

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IMPLEMENTATION OF THE)
TRIENNIAL REVIEW ORDER IN) DOCKET NO. 3550
RHODE ISLAND)

DIRECT LOOP\TRANSPORT TESTIMONY
OF
VALERIE CARDWELL
ON BEHALF OF
COVAD COMMUNICATIONS COMPANY

February 23, 2004

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1 I. INTRODUCTION

2 Q. WHAT IS THE PURPOSE OF THE YOUR TESTIMONY?

3 A. In its Triennial Review Order (“TRO”), the Federal Communications
4 Commission (“FCC”) conducted a comprehensive analysis that resulted in the
5 determination that competitive carriers (“CLECs”) are impaired without access to
6 high capacity loops and dedicated transport at the national level. As a result,
7 incumbent local exchange carriers (“ILECs”) such as Verizon must continue to
8 provide CLECs with access to unbundled loops and dedicated transport at the
9 DS1, DS3, and dark fiber capacity levels on a widespread basis. Recognizing that
10 there may be individual customer locations or transport routes where
11 competitively provisioned loops and transport have been deployed to such an
12 extent that the national finding does not apply and CLECs may not be impaired,
13 the FCC developed a procedure known as the trigger analysis (“triggers”). The
14 triggers are designed to give Verizon an opportunity to rebut the national finding
15 at specific customer locations or on specific transport routes where actual
16 deployment demonstrates non-impairment at that location or route.

17
18 The purpose of this testimony is to provide to the Public Utilities Commission of
19 Rhode Island (“Commission”) a workable framework for evaluating Verizon’s
20 claims of non-impairment on any particular transport routes or to any particular
21 customer locations. As we will demonstrate, Verizon faces a significant burden in
22 satisfying the rigorous granular analysis of the triggers, and the Commission

1 should cast a suspicious view upon Verizon's claims that the triggers have been
2 satisfied on a large scale.

3

4 **A. COVAD COMMUNICATIONS COMPANY**

5

6 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
7 **ADDRESS.**

8 A. My name is Valerie Cardwell. I am the Vice President – Government
9 and External Affairs for Covad Communications Company ("Covad"). My
10 business address is 600 14th Street, NW, Suite 750, Washington, D.C. 20005.

11

12 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

13 A. I act as a liaison between Covad's business personnel and Verizon. I
14 am also responsible for participating in various federal and state regulatory
15 proceedings, representing Covad. Before joining Covad, I was employed by
16 Verizon Communications for 13 years. After joining that company in 1985, I
17 held various management positions including Assistant Manager of Central Office
18 Operations and Manager of Installation, Maintenance and Dispatch Operations.
19 In those positions, I oversaw the installation and maintenance of services to retail
20 customers. Specifically, I supervised several groups that were responsible for the
21 physical end-to-end installation of facilities and the correction of any defects or
22 problems on the line. In 1994, I became Director of ISDN Implementation. In

1 that position, I established work practices to ensure delivery of ISDN services to
2 customers and to address ISDN facilities issues -- issues very similar to those
3 encountered in the DSL arena.

4

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS**
6 **PROCEEDING?**

7 A. I am testifying on behalf of Covad Communications Company.

8

9 **Q. PLEASE DESCRIBE THE TYPE OF SERVICE COVAD**
10 **PROVIDES IN RHODE ISLAND.**

11 A. Covad is a certificated CLEC in Rhode Island. Covad is a leading national
12 provider of Internet connectivity using digital subscriber line ("DSL") technology.
13 Covad offers DSL and T-1 services to small and medium sized business and home
14 users in the State. To offer service to its customers, Covad purchases and deploys
15 DSL equipment in Verizon's central offices and connects to the end user via
16 unbundled loops and line sharing and unbundled interoffice transport.

17

18 **Q. DOES COVAD PROCURE DS1 OR DS3 DEDICATED**
19 **TRANSPORT FROM CARRIERS OTHER THAN VERIZON?**

20 A. No. Other than obtaining transport from Verizon Covad does not procure
21 DS1 or DS3 facilities from third party carriers. In particular, Covad does not
22 purchase or provide interoffice transport between Verizon central offices for the
23 purpose of transporting qualifying traffic between those offices.

1

2 **Q. IS COVAD A WHOLESALE PROVIDER OF DEDICATED**
3 **TRANSPORT IN RHODE ISLAND?**

4 A. No. Covad does not provide dedicated transport services between
5 incumbent LEC central offices.

6

7

8

II. TESTIMONY

9 **A. THE FCC'S IMPAIRMENT ANALYSIS**

10 **Q. PLEASE DESCRIBE THE FCC'S POLICY OBJECTIVES THAT**
11 **PROVIDE THE FRAMEWORK FOR THE TRIENNIAL REVIEW**
12 **IMPLEMENTATION.**

13 A. When applying the rigorous standards for the granular analysis, it is
14 imperative that the Commission keep the TRO's three policy objectives at the
15 forefront. First, the TRO continues the Commission's implementation and
16 enforcement of the federal Act's market-opening requirements. This objective is
17 critical because it recognizes the importance of providing a regulatory
18 environment that is conducive to competition. Second, the TRO applies
19 unbundling as Congress intended: with a recognition of the market barriers faced
20 by new entrants as well as the societal benefits and costs of unbundling. This
21 again is critical because it recognizes the balance that is required to fulfill
22 Congress' objective of delivering better services and lower costs to consumers
23 through competition. Finally, the TRO establishes a regulatory foundation that

1 seeks to ensure that investment in telecommunications infrastructure will generate
2 substantial, long-term benefits for all consumers.

3

4 **Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF**
5 **NON-IMPAIRMENT FOR ENTERPRISE MARKET LOOPS AND**
6 **DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1**
7 **LEVELS?**

8 A. In making a national finding of impairment for loops and transport, the
9 FCC found that evidence of non-impairment was isolated and minimal. For
10 example, the FCC found little evidence of self-deployment for DS1 loops, *TRO* ¶
11 298, and found "scant evidence of wholesale alternatives" for DS1 loops. *TRO* ¶
12 325.

13

14 For transport, the FCC found that "alternative facilities are not available to
15 competing carriers in a majority of areas." *TRO* ¶ 387. Therefore, one would
16 expect that there will be only a small number of transport routes at issue in this
17 proceeding.

18

19 **B. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY**
20 **LOOPS AND TRANSPORT**

21 **Q. WHAT EVIDENCE MUST VERIZON PRESENT TO SATISFY**
22 **THE SELF-PROVISIONING TRIGGERS AT THE RELEVANT**
23 **CAPACITY LEVEL?**

1 A. The specific criteria are set forth in Sections 51.319(a)(4)-(6) and
2 51.319(e) of the FCC's rules. For loops, Verizon must demonstrate that there are
3 *two or more* competing providers that have deployed their own facilities at the
4 specific capacity level (DS3 or dark fiber), and are serving customers using those
5 facilities. For transport, Verizon must demonstrate there are *three or more*
6 competing providers that have deployed their own facilities at the specific
7 capacity level (DS3 or dark fiber), and are offering service using those facilities.

8

9 **Q. WHAT ARE THE KEY CRITERIA THAT THE COMMISSION**
10 **MUST APPLY IN ORDER TO ENSURE VERIZON IS USING THE**
11 **APPROPRIATE INTERPRETATION OF THE SELF-**
12 **PROVISIONING TRIGGERS?**

13 A. The first key issue is to ensure that Verizon is defining loops and transport
14 routes in a manner consistent with the FCC, and is applying those definitions
15 appropriately. For loops, the FCC's definition is "the connection between the
16 relevant service central office and the network interface device ("NID") or
17 equivalent point of demarcation at a specific customer premises." In addition, the
18 loop must permit the CLEC to access all units within a customer location, such as
19 all tenants in a multi-tenant building or all buildings in a campus environment.

20

21 The FCC defined a transport route as "a connection between wire center or switch
22 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the
23 incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an

1 intermediate wire center 'X,' the competing providers must *offer service*
2 connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of
3 the incumbent LEC through wire center 'X'." Thus, the FCC requires that
4 transport service must be offered between the two wire centers in question.

5

6 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION**
7 **OF A LOOP COULD BE MISINTERPRETED BY VERIZON FOR**
8 **THE PURPOSES OF THE SELF-PROVISIONING TRIGGER?**

9 A. Verizon has not at this time made a claim that any loops satisfy the FCC
10 triggers. However, if it decides to do so in the future, Verizon must apply the
11 definition properly in the case of a multi-tenant environment. In a multi-tenant
12 building, two CLECs may have provisioned fiber-optic facilities to serve one
13 customer each, while the rest of the building is being served solely by Verizon.
14 Even though there are two competing loop facilities into the building, a Verizon
15 claim that the Trigger is satisfied for the entire building, or even the two
16 customers served by the CLECs, would be incorrect without proof that the CLECs
17 have installed facilities sufficient to provide access to all units in the building.
18 The key distinction in this example is that the customer location, which is the
19 endpoint of the loop per the FCC, is a subset of a building location in a multi-
20 tenant environment. It is not reasonable to assume that a carrier has access to the
21 entire building simply because it reports facilities to an address. For example,
22 many carriers will provide prospective customers with confidential "lit buildings"
23 lists identifying where the carrier can offer service. A substantial portion of the

1 “lit buildings” on those lists identify only a specific floor or, in some cases a
2 specific suite number, to which the carrier provides service. Thus, the fact that a
3 carrier has deployed facilities to a building does not, in and of itself, indicate that
4 the carrier has access to the entire location.

5

6 **Q. IS VERIZON’S IDENTIFICATION OF TRANSPORT ROUTES**
7 **CONSISTENT WITH THE SELF-PROVISIONING TRIGGER?**

8 A. No. Verizon engaged in a collocation survey-and-count exercise, in which
9 it identifies all of the collocation arrangements for a given CLEC, confirms that
10 fiber optic facilities are present in the collocation arrangement, then declares that
11 transport routes exist between each collocation arrangement. This approach is
12 deficient, in that it presents no evidence that the CLEC in question is providing
13 transport service *between* the two ILEC wire centers, which is the FCC
14 requirement. Assume, for example, that a CLEC has an “on-net” presence at
15 aggregation points A and B. The typical CLEC network will be configured to
16 carry traffic from point A to the switch, and similarly, from point B to the switch.
17 It does not carry traffic from point A to point B. (Most often, these two
18 connections will travel on separate fiber strands within the ring.) There is a high
19 probability, therefore, that the equipment and fiber optics installed in a collocation
20 arrangement will not be appropriate for providing transport between two ILEC
21 wire centers, but instead are designed to carry traffic from a wire center to a
22 CLEC switch. This latter use is not “transport” within the meaning of the trigger.

1 The FCC specifically limited transport to routes between two ILEC wire centers
2 (or an ILEC wire center and an ILEC switch).

3

4 To count as a transport route for purposes of the triggers, each collocation
5 arrangement in question must be used as an endpoint for the transport of traffic
6 between the two ILEC wire centers. The FCC made this clear when it rejected
7 ILEC proposals to use the existence of special access pricing flexibility to identify
8 non-impairment. The FCC explained that the special access pricing flexibility
9 standard relied on the existence of alternative carrier collocations, and that, “the
10 measure may only indicate that numerous carriers have provisioned fiber from
11 their switch to a single collocation rather than indicating that transport has been
12 provisioned to transport traffic between incumbent LEC central offices.” TRO, ¶
13 397. Unless traffic is being routed between the two central offices, the facilities
14 do not constitute a transport route for purposes of the triggers.

15

16 In its testimony, Verizon repeatedly acknowledges that its case relies upon
17 inferences from the actual data, since the data itself does not support its
18 assertions. Verizon acknowledges, as it must, that it “does not have direct
19 knowledge of how a carrier uses its fiber facilities.” (Direct Testimony of O’Brien
20 and White, at page 37, lines 5-6) In spite of the lack of factual proof, Verizon
21 asserts that it is “reasonable to infer” that CLEC facilities are part of a fiber ring –
22 and that CLEC traffic can therefore be routed from one wire center to another.

1 (O'Brien/White, at page 36, lines 13-16) As noted above, this is not a logical,
2 fact-based inference and therefore cannot be relied on by the Commission.

3

4 Verizon also assumes that each and every fiber deployed by each and every
5 carrier has been lit at the OCn level, and then channelized to the DS1 and DS3
6 levels. (O'Brien/White at page 37, lines 17-20) Although Verizon makes this
7 assertion out of necessity, since even it acknowledges that "[f]ew, if any, carriers
8 deploy transport facilities to accommodate only a DS1 or only a DS3,"

9 (O'Brien/White at page 38, lines 7-8, *citing the Triennial Review Order at ¶¶ 386,*
10 *391*) it too is not supported by fact and must therefore be rejected.

11

12 As a result of Verizon's overbroad route definition and numerous, poorly-
13 supported inferences, Verizon overstates the number of transport facilities
14 deployed by competitive carriers. In this regard, Verizon's testimony is built like
15 a house of cards, that cannot withstand even the most cursory examination. The
16 Commission should rely on the CLEC-reported data to identify the routes on
17 which competitive carriers have deployed transport facilities, instead of Verizon's
18 interpretation, expansion and categorization of that data.

19

20 **Q. WHAT EVIDENCE MUST VERIZON SUBMIT TO MEET THE**
21 **FCC'S REQUIREMENT OF OPERATIONAL READINESS FOR**
22 **THE SELF-PROVISIONING TRIGGER?**

1 A. While the existence of CLEC facilities obviously is a prerequisite to the
2 provision of service, that alone does not reflect whether the equipment can be
3 used to provide the service to satisfy the trigger, whether the CLEC can provide
4 service at the requisite capacity level, or whether CLEC has performed the
5 necessary engineering, provisioning, and administrative tasks to ensure that
6 service can be provided. The only reliable way of demonstrating that a CLEC is
7 operationally ready under the Triggers is to produce evidence that the carrier is
8 actually providing service on the given transport route. If the CLEC facilities are
9 in use providing the requisite capacity of service and if the CLEC is able to
10 provision additional circuits using existing equipment and facilities, then it is
11 operationally ready to provide the service. This is consistent with the FCC's
12 requirement that evidence be provided that carriers *offer service* between two wire
13 centers on a given transport route. *See, e.g.*, 47 C.F.R. § 51.319(e)(2).

14

15 **Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING**
16 **TRIGGER, WILL IT AUTOMATICALLY QUALIFY AS AN**
17 **ELIGIBLE PROVIDER UNDER THE COMPETITIVE**
18 **WHOLESALE FACILITIES TRIGGER OR VICE VERSA?**

19 A. No. The FCC emphasized that the triggers are separate and distinct. The
20 purpose of the self-provisioning trigger is to determine through actual experience
21 whether similarly situated CLECs can deploy their own facilities in order to serve
22 its own customers. In contrast, the wholesale facilities trigger examines whether
23 the provider makes its facilities available to other carriers on a widely available

1 basis. Self-provisioners that do not provide service to other carriers do not qualify
2 under the Wholesale Trigger. *See TRO* ¶ 414 (wholesale test does not count
3 facilities owned by a competitor unwilling to offer capacity on a whole basis).
4 Similarly, although some wholesale carriers also may self-provide facilities to
5 serve their own customers, others may not provide any end user service and thus
6 cannot be self-provisioners under the triggers. *See TRO* ¶ 406 & n.1256 (self-
7 provisioner must be operationally ready to provide transport; carrier must “remain
8 in operation” on the route). For example, an entity that operates only as a
9 “carrier’s carrier” does not qualify as a self-provisioner under the FCC’s triggers.

10

11 C. **WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND**
12 **TRANSPORT**

13 Q. **WHAT IS THE PURPOSE OF THE FCC’S WHOLESALE**
14 **TRIGGERS FOR HIGH CAPACITY LOOPS AND DEDICATED**
15 **TRANSPORT?**

16 A. The Wholesale Triggers provide Verizon an opportunity to demonstrate
17 that there is no impairment for a specific customer location or route by identifying
18 locations for which there are a sufficient number of alternative providers offering
19 wholesale loop and transport services using their own facilities. The underlying
20 premise of the Wholesale Triggers is that when a working wholesale market with
21 multiple alternative sources of supply exists for loops or transport, then CLECs
22 would not be reliant on receiving the element from Verizon as a UNE.

23

1 Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE
2 WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND
3 TRANSPORT?

4 A. Wholesale loops and transport at both the DS1 and DS3 level are subject
5 to the Wholesale Triggers. Although Dark Fiber loops are not subject to the
6 Trigger, Dark Fiber transport is subject to the Trigger.

7
8 Q. WHAT MUST VERIZON DEMONSTRATE TO SATISFY THE
9 WHOLESALE PROVISIONING TRIGGERS FOR HIGH
10 CAPACITY LOOPS?

11 A. Specifically, under the FCC's rules, this trigger requires evidence that:

- 12 • Two or more competing providers not affiliated with each other or
13 Verizon are present at the customer location;
- 14 • Each provider has deployed its own facilities and is operationally
15 ready to use those facilities to provide wholesale loops at that
16 location;
- 17 • Each provider is willing to provide wholesale loops on a widely
18 available basis at that location; and
- 19 • Each provider has access to the entire multiunit customer premises.
20 *See* 47 C.F.R. § 51.319(a)(5)(i)(B).

21

22 Q. WHAT MUST VERIZON DEMONSTRATE TO SATISFY THE
23 WHOLESALE PROVISIONING TRIGGERS FOR DEDICATED
24 TRANSPORT?

25 A. Specifically, the trigger requires evidence that:

- 1 • Two or more competing providers not affiliated with each other or
2 with Verizon are present on the route;
- 3 • Each provider has deployed its own transport facilities "and is
4 operationally ready to use those facilities to provide dedicated ...
5 transport along the particular route;"
- 6 • Each provider "is willing immediately to provide, on a widely
7 available basis," dedicated transport to other carriers on that route;
- 8 • Each provider's facilities terminate in a collocation arrangement at
9 each end of the transport route; and
- 10 • Requesting telecommunications carriers are able to obtain
11 reasonable and nondiscriminatory access to the competing
12 provider's facilities through a cross-connect to the competing
13 provider's collocation arrangement." 47 C.F.R. § 51.319(e)(1)(ii).

14

15 **Q. HOW DOES THE REQUIREMENT OF OPERATIONAL**
16 **READINESS APPLY TO THE WHOLESALE TRIGGERS?**

17 A. In addition to the requirements of the self-provisioning triggers, Verizon
18 must demonstrate that the wholesale provider is operationally ready and willing to
19 provide transport to other carriers at each capacity level. At a minimum, Verizon
20 must show that each wholesale carrier:

- 21 • Has sufficient systems, methods and procedures for pre-ordering,
22 ordering, provisioning, maintenance and repair, and billing;
- 23 • Possesses the ability immediately to provision wholesale high
24 capacity loops to each specific customer location identified or
25 dedicated transport along the identified route;
- 26 • For loops, has access to an entire multi-unit customer premises;
- 27 • Is capable of providing transport at a comparable level of capacity,
28 quality, and reliability as that provided by Verizon;
- 29 • For transport, is collocated in each central office at the end point of
30 each transport route;

- 1 • Has the ability to provide wholesale high capacity loops and
2 transport in reasonably foreseeable quantities, including having
3 reasonable quantities of additional, currently installed capacity;
4 and
- 5 • Reasonably can be expected to provide wholesale loop and
6 transport capacity on a going-forward basis.

7

8 **Q. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE**

9 **WHOLESALE FACILITIES TRIGGER?**

10 A. To be widely available, service must be made available on a common
11 carrier basis, for example, through a tariff or standard contract. The fact that a
12 carrier may have provided service to only one or a few other carriers on a route is
13 not sufficient, unless the carrier also is willing to provide comparable service to
14 other carriers. *See TRO ¶ 414* (trigger does not count competing carriers that are
15 not willing to offer capacity on their network on a wholesale basis). Moreover, an
16 offer to negotiate an individualized private carriage contract does not constitute
17 service being widely available. In addition, each carrier identified as a wholesale
18 provider must be able "immediately to provide" wholesale service. 47 C.F.R. §
19 51.319(e). If the carrier is required to construct facilities in order for the service
20 to be made available, then the service is not widely available. Similarly, a service
21 is not widely available if the carrier is unable to interconnect with its wholesale
22 customers because sufficient facilities have not been terminated in the relevant
23 central office or if insufficient collocation space is present to accommodate new
24 CLECs in the central office.

25

1 **Q. WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO**
2 **THE WHOLESALE PROVIDER?**

3 A. Requesting carriers must be able to access cross-connects at
4 nondiscriminatory rates, terms, and conditions in accordance with FCC and state
5 commission rules. In addition, Verizon must provide requesting carriers with
6 adequate cross-connect terminations at cost-based rates, and must enable
7 sufficient capacity expansion. If carriers are not able to cross connect at Verizon
8 central office, then they cannot obtain access to the wholesale providers'
9 facilities.

10

11 In short, for a competitive wholesale market to be in place, there must be proper
12 systems and processes for ordering and provisioning. In addition, carriers must be
13 able to obtain the service at nondiscriminatory rates and on nondiscriminatory
14 intervals.

15

16 **Q. DOES VERIZON PROVIDE ANY EVIDENCE ON THESE**
17 **POINTS?**

18 A. No. Verizon does not address whether the wholesale providers it
19 identifies are operationally ready to provide wholesale services. No evidence has
20 been introduced to show that these carriers have systems, methods and procedures
21 in place to order and provision wholesale service, nor has Verizon introduced any
22 evidence to show that the carrier has a reasonable amount of capacity to offer
23 wholesale facilities to other carriers. Similarly, Verizon does not address whether

1 a carrier's wholesale offerings are "widely available" or whether it has the
2 capability to "immediately provide" service if requested by a competitive carrier.
3 Finally, Verizon does not address the availability of cross-connects to access
4 wholesale providers or how a requesting carrier would be able to use a
5 competitive carrier's wholesale facilities in conjunction with Verizon UNEs.
6 Because Verizon carries the burden of proof to demonstrate satisfaction of the
7 triggers, its failure to produce evidence on these issues is fatal to Verizon's
8 challenge to the nationwide impairment findings.

9
10 **Q. HAS VERIZON PRESENTED SUFFICIENT EVIDENCE THAT**
11 **COMPETITIVE FACILITIES ARE AVAILABLE AT**
12 **WHOLESALE?**

13 A. No. A key element of this Commission's fact-finding function is to
14 properly identify the relevant wholesale providers of loops and transport, and to
15 ensure that the ILECs are not overly broad in their identification of wholesale
16 providers. Verizon has not presented route-specific evidence that any of the
17 wholesale providers offer service on the routes that it identifies. Although
18 Verizon presents route-specific evidence that CLEC-owned facilities exist on an
19 "A to Z" route, nowhere in its testimony does Verizon assert that a carrier, in fact,
20 provides wholesale transport on the route.¹ On the key question of whether the
21 identified facilities are made "readily available" on the route (*see* Triennial

¹ To be clear, Verizon's evidence concerning facilities deployment is flawed in its own respect, as explained above.

1 Review Order at ¶ 414 n.1279), Verizon is silent. It asks the Commission to infer
2 wholesale availability on all routes based on non-granular assertions that some
3 form of “wholesale” generally is offered. But this evidence, even if credited,
4 would not establish that wholesale service was offered on the particular routes in
5 question. Because Verizon has failed to connect its wholesale evidence with any
6 of the transport routes or customer locations challenged, its testimony on
7 wholesale availability is irrelevant.

8
9 In addition, the FCC triggers require that evidence of wholesale availability be
10 presented for each level of capacity. This, too, Verizon failed to present. As we
11 explained in the context of the self-provisioning triggers, it is not reasonable to
12 assume that all OCn facilities have the proper multiplexing equipment installed to
13 provide DS3 and DS1 services. This is particularly true with respect to wholesale
14 services, where carriers frequently offer only certain capacities at wholesale.

15

16 **III. TRANSITIONAL ISSUES**

17 **Q. IF A STATE COMMISSION FINDS THAT A TRIGGER IS**
18 **SATISFIED, WHAT HAPPENS NEXT?**

19 A. If the Commission finds that requesting carriers are not impaired without
20 access to unbundled transport and/or loops on any particular route or at any
21 customer location, then the Commission must establish an “appropriate period for
22 competitive LECs to transition from any unbundled [loops or transport] that the
23 state finds should no longer be unbundled.” *TRO* ¶¶ 339, 417.

1

2 **Q. WHAT ISSUES ARE INVOLVED IN ESTABLISHING AN**
3 **APPROPRIATE TRANSITION PERIOD?**

4 A. A transition period is required for two reasons. First, CLECs made
5 specific business decisions to serve or not serve customers in reliance on the
6 availability of UNE loops or UNE transport to the customer location or on the
7 relevant transport route. CLECs must be able to continue to offer service to these
8 customers after a finding of non-impairment. This consideration is essential
9 because services to enterprise customers are contract-based and generally do not
10 allow the provider to terminate or modify the contract due to sudden cost
11 increases. Without a transition period, CLECs and their customers would face
12 significant disruptions to their services if access to unbundled loops were
13 disconnected or migrated to higher priced services. A transition is needed to
14 prevent rate shock to customers receiving service using UNE arrangements.
15
16 Second, a CLEC cannot modify its network overnight. A litany of business
17 arrangements will have to be negotiated, modified and implemented if a state
18 commission determines that one of the triggers has been satisfied. For example, if
19 the Commission were to determine that the self-provisioning trigger were
20 satisfied, the entire base of customers served using that facility would have to be
21 migrated to alternative arrangements, perhaps (if self-provisioning is
22 demonstrated to be feasible on the route) through the deployment of its own
23 facility to replace the ILEC UNE. Deployment of fiber is a time-consuming

1 experience, and any transition period should build in sufficient time to enable the
2 CLEC to make use of the alternatives that underlie the finding of non-impairment.

3

4 **Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE**
5 **COMMISSION SHOULD CONSIDER?**

6 A. Yes. The Commission should ensure that Verizon maintains an adequate
7 process for ordering combinations of loops and transport, in situations where one
8 or both network elements of the combination have been delisted. In the *TRO*,
9 over ILEC objections, the FCC specifically stated that competing carriers are
10 permitted to continue to have access to combinations of loops and transport
11 regardless of whether one of the items has been delisted. *See TRO* ¶ 584.
12 Similarly, the Commission should ensure that Verizon has adequate billing
13 processes and procedures in place for CLECs to purchase delisted network
14 elements, whether individually or in combination.

15

16 **Q. HOW SHOULD TRANSITION ISSUES BE ADDRESSED?**

17 A. Establishing an appropriate transition period is a complex task. Ideally,
18 these issues should be addressed in a phase of this proceeding that immediately
19 follows a finding of non-impairment. If the Commission follows such a
20 procedure, Verizon should be prohibited from billing non-UNE special access
21 rates to CLECs while the Commission receives evidence on the elements
22 necessary to protect customers from rate shock and to enable CLECs to build
23 replacement facilities and/or to migrate to the network facilities of non-ILEC

1 providers. In the event an interim transition is desired, I recommend the
2 minimum components described below.

3

4 The Commission could develop a multi-tiered transition process similar to the
5 transition applicable in the mass-market switching context. It is essential that
6 there be a transition period during which CLECs may continue to order UNEs for
7 locations and routes where the Commission finds a trigger is met. This period
8 should be a minimum of nine months, and is necessary to enable a CLEC to
9 continue to offer competitive service to new customers while it pursues
10 alternatives. In addition, CLECs must have a transition period for existing
11 customers served by UNE arrangements where non-impairment subsequently is
12 found. A period of three years may serve as a useful model for this purpose. All
13 loop and transport UNEs made available during these transition periods should
14 continue to be made available at TELRIC rates until migrated.

15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes, it does.