which a CLEC does not submit disconnection or conversion orders during the transition.

b. BayRing/segTEL

BayRing and segTEL claim that Verizon should not be permitted to convert delisted high-capacity circuits to special access. According to BayRing and segTEL, Verizon is responsible for continuing to provision high-capacity loops and transport under section 271. BayRing and segTEL claim that section 271 rates must be made available in a tariff approved by the Commission, in accordance with Verizon's section 271 commitment to the Commission. BayRing and segTEL insist that it would represent a material change in Verizon's commitment to allow it the unilateral authority to determine when and whether to convert delisted UNEs to federally-tariffed special access. BayRing and segTEL contend that transition rates in Tariff 84 should apply until Verizon files and obtains approval for new rates. BayRing and segTEL point out that when it applied to the FCC for section 271 authority to provide interLATA service, Verizon did not claim it was satisfying its section 271 checklist obligations by allowing CLECs to purchase retail special access from a tariff which predated the Telecommunications Act by nearly a decade.

c. Conversent

Conversent takes no position on this issue.

H. Other Issues

1. BayRing/segTEL

a. The section 271 elements in this docket must be made available in a tariff approved by this Commission.

BayRing and segTEL note that this Commission has previously recognized Verizon's commitment to making its wholesale offerings available to CLECs through its tariff, and that the UNEs in this docket that may no longer be section 251 elements must be made available in Tariff 84 as section 271 elements. BayRing and segTEL claim that this point of view has been upheld by the US District Court for the District of Maine, which determined that a state Commission has rate-setting authority over section 271 elements.[15] According to BayRing and segTEL, section 271 rates must be just and reasonable. Since TELRIC rates have been found to be just and reasonable by the FCC and the Commission, say BayRing and segTEL, the transition rates of TELRIC plus 15% currently provided in Tariff 84 not only meet the legal standard, but allow Verizon an increase over the section 251 rates that is more than equivalent to Verizon's currently authorized rate of return. Since the FCC itself established TELRIC plus 15% as a fair rate, it is entirely appropriate to use these rates for the section 271 UNEs in this docket.

[15]BayRing and segTEL Brief at 27, citing *Verizon New England, Inc. d/b/a Verizon Maine v. Maine Public Utilities Commission et al.*, 403 F. Supp.2d 96, 102 (Nov. 30, 2005).

b. Verizon's proposal to increase the price of delisted section 251 elements to special access rates is inconsistent with the commitments Verizon made to the FCC regarding its merger with MCI.

BayRing and segTEL contend that Verizon's proposal to increase the price of delisted section 251 elements to special access rates is inconsistent with the commitment Verizon made to the FCC as a condition of its merger with MCI. In its commitment letter to the FCC, according to BayRing and segTEL, Verizon agreed that it would not seek an increase for two years following the merger closing date in state-approved UNE rates that were in effect at the time of the merger.

c. Verizon should be required to refund any difference between the transition rate and TELRIC if any of Verizon's classifications of its wire centers are incorrect.

BayRing and segTEL state that Verizon has been charging the transition rates of TELRIC plus 15% for UNEs that Verizon believes should be delisted in the wire centers that it has identified as unimpaired. BayRing and segTEL further argue, that if this Commission determines that any of Verizon's wire center classifications were incorrect, the Commission should order Verizon to immediately refund to the CLECs the difference between the transition rates and the TELRIC rates that otherwise would have applied.

2. Conversent

a. Business line counts.

At the prehearing conference, Conversent commented that the business line counts must be calculated using the FCC's detailed criteria, such as: the lines must be business lines; they must all be for switched services; special access cannot be counted; and high-capacity facilities must be used as loops and not as transport or entrance facilities. In the case of high-capacity facilities, Conversent says, it is critical that the circuits really are being used for

switched service loops, since the quantity of lines represented by one high-capacity facility might be sufficient on its own to push the count in a wire center over the threshold. Since Verizon is uniquely in possession of this information, in Conversent's view, Conversent urges the Commission to require that Verizon make a disclosure regarding business line counts when submitting wire center classifications for determination. *See* Transcript of Prehearing Conference, May 25, 2005, at 18-20.

3. Staff

a. Future tariff filings.

At the prehearing conference, Staff asserted that, to effectively meet the filing and transparency requirements of RSA 378:l and Puc Rule 402.5[2], Verizon's tariff must include the identification of those wire centers whose rates may be affected by the *TRRO*. *Id.* at 24, lines 13-17.

IV. COMMISSION ANALYSIS

The FCC's *TRRO* calls for several distinct determinations regarding Verizon's wire centers that affect Verizon's obligations to provision certain UNEs and, as a result, the application of Verizon's tariffed rates in New Hampshire. The FCC premises its analysis and rulemaking in the *TRRO* on the understanding that ILECs and CLECs affected by the *TRRO* will implement any resulting rate changes through good faith negotiation of interconnection agreements pursuant to section 252 of the Telecommunications Act. *See TRRO* ¶¶ 233-235. The FCC further expects that any disputes arising from such negotiations would, in turn, be submitted to the relevant state commission for arbitration. *Id*. ¶ 234 and fn. 660.

As noted above, however, the applicable rates in New Hampshire are set forth in Verizon's Tariff 84, which is filed with and approved by the Commission pursuant to RSA 378. CLECs that purchase from the tariff do not have interconnection agreements for these UNEs, and are under no obligation to establish or renegotiate interconnection agreements when changes are made in the availability of UNEs. Any rate changes stemming from the *TRRO* must be filed with this Commission for inclusion in the tariff. In accordance with RSAs 365:5, 374:4, and 378:5, we will undertake, as appropriate, to investigate the reasonableness of any such changes. It has been our objective in this investigation to verify the reasonableness of Verizon's determinations with respect to wire center classifications pursuant to the *TRRO* and FCC rules and, where feasible, to clarify the appropriate guidelines and procedures for determining any future changes in wire center impairment classifications that may arise under the terms of the *TRRO*.

The continuance or discontinuance of Verizon's obligations to provision high capacity loops and dedicated transport UNEs in a particular wire center and their applicable rates are based on the number of "fiber-based collocators" present in that wire center and/or the number of business lines served by that wire center. To guide determinations regarding the number of fiber-based collocators in a wire center, the FCC promulgated rules that appear in Appendix B to the *TRRO*. Included in the "definitions" section of these rules and codified at Rule 51.5, is a specific definition of "fiber-based collocator:"

> A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement with an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that
>
> (1) Terminates at a collocation arrangement within the wire center;
>
> (2) Leaves the incumbent LEC wire center premises; and

> (3) Is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

The first paragraph of the definition sets out a requirement that a fiber-based collocator maintain a collocation with active power, and that the collocator operate a fiber-optic cable or comparable transmission facility. Sub-part one of the rule then sets a requirement that the fiber optic cable must terminate at a collocation within the wire center. Sub-part two requires that the cable leave the wire center premises, and, finally, sub-part three establishes ownership requirements for the cable under consideration.

In order to establish whether the fiber-based collocators identified by Verizon meet the requirements of this definition, Staff undertook an extended discovery process which culminated in Staff's Affidavit. The Parties have concurred with the essential facts laid out in Staff's Affidavit and, therefore, we employ it as the basis for the factual determinations made in this docket.

Analogous to the FCC's conclusion that fiber-based collocation stands out as one of the most objective indicia of competitive deployment available (*see TRRO* ¶ 99), we employ an interpretive approach that focuses on an objective view of the text of the FCC's rule. In support of Rule 51.5 as promulgated pursuant to the *TRRO*, the FCC wrote that it "define[s] fiber-based collocation simply." We seek to act accordingly. Thus, when determining which collocators to count for purposes of the various thresholds established in the *TRRO*, we first

consider how many competitive fiber-optic cables leave the wire center.[16] We then determine whether those cables terminate at a qualifying collocation arrangement and, finally, whether they meet the ownership requirements set forth in the rule.

Certain key terms such as "operate," "fiber-optic cable" and "active electrical power supply" are not defined in the FCC's rules. As has been noted by the Parties briefing the matter, terms that are undefined should be given their plain and ordinary meaning and resort to a dictionary for clarification is appropriate. *See* Verizon Comments at 10; BayRing and segTEL Brief at 16.

We consulted *Webster's II New College Dictionary* 786 (3rd ed. 2005) for a definition of "operate." Rule 51.5 uses "operate" in a transitive sense when it requires that a fiber-based collocator "operate a cable." The first definition for "operate" as a transitive verb seems to be most appropriate: "to control or direct the functioning of."[17] This definition indicates some active control of the cable; not merely its existence or some use of its functions. BayRing and segTEL would have us employ "to perform a work of labor: exert power or influence," a definition taken from the intransitive meaning of the verb. BayRing and segTEL Brief at 16. Conversent, on the other hand, would support, "to run or control the functioning of" or, alternatively, "to cause to function: work; to put or keep in operation." Conversent Brief at 5. Verizon also suggests "to put or keep in operation" (Verizon Comments at 10), a definition which, while transitive, suggests a more passive relationship to the cable than we find the rule

[16]We interpret "comparable transmission facility" to be a form of transmission that employs technology that does not involve fiber-optics, such as microwave transmission facilities or other technology used by fixed-wireless collocators.

[17]*Webster's II New College Dictionary* also provides the synonyms of operate: "OPERATE, HANDLE, RUN, USE, WORK, *v. core meaning* 'to control or direct the functioning of.'" Further, the second definition for operate as a transitive verb is "to conduct the affairs of: MANAGE."

requires. Indeed, the definitions BayRing, segTEL and Verizon selected stand apart from those supplied by Conversent's and our sources for the transitive use of the verb, which include "to bring about, effect" and "to cause to function, work." In our view, the plain meaning of "operate" in the context of Rule 51.5 requires the transitive sense of the verb, as well as a definition that indicates some level of control over the functioning of the property in question. We find that to operate a cable, a CLEC must be able to control not only the lighting of the fiber within it, but a broader range of functions, such as the placement, capacity and configuration of the cable itself.

As to the term "fiber-optic cable," BayRing and segTEL argue that a cable comprises fiber strands within a sheath, and that, to be considered under Rule 51.5, the essential structure of a fiber-optic cable must be unchanged from its termination in the collocation arrangement to its exit from the wire center. Alternatively, Verizon would have us include individual "fiber-optic strands," thus including as fiber-based collocators those CLECs who lease high capacity services that make use of a fiber-optic facility. The FCC could easily have specified "fiber-optic strands" or "fiber-optic facilities" in its rule, but it did not. While we find BayRing and segTEL's interpretation too constrained (in that it may exclude spliced cables or other configurations that, in fact, meet the requirements of the rule), we find Verizon's too loose (such that it may include CLEC collocators that do not, in fact, rise to the level of self-deployed facilities-based competitors).

Thus, based on the plain meaning of the term and a fair interpretation of the rule, we find that only fiber-optic cables, not fiber strands or lit fiber-optic facilities, should be counted toward fiber-based collocation. The rule provides for one exception: when a

collocation arrangement involves dark fiber obtained by a CLEC from an incumbent LEC on an indefeasible right of use (IRU) basis. However, according to Staff's Affidavit, this situation does not exist in any of the wire centers at issue. Further, Staff's Affidavit does not indicate the existence of CLECs operating fiber-optic cable obtained under an IRU basis from another CLEC except in one limited circumstance where it is immaterial to the count of fiber-based collocators.[18] The Parties do not assert differently. We need not address, therefore, how IRUs between the ILEC and CLECs or between CLECs are to be evaluated. As a result, we consider only those collocators that employ CLEC-operated, self-deployed fiber-optic cables in our analysis.

Parties also commented on how DCS and DTS arrangements should be considered. BayRing and segTEL point out that DCS and DTS are services that facilitate connections between two collocation arrangements. Since any fiber-optic cable qualifying a CLEC as a fiber-based collocator must run from its termination in a collocation and exit the wire center, we find, based on Staff's Affidavit and our conclusions above, no instance where consideration of a DCS or DTS arrangement is necessary to evaluate the fiber-based collocators in these five wire centers.

Based on Staff's March 9, 2006, Supplemental Affidavit, we find that MCI had a fiber-optic cable terminating in its collocations and leaving the wire center as asserted by Verizon. We note, as will be discussed below, that MCI was a fiber-based collocator from March 11, 2005, to February 3, 2006, but will not be counted as such after February 3, 2006.

[18]We note only one such circumstance is identified in Staff's Affidavit: CLEC 2 in Dover obtains dark fiber on an IRU basis from CLEC 1, but because CLEC 2 also operates its own self-deployed fiber-optic cable, the dark fiber it has obtained under an IRU is redundant to this analysis and is not relevant here.

Consulting Staff's Affidavit we can identify six additional instances where a CLEC has fiber-optic cable that terminates in its collocation and leaves the wire center: CLEC 2 in Dover; CLEC 3 in Manchester; CLECs 3 and 4 in Nashua; and CLECs 1 and 2 in Portsmouth. Staff's Affidavit indicates that each of these CLECs owns the fiber-optic cable in question. Therefore, the requirements of Rule 51.5 are met. Accordingly, we find that CLEC 2 in Dover, CLEC 3 in Manchester, CLECs 3 and 4 in Nashua, and CLECs 1 and 2 in Portsmouth are fiber-based collocators.

Next we consider the status of those fiber-optic cables that terminate in a CATT collocation arrangement. The Parties agree that while a CATT contains no power source of its own, when a CLEC maintains both a CATT and a traditional collocation that is actively powered in the same wire center, and has a fiber-optic cable terminating in either the traditional collocation or the CATT, or both, that CLEC is a fiber-based collocator. According to Staff's Affidavit, CLEC 1 in Dover, CLEC 1 in Keene, CLEC 1 in Manchester, and CLEC 1 in Nashua each has fiber-optic cable, which it owns, terminating in a CATT. Each of these carriers also maintains a separate collocation arrangement with active electrical power. We find no requirement that the collocation at which the fiber-optic cable terminates must be the same as the collocation with active electrical power maintained by the CLEC. Therefore, CLEC 1 in Dover, CLEC 1 in Keene, CLEC 1 in Manchester, and CLEC 1 in Nashua are fiber-based collocators.

When the CATT is the only collocation arrangement maintained by a CLEC, however, as is the case in Staff's Affidavit for CLEC 3 in Portsmouth, the Parties diverge in their opinions. The CLECs urge us to find that a stand-alone CATT does not constitute a fiber-based collocator, even if there is a fiber-optic cable terminated in the CATT collocation

that leaves the wire center, because it lacks an active electrical power source at the CATT. Verizon contends, on the other hand, that the FCC specifically included CATT collocation in its discussion of relevant collocations, and asks that we look beyond the plain meaning of the rule to the FCC's supporting language in the *TRRO*.

A CATT does not include an active power supply *per se* because one is not needed for the proper functioning of the CATT, which serves as a termination and splice case for the CLEC operating a fiber optic cable leaving the wire center. As Verizon notes in its comments, CATT collocation is an FCC-tariffed arrangement that "provides a shared, alternative splice point within a Telephone Company central office at which a third party competitive fiber provider (CFP) can terminate its facilities" and then cross connect to its own collocation facilities or to those of other CLECs.[19]

Staff's Affidavit indicates that CLEC 3 in Portsmouth maintains only an unpowered CATT collocation in which CLEC 3 terminates a fiber optic cable that leaves the wire center. The collocation arrangement maintained by CLEC 3 includes the right to cross-connect to other CLEC collocations with active electrical power. Such cross-connection permits other CLECs, such as CLECs 4 and 6 in Portsmouth, to utilize UNEs in conjunction with services supported by access to CLEC 3's self-deployed facilities-based investment. We find that arrangements such as that of CLEC 3 in Portsmouth meet the requirements for a fiber-based collocator because the overall collocation arrangement maintained by the CLEC operating the fiber-optic cable includes access to active electrical power supply within the wire center to enable the provision of fiber-based services to other CLECs. To exclude stand-alone CATT

[19]Verizon Comments at 14, citing Verizon FCC Tariff No. 11, Section 28.11.1(B).

collocations, that in and of themselves do not have an active power supply, but that facilitate cross-connections with other CLECs that use active power from within the wire center would be an unfairly restrictive interpretation of the rule in light of the passive technology specific to a CATT arrangement. Therefore, we will include CATT arrangements that have access to and make use of an active electrical power supply within a wire center in our qualification of fiber-based collocators under the FCC definition. Accordingly, CLEC 3 in Portsmouth is a fiber-based collocator.

We do not find that the other CLECs identified on the diagrams operate fiber-optic cable. Therefore, the CLECs we have identified represent all of the fiber-based collocators in these wire centers.

Next, we consider the matter of the Verizon-MCI merger, which closed on January 6, 2006. Verizon has indicated that we should treat its merger with MCI in the same manner as any other merger under the FCC *TRRO* and rules – *i.e.*, that carriers should be counted separately as individual and unaffiliated fiber-based collocators until any proposed merger is completed, and that thereafter the merged entity would be counted as a single entity for purposes of any future wire center determinations. For the purposes of determining the status of wire centers in the future, normally that will be the case. For the five wire centers under consideration here, we look first to the terms of the Verizon/MCI merger, and then to Verizon's February 24, 2006 filing with the FCC.

The FCC approved the Verizon/MCI merger on October 31, 2005. *See* Verizon *Communications Inc. and MCI, Inc. Applications for Transfer of Control,* WC Docket No. 05-75, FCC 05-184, (*rel*. Nov. 17, 2005) (*FCC Verizon/MCI Merger Order).* In that order the FCC

states, "...the Applicants commit to exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers in which Verizon claims there is no impairment pursuant to section 51.319(a) [pertaining to local loops] and (e) [pertaining to dedicated transport] of the [FCC's] rules." *FCC Verizon/MCI Merger Order* ¶ 51. Appendix G of the *FCC Verizon/MCI Merger Order* further provides that "[w]ithin 30 days after the Merger Closing Date, Verizon/MCI shall exclude fiber-based collocation arrangements established by MCI or its affiliates in identifying wire centers ... [and] ... shall file with the [FCC], within 30 days of the Merger Closing Date, revised data or lists that reflect the exclusion of MCI collocation arrangements, as required by this condition." *Id*. at Appendix G. In accordance with the *FCC Verizon/MCI Merger Order*, Verizon initially filed its revised list with the FCC on February 3, 2006, and corrected that list in the February 21 Industry Notice that it filed with the FCC on February 24, 2006.

The practical effect of the revised list of wire centers is explained by Verizon in footnote 6 of its February 21 Industry Notice, which states:

> [6] For example, if prior to February 3, 2006, a CLEC had an embedded base of dedicated DS3 transport circuits between wire centers that were initially classified as Tier 2 wire centers, but that as of February 3, 2006 are classified as Tier 3 wire centers, those circuits are subject to the 15% transition surcharge provided by the FCC in 47 C.F.R § 15.319(e)(2)(iii)(C) for the period covering March 11, 2005 through February 2, 2006, but not thereafter. In addition, if a CLEC obtained, for example, a dedicated DS3 transport circuit ordered pursuant to an interstate or intrastate access tariff after March 11, 2005 between two wire centers that were initially classified as Tier 2 wire centers, but that as of February 3, 2006 are classified as Tier 3 wire centers, that circuit would not be entitled to unbundled network element rates for any portion of the period covering March 11, 2005 through February 2, 2006. On and after February 3, 2006, any circuits that have changed status from "non-impaired" to "impaired" by reason of the February 3, 2006 wire center reclassifications may, at the carrier's wirtten [sic] request and subject to the terms of any term or volume plans, contract tariff, or other tariffed arrangement, or conversion charges (including without limitation, termination liability, shortfall penalties, and other charges set forth in an access tariff or an interconnection agreement) applicable to those circuits, be converted to unbundled network elements. Circuits ordered with provisioning dates on or after February 3, 2006 in wire centers classified as "impaired" by reason of the February 3, 2006 wire center reclassifications may be ordered as unbundled network elements or as special access services at the carrier's option. Please note that any illustrative examples or other discussion set forth herein

> should not be interpreted to expand Verizon's obligations or CLECs' rights as to matters beyond the scope of this notice (e.g., any conversion of a dedicated transport circuit to UNE under the example set forth above would be subject to the cap on the number of UNE dedicated transport circuits that CLECs may obtain on a given route under the *TRO* Remand Order, any EEL circuits remain subject to certification requirements, etc.).

According to the above footnote, Verizon itself agrees, based on the merger commitments made to the FCC, that as of February 3, 2006, it must, if asked, convert affected elements back to UNEs where, by not counting MCI as a fiber-based collocator, a wire center would be considered impaired. In other words, Verizon's post-merger exclusion of MCI and the revision of its wire center classifications may entitle CLECs to request a conversion back to UNE arrangements, as appropriate. The footnote also asserts Verizon's position that it is entitled to any transition rates that it may have collected from CLECs due to MCI being counted from March 11, 2005, when the original list was filed, through February 3, 2006, when Verizon updated the list of wire centers to exclude MCI.

We find that Verizon's merger commitments to the FCC included a commitment to revise its list of wire centers for the purpose of identifying changes in impairment status due to the merger. For those wire centers where MCI was the deciding fiber-based collocator in Verizon's initial list, effective as of March 11, 2005, the February 3, 2006 revision effectively (1) reclassifies tier identifications that would otherwise not be subject to reclassification under the FCC's rules, and (2) allows CLECs to obtain high capacity loops once again. Accordingly, as of February 3, 2006, the Nashua wire center will be reclassified at tier 2, notwithstanding the *TRRO* prohibition on reclassification of tier levels.

We further find that Verizon has billed CLECs in accordance with the Tariff 84 rates we approved by Secretarial Letter on April 22, 2005, which reflect the transitional rates permitted by the *TRRO*. We also find that Verizon, in good faith adherence to the *TRRO* and

Rule 51.5, counted MCI as an unaffiliated carrier between March 11, 2005, the effective date of the *TRRO*, and February 3, 2006, when Verizon filed its revised list of wire centers with the FCC. Accordingly, we conclude that Verizon is entitled to any transition rates that it may have collected from CLECs due to MCI being counted between March 11, 2005, and February 3, 2006. We note that this finding applies only to Nashua, which would have been classified as tier 1 if MCI were counted as an unaffiliated fiber-based collocator, but which we classify herein as tier 2.

As to mergers in general, BayRing and segTEL have suggested that we count as one any CLECs that may merge after Verizon places a wire center on its list, but prior to our verification of that list, rather than counting such CLECs individually. We decline to adopt the CLECs' suggestion, and find that our determination of the status of these initial wire centers will be based on the circumstances as they existed on March 11, 2005, when Verizon first filed its list, except as otherwise indicated in this order. Going forward, in the event that CLECs counted as separate entities in these initial five determinations later merge, any later reclassifications occurring after such merger normally will count the merged entity only once based on the CLECs' status at the time a proposed tariff is filed with this Commission asserting the reclassification of wire centers.

Finally, we consider the number of business lines in Manchester. Verizon has asserted that its ARMIS data support classifying Manchester as a tier 1 wire center for transport because there are more than 38,000 business lines in Manchester. The CLECs did not raise the issues of business lines in their briefs. Although at the prehearing conference Conversent enumerated its concerns regarding how business lines are counted in general, we have no

information on the record other than Verizon's assertion concerning Manchester, which supports our determination that Manchester is a tier 1 wire center for transport.

Applying these determinations to the five wire centers, we find as follows. For those wire centers that Verizon identified as no long impaired for dedicated transport: Dover is classified as tier 3, as there are two fiber-based collocators (CLECs 1 and 2 in Staff's Affidavit); Keene is classified as tier 3, as there is one fiber-based collocator (CLEC 1 in Staff's Affidavit); Manchester is classified as tier 1 because there are more than 38,000 business lines; Nashua is classified as tier 2, as there are three fiber-based collocators (CLECs 1, 3 and 4 in Staff's Affidavit); and Portsmouth is classified as tier 2, as there are three fiber-based collocators (CLECs 1, 2 and 3 in Staff's Affidavit). We also find that competitors continue to be impaired in Manchester without access to high-capacity loops as there are only two fiber-based collocators in Manchester (CLECs 1 and 3 in Staff's Affidavit) and the FCC's rules require four fiber-based collocators and 38,000 business lines.

Having determined that, at least as to some of the wire centers at issue in this docket, Verizon is no longer fully obligated under section 251 of the Telecommunications Act to offer DS-1, DS-3 and dark fiber transport to CLECs on an unbundled basis, we must address the question of whether Verizon's status as an RBOC confers an obligation to provide these elements under section 271 of the Telecommunications Act. The substance of this issue, as well as the issue of rates for those elements has been fully discussed in the Commission's decision in Order No. 24,442, which is before the U.S. District Court for the District of New Hampshire. Similar findings by the Maine Public Utilities Commission, *i.e.*, that a state commission may determine whether an element is required by section 271 and may approve rates for section 271

elements, were upheld by the U.S. District Court for the District of Maine. Consistent with the Commission's determinations in Order No. 24,442, we make the following determinations regarding the UNEs under discussion here.

The Parties are in agreement that access to the high-capacity loops and dedicated transport at issue in this docket are required by section 271, and we concur. Consistent with our decision in Order No. 24,442, Verizon may not discontinue offering dark fiber transport, and high capacity transport at DS-3 and DS-1 levels on the basis that these UNEs are no longer required to be unbundled pursuant to section 251 because of Verizon's committment to maintain a wholesale tariff in New Hampshire.

As determined in Order No. 24,442, we find that because our decision has the effect of preventing Verizon from discontinuing the provision of certain network elements to CLECs, we must address pricing issues as to those elements. In Docket No. DT 05-034, we approved Verizon's transition rates for the same DS-1, DS-3 and dark fiber transport elements at issue today. Those rates are not section 251 rates, since the elements in question are no longer required under section 251, but are transition rates, calculated using the FCC-prescribed formula of TELRIC plus 15%. Accordingly, we find that Verizon shall offer the section 271 elements at issue in this docket at the currently approved Tariff 84 transition rates, until such time as new rates are established and approved for DS-1, DS-3 and dark fiber transport.

The CLECs and Verizon have made various arguments concerning the effective date of the determination regarding the five wire centers, as well as the length of a transition period for conversion. Based on the record and on Verizon's Tariff 84, we find that Verizon is currently charging CLECs the transition rates as set out in Tariff 84, and has been since March

11, 2005. It appears that CLECs did not need to place orders and that no physical conversions were necessary to effectuate those rate changes. Accordingly, we find that a transition period for changing from TELRIC to TELRIC plus 15% need not be considered at this time.

To the extent that CLECs have placed orders and transitioned away from the circuits at issue here, we find that the FCC's initial transition period is appropriate. For wire centers not yet classified, and for those pending a determination by this Commission, we defer consideration of any future transition period until such time as there may be a need to determine one.

For those wire centers where Verizon has assessed transition rates based on its initial identification of wire centers, that is: DS-3 loops in Manchester; DS-1, DS-3 and dark fiber transport between Dover and Keene or between Dover and any other wire center or Keene and any other wire center; and for DS-3 and dark fiber transport between Portsmouth and any other wire center; Verizon must revert back to section 251 rates for those elements and refund any over-billing back to March 11, 2005.

Finally, as to Verizon's tariff filing in Docket No. DT 06-012, we find that the filing is deficient as it makes no reference to Verizon's obligation as an RBOC to provide the elements in question pursuant to section 271. Further, the proposed revisions reserve to Verizon the unilateral discretion for selection of alternative facilities provided to CLECs. Accordingly, Verizon's tariff filing is rejected pursuant to RSA 378:6,IV.

In compliance with this order, Verizon shall file revised tariff pages within thirty days. The tariff pages filed shall: (1) include a list of wire centers with an effective date of March 11, 2005, identifying Portsmouth as a tier 2 wire center and Manchester and Nashua as

tier 1 wire centers; (2) remove any reference to the end of the so-called "transition periods" for the delisted section 251 elements affected by the classification of these wire centers; (3) remove references to the length of the transition plan period; (4) include a list of wire centers with an effective date of February 3, 2006, reclassifying Nashua as a tier 2 wire center.

Going forward, we find that, for the purposes of Tariff 84, the reclassification of any wire center shall be effective on the date the Tariff 84 revisions reflecting such reclassification are approved by this Commission. Verizon may file its tariff revisions concurrently with its notices to the CLEC industry of changes to wire center classifications, and may true-up rate changes to the effective date of such future tariff revisions. In support of any future proposed revisions to Tariff 84 which seek to change wire center classifications, Verizon shall provide this Commission with a list of CLECs it deems to be fiber-based collocators in accordance with our determinations herein and/or with a copy of the ARMIS data supporting the number of asserted business lines, including information demonstrating that the business lines are used for switched services, whichever is relevant to the wire center's classification.

Based upon the foregoing, it is hereby

ORDERED, that Verizon's wire centers in Dover and Keene are determined to be tier 3 wire centers; and it is

FURTHER ORDERED, that Verizon's wire centers in Nashua and Portsmouth are determined to be tier 2 wire centers; and it is

FURTHER ORDERED, that Verizon's wire center in Manchester is determined to be a tier 1 wire center; and it is

FURTHER ORDERED, that dark fiber transport, DS-3 transport and DS-1 transport are section 271 elements; and it is

FURTHER ORDERED, that Verizon shall file a compliance tariff within thirty days pursuant to our decisions in Docket No. DT 05-083 as described herein; and it is

FURTHER ORDERED, that Verizon shall refund to CLECs monies collected by virtue of applying the transition rates in Tariff 84 to section 251 UNEs it considered delisted in Dover, Keene, and Portsmouth, retroactive to March 11, 2005, as described herein; and it is

FURTHER ORDERED, that the proposed tariff revisions to Tariff 84 submitted by Verizon in Docket No. DT 06-012 are rejected.

By order of the Public Utilities Commission of New Hampshire this tenth day of March, 2006.

Thomas B. Getz	Graham J. Morrison	Clifton C. Below
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary