

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

_____	:	
In the Matter of the Implementation of the	:	
Federal Communication Commission's Triennial	:	Docket No. 3550
Review Order	:	
_____	:	

**REBUTTAL TESTIMONY OF**

**DAVID A. GRAHAM  
ON BEHALF OF**

**CONVERSENT COMMUNICATIONS OF RHODE ISLAND, LLC**

**REDACTED VERSION**

**DATE: February 24, 2004**

1  
2 **I. INTRODUCTION**

3  
4 **Q. Please state your name, business address and current position.**

5  
6 **A.** My name is David A. Graham. I am an independent telecommunications  
7 consultant with a business address at 455 Cole Plain Rd., Lisbon, NH. I have  
8 been retained as a consultant by Conversent Communications of Rhode Island,  
9 LLC ("Conversent" or the "Company").

10 **Q. Please provide your professional background.**

11  
12 **A.** I have over 30 years of experience in the design, planning, engineering,  
13 installation, surveillance and restoration of telecommunications networks. I  
14 began my career as an employee of New England Telephone Company in 1968 in  
15 its New Hampshire outside plant engineering department and held numerous  
16 technical and engineering management positions with New England Telephone,  
17 NYNEX and NYNEX Corporate prior to my retirement from NYNEX in April  
18 1997.

19 My more significant responsibilities while employed by NYNEX were the  
20 management and administration of a \$50 million annual capital construction  
21 program for expansion and modernization of NYNEX's telecommunications  
22 infrastructure for the state of Rhode Island. This responsibility included  
23 identification, funding, scheduling, engineering and construction of cable, loop  
24 electronics, poles, frame, conduit and surveillance equipment to ensure overall  
25 service continuity in a cost-effective manner. From 1999 through 2002, I was  
26 employed by Conversent as Vice President, Engineering.

27 **Q. Please describe your responsibilities while you were employed at Conversent.**

1    **A.**     I was responsible for designing, engineering, installing and turning up the  
2           Company's outside network, including all matters pertaining to deploying  
3           Conversent's SONET ring network in Rhode Island, as well as designing,  
4           engineering, installing and turning up the networks of Conversent's affiliates in  
5           other states.

6    **Q.**     **Please describe the status of Conversent's operations in Rhode Island.**

7    **A.**     The Company is currently providing local exchange, toll, and broadband services  
8           to small and medium sized businesses in Rhode Island by relying on i) unbundled  
9           voice grade, xDSL, high capacity DS-1 and high capacity DS-3 loops; ii)  
10          unbundled dark fiber dedicated transport that Conversent lights using its own  
11          optronics collocated in Verizon central offices; and iii) Conversent's own switch  
12          and transmission equipment. By relying on this combination of Conversent  
13          owned and ILEC-leased facilities, Conversent has been able to provide voice and  
14          broadband services as a competitive alternative to the incumbent provider.

15

16   **II.     PURPOSE**

17   **Q.**     **What is the purpose of your testimony?**

18   **A.**     The purpose of my testimony is to respond to the December 8, 2003 Direct  
19          Testimony of Theresa L. O'Brien and John White, on behalf of Verizon,  
20          regarding the application of the FCC's impairment triggers for dedicated transport.  
21          Because Conversent relies almost exclusively on unbundled dark fiber dedicated  
22          transport from Verizon to connect its collocation arrangements, my testimony will  
23          deal mainly with dark fiber transport (instead of DS-1 or DS-3 level transport).

1

2 **III. FCC IMPAIRMENT TRIGGERS FOR DARK FIBER DEDICATED**  
3 **TRANSPORT**

4

5 **Q. What is dedicated transport?**

6 **A.** The FCC defined dedicated transport as those transmission facilities connecting  
7 incumbent LEC switches or wire centers within a LATA<sup>1</sup>. The FCC found that,  
8 on a national basis, competing carriers are impaired without access to unbundled  
9 dark fiber dedicated transport.<sup>2</sup> It reached this conclusion based on the “large  
10 fixed and sunk costs” that must be incurred to “self-provision fiber transport  
11 facilities.”<sup>3</sup> These costs “include obtaining rights-of-way, the costs of fiber, the  
12 cost of deploying the fiber, and the optronic equipment necessary to activate the  
13 fiber.”<sup>4</sup> The FCC also acknowledged carrier assertions that retaining unbundled  
14 dark fiber “avoids unnecessary digging of streets” that can cause significant  
15 disruption traffic and commerce.<sup>5</sup> The FCC ultimately found that “dark fiber  
16 transport is generally not available in most areas of the country” and in many  
17 areas have “no alternative to the incumbent LECs facilities.” While it recognized  
18 the possibility that “in some circumstances” dark fiber transport might be self-  
19 provisioned or available on a wholesale basis, evidence to identify the specific

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<sup>1</sup> See *Review of the Section 251 Unbundling Objections of Incumbent Local Exchange Carriers*, Report and Order on Remand and Further Notice of Proposal Rulemaking, cc Docket Nos. 01-338, 96-98, 98-147 (rel Aug. 21, 2003) (“*Triennial Review Order*”) paragraph 359.

<sup>2</sup> *Id.* ¶ 381.

<sup>3</sup> *Id.* ¶ 382.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 383.

1 point-to-point routes on which competitors are not impaired without access to  
2 unbundled dark fiber transport.<sup>6</sup> It therefore delegated to the states the  
3 responsibility of applying competitive triggers on a point-to-point basis as  
4 explained below.<sup>7</sup>

5 **Q. Please describe the FCC's Impairment Triggers for dark fiber dedicated**  
6 **transport.**

7  
8 **A.** Under the *Triennial Review Order*, a finding of non-impairment is permitted with  
9 regard to dark fiber dedicated transport where only *three (3)* or more unaffiliated  
10 competing carriers each have deployed dedicated dark fiber transport facilities on  
11 the same route to provide service to their own retail customers (the self-  
12 provisioning trigger); *or* where *two (2)* or more competing carriers each has  
13 deployed its own dark fiber and offers it at wholesale on the same route  
14 (wholesale trigger).

15 **Q. Please describe what factors the Commission should be evaluating at in**  
16 **applying the FCC's self-provisioning trigger.**

17  
18 **A.** The FCC, in the *Triennial Review Order*, described the following factors that the  
19 Commission is to consider in determining whether dark fiber transport facilities  
20 qualify as facilities that are used to provide services to the competitor's own retail  
21 customers (i.e., "self-provisioned"):

22 (1) Competitive dark fiber transport self-providers must be *unaffiliated*  
23 with the incumbent LEC and each other;

24  
25 (2) Each self-provisioned facility along a route must be *operationally*  
26 *ready* to provide transport into or out of an incumbent LEC's central  
27 office for purposes of serving the competitor's own retail customers;

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<sup>6</sup> *Id.* ¶ 384.

<sup>7</sup> *Id.*

(3) Dark fiber transport facilities must *terminate in a collocation arrangement at each end of the transport route* that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises; and

(4) *The competitor must have constructed the facility or acquired it from another carrier pursuant to a long-term IRU or similar arrangement* (but not as an unbundled network element from the incumbent LEC).

**Q. Please describe what factors the Commission should be evaluating at in applying the FCC's wholesale trigger.**

**A.** The FCC, in the *Triennial Review Order*, described the following factors for the Commission to consider when reviewing whether dark fiber transport facilities qualify as facilities that are used to provide services to wholesale customers:

- (1) Competitive wholesale transport providers must be *unaffiliated* with each other and the incumbent LEC;
- (2) Competitive dark fiber transport providers must be *operationally ready* and willing to provide the dark fiber transport on a wholesale basis along the specific route;
- (3) Dark fiber transport facilities must *terminate in a collocation arrangement at each end of the transport route* that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises; and
- (4) The wholesale transport provider must have constructed the facility or acquired it from another carrier pursuant to a long-term IRU or similar arrangement (but not as an unbundled network element from the incumbent LEC); and
- (5) Competitive transport providers must make the dark fiber transport *widely available*.

**Q. Have you examined the dark fiber transport routes that Verizon witnesses O'Brien and White have identified as meeting the FCC's impairment triggers in Verizon's Initial Testimony (filed December 8, 2003)?**

1

2 A. Yes.

3 **Q. Please summarize Verizon's Testimony regarding Dark-Fiber Transport?**

4 A. The dark fiber transport routes that Verizon Witnesses O'Brien and White have  
5 identified in their Panel Testimony as meeting the FCC's self-provisioning and/or  
6 wholesale triggers are contained in Attachment 6-A (self provisioning trigger) and  
7 Attachment 6-B (wholesale trigger), which are attached to their direct testimony.  
8 In these attachments, Witnesses O'Brien and White identified 20 routes that they  
9 believe meet the self-provisioning trigger for dark fiber transport.<sup>8</sup> In addition,  
10 Witnesses O'Brien and White assert that 23 routes meet the wholesale trigger.<sup>9</sup>  
11 Verizon asserts that many of these routes meet both triggers such that, in their  
12 view, there are a total of 50 routes that are identified in this proceeding for dark  
13 fiber transport.<sup>10</sup> However, not all of these routes are where Conversent currently  
14 purchases dark fiber transport from Verizon.

15 **Q. Have you examined the routes Verizon lists in Attachments 6-A and 6-B in**  
16 **their Testimony with the routes where Conversent currently purchases Dark**  
17 **Fiber transport facilities from Verizon?**

18

19 A. Yes I have. Conversent is currently leasing unbundled dark fiber transport from  
20 Verizon for at least five (5) of the routes that Verizon Witnesses O'Brien and  
21 White have identified in the Self-Provisioning Spreadsheet in Attachment 6-A.  
22 Further, Conversent is currently leasing unbundled dark fiber transport from  
23 Verizon for at least eight (8) of the routes identified in Verizon's Wholesale

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<sup>8</sup> Direct Testimony at pg. 32 and Attachment 6-A.

<sup>9</sup> Direct Testimony at pg. 32 and Attachment 6-B.

1 Spreadsheet in Attachment 6-B. These Conversent specific routes, and the  
 2 carriers that Verizon is relying on to meet the trigger tests are set forth in the  
 3 tables 1 and 2 below.

4

5

6 **BEGIN CONFIDENTIAL \*\*\***

<b><u>TABLE 1</u></b>						
<b>Transport Routes VERIZON Asserts Meet the Self-Provisioning Trigger and Where Conversent is Currently Leasing Unbundled Dark Fiber<sup>11</sup></b>						
<b>A CLLI</b>	<b>Z CLLI</b>	<b>Competing Transport Providers (with collocation at route end points)</b>				

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<sup>10</sup> *Id.*



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<b><u>TABLE 2</u></b>						
<b>Transport Routes VERIZON Asserts Meet the <u>Wholesale</u> Trigger and Where Conversent is Currently Leasing Unbundled Dark Fiber<sup>12</sup></b>						
<b>A CLLI</b>	<b>Z CLLI</b>	<b>Competing Transport Providers (with collocation at route end points)</b>				

2

3 **\*\*\* END CONFIDENTIAL**

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<sup>11</sup> This data is taken from Attachment 6-A to Verizon's Direct Testimony.

<sup>12</sup> This data is taken from Attachment 6-B to Verizon's Direct Testimony.

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4 **Q. Why is it important for the Commission to focus on these specific routes**  
5 **where Verizon has alleged that it has met the triggers for Dedicated**  
6 **Transport?**  
7

8 **A.** To the extent the Commission makes non-impairment findings for a given route,  
9  
10 Conversent will be deprived of its ability to purchase unbundled dark fiber from  
11 Verizon at the Commission approved UNE rates. Conversent has a particular  
12 interest in these specific routes because these are the routes where Conversent has  
13 arranged to lease Verizon dark fiber inter-office transport at UNE rates.  
14  
15 Conversent has a significant interest in making sure that Verizon Witnesses  
16 O'Brien and White have applied the FCC's impairment triggers properly and that  
17 CLECs such as Conversent are truly not impaired in the absence of unbundled  
18 dark fiber for these specific routes. It is imperative that the Commission should  
19 not simply accept Verizon's submission at face value but rather critically  
20 scrutinize the data to verify whether Verizon's assertions (and assumptions) are  
21 accurate. For this reason, I will further analyze Verizon's data and specific routes  
22 identified in Tables 1 and 2 above.

23 **Q. Do you agree that Verizon has demonstrated that each of the routes in Table**  
24 **1 and Table 2 meet one or both of the FCC's Triggers for Dark Fiber**  
25 **Transport?**

26 **A.** No. As I will show below, with the exception of one route, all the other seven  
27 routes identified in Tables 1 and 2 fail to meet *either* of the FCC's triggers for  
28 dark fiber transport. Conversent sent out data requests to each of the companies  
29 identified by Verizon in the spreadsheets contained in Attachments 6-A and 6-B  
to determine whether Verizon's allegations were true. Many of the responses

obtained from this discovery directly contradict Verizon's findings. In fact, many of the companies specifically denied that they have either self-provisioned dark fiber facilities or have facilities that are operationally ready to wholesale dark fiber capacity on these specific routes. I will now examine each route and examine each of the company's responses to discovery concerning each relevant route that Verizon claims meets either the self-provisioning or wholesale trigger test for that specific route.

**Self-Provisioning Trigger**

**Q. Have you examined the first route identified in Table 1 (Cranston to Washington Street)?**

**A.** Yes. Based on the responses to discovery, there are not at least 3 companies that have self-provisioned dark fiber transport. Here is the route.

**\*\*\* BEGIN CONFIDENTIAL**

A CLI	Z CLI	Competing Transport Providers (with collocation at route end points)				

1       **END CONFIDENTIAL \*\*\*** As I pointed out above, Verizon must show that at  
2       least three of the companies named in this chart have self-provisioned dark fiber  
3       for this route. As I explained above, to count as self-provisioned dark fiber  
4       (according to the FCC) the company must have deployed dark fiber "along a  
5       given route between incumbent LEC switches or wire centers," the dark fiber  
6       must be "operationally ready to provide transport into or out of an ILEC central  
7       office," and such dark fiber must terminate at a collocation arrangement at each  
8       end of the transport route that is located at an incumbent LEC premises and in a  
9       similar arrangement at each end of the transport route that is not located at an  
10      incumbent LEC premises.

11      With these specific criteria in mind, Conversent asked each of these companies  
12      whether they have self-provisioned dark fiber on this route (Cranston to  
13      Washington Street). Here is what they responded:

14      \*\*\* **BEGIN CONFIDENTIAL**

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5 **END CONFIDENTIAL \*\*\***

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8 **Q. What are your conclusions on this first route (Cranston to Washington St.)?**9 **A.** Based on my review of the specific discovery responses Verizon cannot meet the10 3-company trigger test for this route. Three of the companies **BEGIN**11 **CONFIDENTIAL \*\*\*** **\*\*\* END CONFIDENTIAL**

12 specifically deny that they have self-deployed their own dark fiber transport on

13 this route. Only **BEGIN CONFIDENTIAL \*\*\*** **\*\*\* END**14 **CONFIDENTIAL** states it has deployed such fiber, but then denies that it is

15 “self-provisioned.” Therefore there is an insufficient number of companies that

16 have self-provisioned their own dark fiber transport for this route and the

17 Commission should find that Verizon has failed to prove that this route meets the

18 self-provision trigger test set by the FCC.

19 **Q. Have you examined the second route identified in Table 1 above (Broad**  
20 **Street to Washington St)?**

21

22 **A.** Yes. It appears that this route just barely qualifies. First, here is the route and the

23 companies identified in Table 1 above:

24 **BEGIN CONFIDENTIAL \*\*\***

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**END CONFIDENTIAL \*\*\***

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**Q. What conclusions do you reach regarding this second route in the self-provision trigger table 1?**

4

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6

A. Three companies indicated that they have deployed their own dark fiber dedicated

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transport on these routes **BEGIN CONFIDENTIAL**

**\*\*\***

8

**END CONFIDENTIAL** Thus it appears that this route will qualify since the 3-

9

company test is satisfied.

10

**Q. Have you examined the third route identified in Table 1 (Washington St to Pawtucket)?**

11

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A. Yes. Here is the route and the companies identified:

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**BEGIN CONFIDENTIAL \*\*\***

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**END CONFIDENTIAL \*\*\***

22

**Q. What conclusions do you reach regarding this third route (Washington St. to Pawtucket)?**

23

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A. Based on my review of the specific discovery responses Verizon cannot meet the

26

3-company trigger test for this route. Two of the companies **BEGIN**

**CONFIDENTIAL \*\*\***

2 specifically deny that they have self-deployed their own dark fiber transport on

3 this route. That leaves only **BEGIN CONFIDENTIAL \*\*\*** . \*\*\*

4 **END CONFIDENTIAL** However 2 companies is an insufficient number of

5 companies necessary to meet the 3 company minimum set by the FCC.

6 Therefore there is an insufficient number of companies that have self-provisioned

7        their own dark fiber transport for this route and the Commission should find that

8 Verizon has failed to prove that this route meets the self-provision trigger test set

9 by the FCC.

10 **Q. Have you examined the fourth route identified in Table 1 (Washington St to**  
11 **Pawtucket)?**

12  
13     **A.** Yes. Here are the companies identified for this route.

15 **BEGIN CONFIDENTIAL \*\*\***

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23 \*\*\* END CONFIDENTIAL.

24 **Q. What conclusions do you reach regarding this fourth route (Washington St.**  
25 **to Warwick)?**

26

1     **A.** Based on my review of the specific discovery responses Verizon cannot meet the  
2     3-company trigger test for this route. Two of the companies **BEGIN**  
3     **CONFIDENTIAL \*\*\***                      **\*\*\* END CONFIDENTIAL** specifically  
4     deny that they have self-deployed their own dark fiber transport on this route.  
5     That leaves only **BEGIN CONFIDENTIAL \*\*\***                      **\*\*\* END**  
6     **CONFIDENTIAL** However two companies is an insufficient number of  
7     companies to meet the three company minimum set by the FCC. Therefore, there  
8     is an insufficient number of companies that have self-provisioned their own dark  
9     fiber transport for this route and the Commission should find that Verizon has  
10    failed to prove that this route meets the self-provision trigger test set by the FCC.

11   **Q. Have you examined the fifth route identified in Table 1 (Pawtucket to**  
12   **Woonsocket)?**

13  
14   **A.** Yes. Here are the companies identified on this route:

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16   **BEGIN CONFIDENTIAL \*\*\***  
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**END CONFIDENTIAL \*\*\***

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**Q. What conclusions do you reach regarding this fifth route (Pawtucket to Woonsocket)?**

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Based on my review of the specific discovery responses Verizon cannot meet the

12

3-company trigger test for this route. One of the companies **BEGIN**

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**CONFIDENTIAL \*\*\*****\*\*\* END CONFIDENTIAL** specifically

14

denied that they have self-deployed their own dark fiber transport on this route.

15

That leaves only **BEGIN CONFIDENTIAL \*\*\***

**\*\*\* END**

16

**CONFIDENTIAL** However two companies is an insufficient number of

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companies to meet the three company minimum set by the FCC. Therefore there

18

is an insufficient number of companies that have self-provisioned their own dark

19

fiber transport for this route and the Commission should find that Verizon has

20

failed to prove that this route meets the self-provision trigger test set by the FCC.

21

**Q. Does that conclude your examination of the five routes identified by Verizon in their testimony where they claim Conversent is not impaired under the self-provisioning test?**

22

23

24

25

A. Yes.

26

**Q. What overall conclusions do you draw on these five routes?**

1 A. Based on the analysis provided above, I am left to conclude that Verizon cannot  
 2 meet the 3-company trigger test for companies that have self-provisioned dark  
 3 fiber transport *on four out of the five routes* identified above. Again, here is the  
 4 table I am referring to:

5 **BEGIN CONFIDENTIAL \*\*\***

<b><u>TABLE 1</u></b>						
<b>Transport Routes VERIZON Asserts Meet the <u>Self-Provisioning</u> Trigger and Where Conversent is Currently Leasing Unbundled Dark Fiber<sup>13</sup></b>						
<b>A CLLI</b>	<b>Z CLLI</b>	<b>Competing Transport Providers (with collocation at route end points)</b>				

6

7 **\*\*\* END CONFIDENTIAL**

8 As I described above, only on one of these routes (Broad Street to Washington  
 9 Street – the second route) has Verizon made a sufficient showing that there are at  
 10 least 3 companies that have self-deployed dark fiber transport between collocation  
 11 arrangements at these Verizon wire centers. For the other four (Cranston to  
 12 Washington St; Washington St. to Pawtucket; Washington Street to Warwick; and  
 13 Pawtucket to Woonsocket) Verizon has failed to show that there are at least 3

1 companies that have self-deployed dark fiber transport between these collocation  
2 offices. Therefore, four out of the five routes will not qualify under the FCC's  
3 self-provisioning trigger, because there are less than the required three company  
4 minimum test for companies that have self-provisioned dark fiber transport on  
5 these routes.

6  
7 **Wholesale Trigger**  
8

9 **Q. Have you performed a similar analysis for the routes Verizon asserts meet**  
10 **the wholesale trigger for dark fiber?**

11  
12 **A.** Yes. As can be seen from Table 2 above, Verizon asserts that these same five  
13 routes from Table 1 also meet the wholesale trigger for dark fiber dedicated  
14 transport. Verizon asserts that there are three other routes that meet the wholesale  
15 trigger test alone (but not the self-provision test).

16 **Q. Have you analyzed the discovery responses for each of these companies to**  
17 **determine if Verizon's information is correct and whether Verizon has**  
18 **properly applied the trigger analysis to these companies for the wholesale**  
19 **trigger?**  
20

21 **A.** Yes. I will also examine these routes one at a time. As I stated above, in order to  
22 satisfy the wholesale trigger, the company must be willing immediately to  
23 provide, on a widely available basis, dark fiber along the particular route between  
24 ILEC switches or wire centers. In order to satisfy this test, the dark fiber must  
25 terminate in a collocation arrangement at each end of the transport route that is  
26 located at an incumbent LEC premises and in a similar arrangement at each end of  
27 the transport route that is not located at an incumbent LEC premises. With these  
28 criteria as the standard, I will examine each of the routes.

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<sup>13</sup> This data is taken from Attachment 6-A to Verizon's Direct Testimony.

1 **Q. What did your examination reveal about the first route on the wholesale**  
 2 **trigger chart (Cranston to Washington Street)?**  
 3

4 A. This route will not qualify. Verizon's data does not show that there are at least  
 5 two companies offering dark fiber transport at wholesale on this route. Again,  
 6 Conversent specifically asked each company whether they are offering dark fiber  
 7 at wholesale under the FCC's standards in the Triennial Review Order. I will  
 8 again analyze each companies' response:

9 **BEGIN CONFIDENTIAL \*\*\***

A CLLI	Z CLLI	Competing Transport Providers (with collocation at route end points)				

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5 **\*\*\* END CONFIDENTIAL**

6 **Q. What conclusions do you reach regarding this first route (Cranston to**  
7 **Washington Street?**

8

9 **A.** Based on my review of the specific discovery responses Verizon cannot meet the10 2-company trigger test for this route. Two of the companies **BEGIN**11 **CONFIDENTIAL \*\*\*** **\*\*\* END CONFIDENTIAL**

12 specifically denied that they offer wholesale dark fiber transport on this route.

13 **BEGIN CONFIDENTIAL \*\*\*** **\*\*\* END CONFIDENTIAL** has

14 collocated in one of the two Verizon wire centers, but can only offer dark fiber

15 transport through a CATT arrangement at the other wire center. However, as I

16 pointed out above, Conversent would have to apply to augment its network and/or

17 otherwise seek to have Verizon undertake additional arrangements in order to

18 complete a transport route. Because of all of the outstanding work and time that

19 is required to make dark fiber that terminates at a Verizon CATT operationally

20 ready, dark fiber that terminates in a CATT instead of a collocation arrangement

21 cannot be counted toward the trigger. That leaves only **BEGIN**22 **CONFIDENTIAL \*\*\*** **\*\*\* END CONFIDENTIAL** However, one

23 company is an insufficient number of companies that have operationally dark

24 fiber transport available for wholesale through collocation arrangements at each

25 wire center in order to meet the FCC's two company minimum test. Therefore

1           there is an insufficient number of companies that meet the wholesale trigger test  
2           for this route.

3           **Q. What did your examination reveal about the second route on the wholesale**  
4           **trigger chart (Washington Street to Broad Street)?**

5  
6           **A.** My analysis shows that this route will not qualify. There are not at least two  
7           companies on this route that meet the wholesale trigger test. Here is the route and  
8           the companies identified by Verizon.

9           **BEGIN CONFIDENTIAL \*\*\***

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**\*\*\* END CONFIDENTIAL**

17           **Q. What conclusions do you reach regarding this second route (Broad Street to**  
18           **Washington Street)?**

19

20           **A.** Based on my review of the specific discovery responses Verizon cannot meet the

21           2-company trigger test for this route. Two of the companies **BEGIN**

22           **CONFIDENTIAL \*\*\***

**\*\*\* END CONFIDENTIAL**

23           specifically denied that they offer wholesale dark fiber transport on this route.

24           **BEGIN CONFIDENTIAL \*\*\***                      **\*\*\* END CONFIDENTIAL** has

25           collocated in one of the two Verizon wire centers, but can only offer dark fiber

1 transport through a CATT arrangement at the other wire center. As I pointed out  
2 above, however, Conversent would have to apply to augment its network and/or  
3 otherwise seek to have Verizon undertake additional arrangements in order to  
4 complete a transport route. Because of all of the outstanding work and time that  
5 is required to make dark fiber that terminates at a Verizon CATT operationally  
6 ready, dark fiber that terminates in a CATT instead of a collocation arrangement  
7 is not currently available and cannot be counted toward the trigger. That leaves  
8 only **BEGIN CONFIDENTIAL \*\*\* \*\*\* END CONFIDENTIAL**

9 However, one company is insufficient to meet the two company minimum test of  
10 the FCC. Therefore there are not enough companies that meet the FCC's  
11 wholesale trigger test for this route.

12 **Q. What did your examination reveal about the third route on the wholesale**  
13 **trigger chart (Washington Street to Pawtucket)?**

14 **A.** My analysis shows that Verizon cannot show that there are the requisite number  
15 of companies on this route that meet the wholesale trigger test. Here is the route  
16 and the companies.

17 **BEGIN CONFIDENTIAL \*\*\***

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**\*\*\* END CONFIDENTIAL**

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**Q. What conclusions do you reach regarding this third route (Washington Street to Pawtucket)?**

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8

**A.** Based on my review of the specific discovery responses Verizon cannot meet the

9

2-company trigger test for this route. All four of the companies **BEGIN**

10

**CONFIDENTIAL \*\*\*****\*\*\* END CONFIDENTIAL**

11

specifically denied that they offer wholesale dark fiber transport on this route.

12

Therefore there are no companies that meet the FCC's wholesale trigger test for

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this route.

14

**Q. What did your examination reveal about the fourth route on the wholesale trigger chart (Washington Street to Warwick)?**

15

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17

**A.** My analysis shows that Verizon cannot show that there are the requisite number

18

of companies on this route that meet the wholesale trigger test. Here is the route

19

and the companies.

20

**BEGIN CONFIDENTIAL \*\*\***

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**\*\*\* END CONFIDENTIAL**

5

**Q. What conclusions do you reach regarding this fourth route (Washington Street to Warwick)?**

6

7

8

**A.** Based on my review of the specific discovery responses Verizon cannot meet the

9

2-company trigger test for this route. All four of the companies **BEGIN**

10

**CONFIDENTIAL \*\*\*****\*\*\* END CONFIDENTIAL**

11

specifically denied that they offer wholesale dark fiber transport on this route.

12

Therefore there are no companies that meet the FCC's wholesale trigger test for

13

this route.

14

**Q. What did your examination reveal about the fifth route on the wholesale trigger chart (Pawtucket to Woonsocket)?**

15

16

17

**A.** My analysis shows that Verizon cannot show that there are the requisite number

18

of companies on this route that meet the wholesale trigger test. Here is the route

19

and the companies.

20

**BEGIN CONFIDENTIAL \*\*\***

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**\*\*\* END CONFIDENTIAL**

3

**Q. What conclusions do you reach regarding this fifth route (Pawtucket to Woonsocket)?**

4

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6

**A.** Based on my review of the specific discovery responses Verizon cannot meet the

7

2-company trigger test for this route. All three of the companies **BEGIN**

8

**CONFIDENTIAL \*\*\*****\*\*\* END CONFIDENTIAL**

9

specifically denied that they offer wholesale dark fiber transport on this route.

10

Therefore there are no companies that meet the FCC's wholesale trigger test for

11

this route.

12

**Q. What did your examination reveal about the sixth route on the wholesale trigger chart (Cranston to Warwick)?**

13

14

15

**A.** My analysis shows that Verizon cannot show that there are the requisite number

16

of companies on this route that meet the wholesale trigger test. Here is the route

17

and the companies.

18

**BEGIN CONFIDENTIAL \*\*\***

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**A.** My analysis shows that Verizon cannot show that there are the requisite number of companies on this route that meet the wholesale trigger test. Here is the route and the companies.

1        **BEGIN CONFIDENTIAL \*\*\***

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7        **\*\*\* END CONFIDENTIAL**

8        **Q. What conclusions do you reach regarding this seventh route (East**  
9        **Providence to Washington St)?**

10

11        **A.** Based on my review of the specific discovery responses Verizon cannot meet the

12        2-company trigger test for this route. Both of the companies **BEGIN**

13        **CONFIDENTIAL \*\*\*                      \*\*\* END CONFIDENTIAL** specifically

14        denied that they offer wholesale dark fiber transport on this route. Therefore there

15        are no companies that meet the FCC's wholesale trigger test for this route.

16        **Q. What did your examination reveal about the eighth route on the wholesale**  
17        **trigger chart (East Providence to Pawtucket)?**

18

19        **A.** My analysis shows that Verizon cannot show that there are the requisite number

20        of companies on this route that meet the wholesale trigger test. Here is the route

21        and the companies.

22        **BEGIN CONFIDENTIAL \*\*\***

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23

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5       **\*\* END CONFIDENTIAL**6       **Q. What conclusions do you reach regarding this eighth route (East Providence**  
7       **to Pawtucket)?**

8

9       **A.** Based on my review of the specific discovery responses Verizon cannot meet the10       2-company trigger test for this route. Both of the companies **BEGIN**11       **CONFIDENTIAL \*\*\*****\*\*\* END CONFIDENTIAL**

12       specifically denied that they offer wholesale dark fiber transport on this route.

13       Therefore there are no companies that meet the FCC's wholesale trigger test for

14       this route.

15       **Q. What conclusions do you draw from your review of the specific discovery**  
16       **responses of these companies to the eight routes in Table 2 that Verizon**  
17       **alleges meet the wholesale trigger test, as identified in their Testimony?**

18

19       **A.** As reviewed above, when all the discovery responses are examined Verizon

20       cannot demonstrate that there are the requisite number of two wholesalers who

21       make dark fiber "widely available" along any of these eight routes in accordance

22       with the FCC's wholesale test set forth in the *Triennial Review Order*.

23       Accordingly, none of the following routes will qualify under the FCC's wholesale

24       trigger test. I will repeat these routes again in my Table 2:

25

26

27

1 **BEGIN CONFIDENTIAL \*\*\***

<b><u>TABLE 2</u></b>						
<b>Transport Routes VERIZON Asserts Meet the <u>Wholesale</u> Trigger and Where Conversent is Currently Leasing Unbundled Dark Fiber<sup>14</sup></b>						

2

3 **\*\*\* END CONFIDENTIAL**

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<sup>14</sup> This data is taken from Attachment 6-B to Verizon's Direct Testimony and Attachment Tab C to Verizon's Supplemental Testimony.

1 **Q. What is the bottom line on the eight routes that Verizon alleges are satisfied**  
2 **by either the self-provisioning trigger or the wholesale trigger?**

3  
4 **A.** The bottom line is this: Of the eight total routes that Verizon claims meet either  
5 the self provision test (Table 1) or meet the wholesale trigger test (table 2) only  
6 one route, arguably, meets a specific trigger test set by the FCC. One route has 3  
7 companies that have self-provisioned. That route is Broad Street to Washington  
8 Street. That is the only route to which competitive LECs are not impaired under  
9 the FCC's trigger test in the Triennial Review. None of the other routes meets the  
10 requisite number of 3 companies for the self-provision test, or the requisite 2  
11 companies for the wholesale test. That means that these seven other routes  
12 (Cranston to Washington St.; Washington St. to Pawtucket; Washington St. to  
13 Warwick; Pawtucket to Woonsocket; Cranston to Warwick, East Providence to  
14 Washington St.; East Providence to Pawtucket) should remain fully available to  
15 Conversent, and other competitive LECs, at TELRIC rates.

16 **Q. In the event that Verizon is able to prove that any of these routes do satisfy**  
17 **the requisite number of trigger companies, either as self-provisioners or**  
18 **wholesalers, what is an appropriate period for competitors to transition to**  
19 **other arrangements for transport for which competitors are deemed not**  
20 **impaired?**

21  
22 **A.** The FCC contemplated that state commissions would have to determine what they  
23 consider to be an "appropriate period" for competitors to transition to other  
24 arrangements for loops and transport for which competitors are deemed not  
25 impaired.<sup>15</sup> The transition should "afford sufficient time for carriers to implement  
26 any necessary business and operational plans and practices to account for the

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<sup>15</sup> See *Triennial Review Order* ¶¶ 339, 417

1        changed regulatory environment".<sup>16</sup> As the FCC recognized with regard to  
2        switching, these considerations require that an incumbent LEC continue to  
3        provide an unbundled network element for a period of time after the state has  
4        decided that there is not impairment so that competitors can make needed  
5        adjustments.<sup>17</sup>  
6        The need for a transition is slightly different depending upon whether the no  
7        impairment finding is based on the self-provisioning trigger or wholesale trigger.  
8        If the no impairment finding is based on satisfying the self-provisioning trigger, it  
9        must be assumed that adequate wholesale alternatives are not available that would  
10       enable a competitor to make a relatively quick transition to the non-incumbent  
11       LEC source of supply. In this case, competitors must be given enough time to  
12       deploy their own loops or transport facilities or to negotiate another arrangement  
13       with the incumbent pursuant to a change in its interconnection agreement.  
14       The record as described in the *Triennial Review Order* indicated that it takes  
15       competitors between six to nine months without unforeseen delay to deploy their  
16       own loops<sup>18</sup> and approximately a year, give or take a few months, to deploy  
17       transport facilities<sup>19</sup>. Moreover, the state commissions are given nine months  
18       under Section 252(b)(4)(c) of the Communications Act from the time a

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<sup>16</sup> *Id.* ¶ 529 (discussing transition for switching).

<sup>17</sup> *See. id.*

<sup>18</sup> *Id.* ¶ 304.

<sup>19</sup> *Id.* n. 1138.



1 competitor requests interconnection (or in this case amendment) in which to  
2 resolve disputed interconnection issues pursuant to arbitration.<sup>20</sup>  
3 All of this demonstrates that a nine month transition for loops and a twelve month  
4 transition for transport would be an adequate and fair period in which to transition  
5 to non-unbundled element arrangements after a conclusion that a self-  
6 provisioning trigger has been met (or the results of such trigger overridden as  
7 discussed). This transition would give competitors adequate time to deploy their  
8 own facilities or to resolve any issues associated with obtaining loops or transport  
9 (under terms and conditions other than the unbundling requirements) from the  
10 incumbent pursuant to a revised interconnection agreement.  
11 Where a finding of non-impairment is based on compliance with the wholesale  
12 trigger, it can be presumed that the transition is necessary solely for competitors  
13 to transition to non-UNE wholesale arrangements. The time needed for such a  
14 change should cover the negotiation of the terms of the agreement and the time  
15 needed to make needed network changes required for the new arrangements. In  
16 my experience this process varies considerably and therefore the transition period  
17 needs to be flexible. I would recommend that the Commission adopt a six month  
18 transition period with the possibility of a re-opener if circumstances warrant.  
19 Regardless of the length of a proper transition, however, carriers should be  
20 permitted to petition the Commission for a longer period of time if circumstances  
21 warrant.

22 **Q. Is that the conclusion of your rebuttal testimony?**

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<sup>20</sup> See *id.* ¶ 529 (discussing the need to give competitors enough time in a transition to amend

1     **A.**     Yes.

2

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*interconnection agreements).*