State of Rhode Island and Providence Plantations

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Patrick C. Lynch, Attorney General

March 7, 2005

Luly Massaro
Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02889

Re: Docket 3662

Dear Ms. Massaro:

Enclosed please find an original and nine copies of a Summary of Comparison of Parties' Positions in the above matter. Kindly note that in formulating the Comparison, the Division has only reviewed Verizon's filing of February 18, 2005 and the filing of Conversent Communications of Rhode Island, LCC ("Conversent") dated March 2, 2005. The Division has not received Verizon's response to Conversent's letter dated March 2, 2005. Further, the Division is aware that CTC Communications Corp and Lightship Telecom, LLC objected to Verizon's Proposed Revisions to Tariff by letter dated March 4, 2005. However, due to lack of sufficient time between the date of their receipt and tomorrow's open meeting, the Division has not been able to incorporate either of these items into the Comparison. Should these comments or any additional comments materially alter the position of the agency, the Division reserves its right to amend the Comparison.

Respectfully submitted,
Division of Public Utilities and Carriers

Leo J. Wold
Special Assistant Attorney General

Enclosure

cc: Service List

RHODE ISLAND PUC DOCKET NO. 3662

In Re: Proposed Revisions to Verizon PUC RI Tariff No. 18, filed on February 18, 2005

SUMMARY COMPARISON OF PARTIES' POSITIONS

Issue Number	NAME OF PARTY		
	Conversent Communications	Verizon Communications	Division of Public Utilities
1	Verizon's proposed revisions usurp Section 252 of the Act[1] that requires CLECs and ILECs to negotiate terms and conditions for access to UNEs, then implement those terms through interconnection agreements. For example, the proposed revisions allow Verizon unilaterally to dictate, rather than negotiate with CLECs, the lists of its wire centers, routes, etc. where individual UNEs will be unbundled ("the lists") in accordance with specific requirements cited at Part 51 of Title 47 of the Code of Federal Regulations, § 51.319[2] At ¶ 253 (sic) of the TRRO, the FCC requires such negotiations.		Part 51 of Title 47 of the Code of Federal Regulations, §51.319 specifies, in detail, the conditions under which ILECs are required to offer unbundled network elements at their wire centers both during and after the expiration of the FCC-specified transition periods. Verizon's proposed revisions to Tariff No. 18 accurately reflect those detailed specifications. The Division notes that ¶ 233 of the TRRO requires both ILECs and CLECs to negotiate in good faith regarding rates, terms, and conditions necessary to implement the FCC's rule changes. In the Division's view, however, those negotiations do not involve any conclusion from the TRRO (or the FCC Rules that follow therefrom) that is unequivocal, such as the metrics that define the lists of individual wire centers required to offer unbundled network elements.
2	Verizon's proposed revisions violate State law and the Commission's own Rules in that the revisions are vague and fail to specify plainly the rates, charges, terms and		By accurately refering to the appropriate portions of Part 51 of Title 47 of the Code of Federal Regulations, §51.319, Verizon's proposed revisions to Tariff No. 18 are precise

[1] The Telecommunications Act of 1996.

[2] TRRO, Appendix B.

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	conditions of service. Specifically, the proposed revisions do not specify the lists of wire centers where UNE pricing is available.		in defining the rates, charges, terms and conditions under which services will be offered to CLECs on an unbundled basis. For example, with reference to IOF, at Part B, Section 2.1.1.E of its proposed revisions to Tariff No. 18, Verizon clearly refers to lists that it will compile and publish, and that meet the criteria specified at Part 51 of Title 47 of the Code of Federal Regulations, § 51.319 to define interoffice routes on which IOF service will be offered to CLECs on an unbundled basis. Verizon's proposed revisions do NOT, however, define the frequency at which the lists will be updated. The Division suggests that the initial lists become effective on the effective date of the proposed revisions to Tariff No. 18 but with the understanding that they are subject to review by the Parties. Objections, if any, should be filed with the Commission within 15 business days after the initial tariff effective date. The Commission should address objections in accord with its Rules. Thereafter, Verizon should publish the lists on a monthly basis with changes from the prior month, if any, highlighted and and accompanied with supporting documentation

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			for review by the Parties.
3	Verizon's proposed revisions violate Rhode Island Law and the Commission's own Rules by failing to explain and/or justify the methodologies to be used in developing the lists.		By accurately refering to the appropriate portions of Part 51, 47 C.F.R. § 51.319, Verizon's proposed revisions to Tariff No. 18 are precice in defining the rates, charges, terms and conditions (including the lists) under which services will be offered to CLECs on an unbundled basis. Also, see the Division's comments regarding preparation and maintenance of the lists as described in connection with Issue No. 2, above.
4	Verizon's proposed revisions violate Rhode Island Law and the Commission's own Rules by allowing Verizon to back-bill for the difference between the UNE rate and the rate that would otherwise be charged for use of an element if Verizon can show that it was not required to provide a UNE in a particular wire center. Verizon does not specify or explain how to calculate the alternative rate.		Verizon's proposal to charge an alternative rate in cases where a UNE rate had been erroneously charged to a CLEC due the CLECs failure to request UNE service in accord with applicable restrictions is reasonable and clear on its face. By way of example, if a CLEC mistakenly secures DS1 Interoffice Transport service at the UNE rate, then Verizon would adjust its charges retroactively to the CLEC to reflect the alternative – i.e., the retail tariffed rate for DS1 Interoffice Transport service.
5	Verizon's proposed revisions are inefficient in that they fail to include in the physical		Verizon's proposal to place the lists on its wholesale website is administratively efficient

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	tariff sheets the list of wire centers that would satisfy the non-impairment criteria. The revisions prevent the Commission from assessing the accuracy of the lists.		in that it does not require (e.g., for the Division and the Commission) periodic revisions of the physical tariff pages. Also, see the Division's comments regarding preparation and maintenance of the lists as described in connection with Issue No. 2, above.
6	The TRRO refers to only a "reasonably diligent inquiry" being required of a CLEC to determine if it is eligible to receive a UNE rate for a particular network element. By failing to require only a reasonably diligent inquiry, Verizon's proposal for the CLEC to conduct the more stringent "diligent inquiry" is inappropriately restrictive and highly burdensome for CLECs.		The difference between a mere "diligent inquiry" and a "reasonably diligent inquiry" is not clear in context. For example, the comment does not explain what may be covered by a "diligent inquiry" that is not covered by a "reasonably diligent inquiry." TRRO ¶ 234 clearly defines the relevant factual criteria to be examined for such an inquiry and, presumably, a factual determination of those criteria should qualify an examination as being both "diligent" and "reasonably diligent."
7	Part B § 2.1.1B.1 of Verizon's proposed revision excessively restricts a CLEC's right to obtain dedicated DS1 transport at an unbundled rate to only ten (10) DS1 circuits per interoffice route. Verizon's cap applies on every route where DS1 transport is available. However, according to ¶ 128 of the TRRO, the cap on DS1 circuits applies only		Part B § 2.1.1B.1 of Verizon's proposed revision accurately reflects the conclusions in the TRRO and it conforms accurately to the requirements of Part 51 of Title 47 of the Code of Federal Regulations, §51.319 (e)(2)(ii)(B) that states that a CLEC may obtain "a maximum of ten unbundled DS1dedicated transport circuits on each route where DS1

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	on routes where Verizon is not required to offer DS3 transport on an unbundled basis. The TRRO does not specify a DS1 cap on routes where DS3 unbundling is also required.		dedicated transport is available on an unbundled basis." Nowhere in Part 51, Title 47 of the Code of Federal Regulations, §51.319 does any exception or modification to this ten-circuit cap appear. Taken in context with the entirety of Part V, Section C(3) of the TRRO, Paragraph No. 128 is offered by the FCC only as partial explanation of its reasoning for selecting its ten-circuit cap applicable to unbundled dedicated DS1 interoffice transport. In fact, in opening the discussion of the DS1 circuit cap, Paragraph 126 of the TRRO clearly states that "[W]e find that requesting carriers are impaired without access to DS1-capacity transport <u>on all routes except those connecting two Tier 1 wire centers</u>." (Emphasis added)
8	Verizon's proposed revisions explicitly disavow any obligation to unbundle UNEs such as DS1, DS3, and dark fiber dedicated transport and DS1 and DS3 loops "to an extent beyond that required by [specifically listed FCC regulations] as in effect on or after March 11, 2005." Thus, under the proposed revisions, in the absence of the specified federal requirements, Verizon's unbundling		In the Division's view, it is unlikely that Verizon will prevail in its appeal for review. Pending the outcome of the review, however, unless the provisions of the TRRO are somehow stayed, those provisions remain in effect. Thus, it is unlikely that CLECs will be suddenly deprived of the resources that they need to continue competing with Verizon.

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	obligations would cease immediately. Verizon has sought review of the TRRO at the at the United States Court of Appeals for the D.C. Circuit and has requested the Court to vacate, enjoin, and set aside those portions of the TRRO that are unlawful. It is possible that the Court could find the unbundling rules embodied in the TRRO to be unlawful and, if so, would permit Verizon to cease providing high-capacity facilities immediately.		
9	As the result of possible consolidation in the telecommunications industry -- specifically, Verizon's acquisition of MCI and its affiliates – when it applies the FCC's new unbundling standards to Verizon, its should disregard MCI's and its affiliates' fiber collocation arrangements in defining its non-impairment triggers. Failure by the Commission do so would unfairly subject the CLECs to uncertainty that could result in irreversible losses of market share and revenue.		Unless and until the transaction between Verizon and MCI, including MCI's affiliates, closes, Verizon and MCI are separate corporations and should be treated as such in defining the non-impairment triggers. For purposes of classifying wire centers pending completion of the transaction, MCI and its affiliates would be counted just as they would have been if the transaction were not contemplated at all. Thus, the CLECs are not affected any differently with the potential for the transaction being known than they would have been affected if no knowledge of the transaction was available. According to the TRRO, when the transaction is completed and MCI's presence is not included in classifying

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			wire centers, the CLECs enjoy a benefit, because the TRRO wire center classification criteria would tend to reduce the number of wire centers that qualify for classification as "Tier 1," and thereby increasing the number of wire centers in which competition is deemed to be impaired without access to UNEs.