made it abundantly clear that CLECs are entitled to obtain facilities in any manner in which it is technically feasible and provide these efficiencies to the market. In contrast, Verizon's definition is designed to avoid its obligation to provide, as a transport UNE, any unused transmission medium that is installed. The Commission specifically found that the distinct aspect of dark fiber that qualifies it as a UNE is that it is "unused transport capacity"[4] and as such, it is "similar to the unused capacity of other network elements."[5]

Fiber is not the only type of "unused transport capacity" that is used in the provision of a telecommunications service, and the fact that the Commission did not expressly mention other types of unused transmission media, such as, for example, coaxial cable does not affect their status as unused capacity.[6] The transmission medium is not the governing factor. The relevant standard that the Act itself sets, as identified by the Commission and confirmed by the US Supreme Court, is whether Verizon has "unused transport capacity". If so, this capacity is defined as being part of the Local Transport UNE. To the extent, then, that Verizon has deployed fiber, coaxial cable or other transmission media in its network for purposes of providing "transport capacity," it should appropriately be included in the interconnection agreement.

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4 UNE Remand Order at ¶ 326.

5 *Id.* at 325.

6 Indeed, the Commission implicitly acknowledged that it could not enumerate all such methods of transport, when it modified its transport rules to "clarify that incumbent LEC[s] must unbundled DS1 through OC192 dedicated transport offerings *and such higher capacities as evolve over time...to ensure that the definition ... will apply to new, as well as current technologies.* *Id.* at ¶ 323.

Q. SHOULD VERIZON BE PERMITTED TO RESERVE CAPACITY FOR ITS OWN USE WHILE AT THE SAME TIME DENYING AT&T ACCESS TO CAPACITY BETWEEN THE SAME POINTS?

A. No. Verizon maintains that it does not reserve fiber for itself, but admits in the same breath that it dedicates some fibers as maintenance spares and reserves others for near-term customer service requirements, ***and for future growth***.[7] Those fibers, it declares, are off-limits to CLECs. This is patently discriminatory; Verizon reserves dark fiber for its future growth, but Verizon prohibits CLECs from doing precisely the same thing. Non-discrimination mandates that Verizon afford CLECs the same or equivalent opportunities to reserve fiber for maintenance spares, near-term customer service requirements, and for future growth.

The UNE Remand Order makes it clear that the technological ability to readily increase the capacity of dark fiber should eliminate any need for ILECs to reserve capacity to themselves. In dismissing ILEC claims that their inability to reserve unused transmission media would jeopardize their obligations as carrier of last resort, the Commission stated:

> We note here ... that GTE [Verizon] raises concerns that incumbents, because of their carrier-of-last-resort obligations, have a special need for fiber reserves. As we explain in greater detail

[7] Paragraph 11.2.11.3 of Verizon's suggested interconnection agreement language states that "Verizon may reserve dark fiber loops and dark fiber IOF for maintenance purposes, to satisfy customer orders for fiber related services, or for future growth." In the Massachusetts DTE Order on Pricing and Terms and Conditions for Dark Fiber (Docket 96-80/81), the Department agreed with AT&T that the three-year planning forecast (allocated for future growth) would give Verizon unreasonable discretion to limit the availability of dark fiber to CLECs. Therefore, it ordered that unless Verizon has received a specific order for fiber related service from a given customer, it may not reserve the use of a fiber strand for that customer and thereby limit its availability to CLECs. *Id. at* 20; *see also,* Verizon Answer and Response to Issues, filed May 31, 2001, at 106.

below, we find these concerns exaggerated, because the capacity of fiber can be increased many fold simply by increasing the power of the [Dense Wave Division Multiplexing] electronics that light it. *We find, therefore, that a shortage of fiber capacity caused by unbundling is highly unlikely.* In addition, GTE [Verizon] and the Telecommunications Industry Association argue that requiring incumbent LECs to unbundle fiber will reduce their incentive to build fiber loops in the first place. We remain skeptical that this is the case, because incumbents face loop unbundling obligations no matter which technology they deploy.[8]

Q. IF THE COMMISSION DECIDES THAT VERIZON MAY DENY REQUESTS FOR UNUSED TRANSMISSION MEDIA, SHOULD THE COMMISSION MAKE IT CLEAR THAT VERIZON MAY NOT REFUSE A REQUEST IF IT IS TECHNICALLY FEASIBLE TO UPGRADE THE ELECTRONICS?

A. Yes. If the only thing stopping Verizon from providing the unused transmission media to AT&T is the electronics, Verizon should be required to upgrade the electronics and render the unused transmission media usable for AT&T. Certainly, if Verizon needed that transmission media, Verizon would upgrade the electronics for itself. As a result, Verizon should be required to do so for AT&T as well. If the Commission permits Verizon to deny AT&T's requests for unused transmission media, the Commission should make it clear that Verizon may not refuse a request if it is technically feasible to upgrade the electronics and, thus, render the unused transmission media available.

Q. SHOULD VERIZON BE REQUIRED TO ADD SUFFICIENT UNUSED TRANSMISSION MEDIA TO MEET THE PROJECTED REQUIREMENTS OF AT&T WHEN VERIZON INSTALLS NEW TRANSMISSION FOR ITSELF?

A. Yes. From time to time, in building its network, Verizon installs transmission media for future uses and/or for administrative uses. Because Verizon builds to

[8] UNE Remand Order at ¶¶ 198-99.

meet its own forecasted needs for unused transmission media, Verizon should be required to do the same for AT&T. When Verizon installs such new transmission media or adds to existing transmission media, Verizon must add sufficient unused transmission media to meet the projected requirements of AT&T. AT&T will provide reasonable and timely forecasts to enable Verizon to install the amount of media needed.

Q. SHOULD VERIZON BE PERMITTED TO LIMIT ACCESS TO UNUSED TRANSMISSION MEDIA, (SUCH AS DARK FIBER), TO HARD TERMINATION POINTS?

A. No. Verizon contends that it is technically infeasible to provide access anywhere other than at such points. But again, even as it does, it acknowledges that it is technically feasible to obtain access at regenerator or amplifier equipment.[9] It makes the same inconsistent argument about access at splice points,[10] which it contends, on one hand are a technically infeasible point of interconnection and, on the other, are, if AT&T seeks such access there, really subloops. There is no basis for Verizon's restrictions, and AT&T should, consistent with the Act and the UNE Remand Order, be permitted access to dark fiber at any technically feasible point, as its proposed contract terms provide.

Moreover, even if, as Verizon apparently prefers, access to dark fiber loops at splice points is really more appropriately referred to as a method of subloop unbundling, AT&T is still entitled to that form of access. Thus, the

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[9] Verizon Answer and Response to Issues, filed May 31, 2001, at 108.

[10] *Id.* at 109.

semantic gamesmanship that Verizon engages in is not only unfounded, it does not support its position. Verizon's arguments in seeking to prevent AT&T from rightfully availing itself of dark fiber ultimately fail to provide sufficient reason for such denial of facilities.

Q. WHAT OTHER ASPECTS OF VERIZON'S PROPOSAL ARE PROBLEMATIC?

A. Verizon proposes to define the dark fiber that it will make available to CLECs in a manner that severely—and discriminatorily—limits its obligation. Specifically, Verizon maintains that the only unused loop or transport facilities that it will make available must be two continuous fiber optic strands located within a Verizon fiber optic cable sheath. Verizon maintains that fiber that is not continuous, or that must be spliced together, is not connected to Verizon's facilities and thus does not qualify as a UNE. Adding insult to this injury, it also maintains that while it can splice such fiber for itself, it not only has no obligation to do so for AT&T, it also will not permit AT&T, or qualified vendors, third party vendors, etc., to do so on its own behalf, for fear that that would "jeopardize service to thousands of "live" customers."

None of Verizon's contorted arguments have merit. Verizon does not explain – because it cannot – why Verizon should be entitled to access a fiber strand from Point A to Point B and another from Point B to Point C, and by splicing them together thus reach from A to C, while denying AT&T and other CLECs the same reasonable opportunity. Under Verizon's view, unless a particular uninterrupted strand of fiber matched precisely the route that AT&T

needed, Verizon would not need to provide it. Nor could AT&T obtain two contiguous, but discontinuous, strands and splice them together. This discrimination further establishes a perverse incentive for Verizon to *not* splice together fiber spans that it would otherwise have splice together during construction. For under Verizon's contorted view keeping the two strands unspliced somehow keeps then beyond a CLEC's reach.

Additionally, I object to Verizon's requirement that its obligation be limited to fibers within a fiber optic cable sheath that it owns. The Commission did not see fit to make sheath ownership a part of the definition of dark fiber. Moreover, Verizon easily could manipulate the title to sheath of the fiber optic cable to discriminate against CLECs. It is foreseeable that Verizon could transfer ownership of the fiber optic sheath to an affiliate (established pursuant to 47 U.S.C. § 272) in order to reserve to the affiliate large amounts of dark fiber and thereby avoid its dark fiber obligations. The issue of sheath ownership is simply a vehicle by which Verizon seeks to avoid providing CLECs with non-discriminatory access to dark fiber and it should not be included in the contract.

Q. HAS AT&T PROPOSED A REASONABLE PROCESS TO OBTAIN ACCESS TO DARK FIBER?

A. Yes. AT&T has proposed that it be provided reasonable access to Verizon's pole and conduit maps, records, or other records, including databases, that would contain the necessary dark fiber information, or that, within specific time periods for responses, AT&T could submit an inquiry to Verizon. The inquiry would set forth the end points where dark fiber is requested and would be required to be

responded to in a reasonable time frame, depending on the review necessary. The response would set forth the availability of dark fiber across the designated route and not simply the availability (or lack thereof) from point A to point B, (*e.g.* if fiber is available from A to within 100 feet of point B, that information should be conveyed to the CLEC as it would be to Verizon).

CLECs however, should not be saddled with a cumbersome process. Verizon should be obligated to provide us with either access to the same back end system, or access to an interface with the same information that Verizon provides to itself, (irrespective of whether the process is manual or electronic). For example, a CLEC may request dark fiber on a ring from a point at 12 0'clock to a point 9 o'clock and receive a negative response from Verizon that dark fiber is not available for that route. However, it might be the case that dark fiber is available from points 12 o'clock to 3 o'clock to 6 o'clock to 9 o'clock. Such preorder information on alternate routes or configurations should be available on a non-discriminatory basis.

Q. SHOULD VERIZON BE PERMITTED TO REQUIRE BURDENSOME FIELD SURVEYS FOR AT&T TO OBTAIN ACCESS TO DARK FIBER?

A. No. Verizon should not be permitted to require burdensome field surveys with no guarantee of facilities availability or quality.[11] Verizon certainly has records of its fiber plant locations. It should be required to share those records with AT&T

[11] Verizon maintains in its Answer (p. 111) that field surveys are not required to obtain access to dark fiber and that they are "merely a recommended option." However, Verizon does not explain how AT&T will obtain access to unused transmission media without a field survey. The Commission should insure that the process is documented and affirmatively does not require burdensome field surveys.

such that AT&T could determine the location of unused transmission media and obtain access without the need for a burdensome field survey. If, instead, AT&T is required to perform a field survey every time it wants to request unused transmission media, AT&T would be needlessly duplicating work already represented by Verizon's existing records.[12] Moreover, such a requirement would be inconsistent with the Act's obligation of non-discriminatory access and inconsistent with the FCC's determinations in the UNE Remand Order.

Q. IS VERIZON'S REQUIREMENT, THAT AT LEAST ONE END OF A DARK FIBER SPAN MUST BE LOCATED AT A COLLOCATION CAGE, REASONABLE?

A. No. The requirement of a collocation arrangement at a minimum of one end of the dark fiber is technically unnecessary and is otherwise unreasonable. It would competition from a practical point of view by imposing an unnecessary cost and delay on AT&T where AT&T has no other reason for a collocation arrangement. Such a requirement is anti-competitive because it forces CLECs unnecessarily to use valuable and limited collocation space in the central office that may foreclose an opportunity for another CLEC that actually needs the collocation space to operate. Moreover, Verizon already has recognized there is no need for such mandatory collocation as evidenced by its implementation of "virtual collocation", (by which Verizon splices a CLEC fiber cable to a Verizon fiber cable in the central office vault, central office manhole, or other nearby mid-span meet, to create fiber continuity into the central office without requiring a

[12] AT&T understands that, if it does not perform a field survey and relies solely on Verizon's fiber plant records, AT&T assumes the risk that unused transmission media shown on the records may not actually exist or may not actually be unused.

collocation cage in the central office). AT&T should be permitted to access unused transmission media at splice points.

Verizon asserted a substantially similar position about dark fiber termination in a collocation arrangement in a proceeding before the Massachusetts Department of Telecommunications and Energy. Its justification was that the collocation requirement was critical to Verizon's ability to repair and restore damaged fiber optic facilities within its network. The Massachusetts DTE disagreed, siding with AT&T, which asserted that there was no technical justification given the feasibility of connecting at existing splice points.[13]

Q. SHOULD VERIZON BE REQUIRED TO COMMIT TO REASONABLE INTERVALS FOR THE COMPLETION OF REQUESTED SURVEYS AND TO THE TURN-UP OF FIBER?

A. Yes. Verizon should be required to commit to reasonable intervals for the completion of surveys and turn-up of fiber, even if it receives more than 10 survey requests per LATA within a month. While it is reasonable to expect that Verizon should be afforded some provisioning flexibility in the face of multiple requests for access to dark fiber, it is unreasonable for it to seek to avoid any commitments at all—in advance—whenever as few as 10 requests within a LATA are filed in any one month.

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[13] *See* Order, *Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies*, Massachusetts Department of Telecommunications and Energy, Case No. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-N, December 13, 1999.

Moreover, Verizon should not be allowed to require a 30-day interval to turn up dark fiber once ordered by a CLEC. Once all necessary predicates for access to a fiber sheath are accomplished, imposing another 30-day period to turn up the requested fiber is unnecessary. Recognizing that there may be a few additional steps to be taken, AT&T would not object to a more reasonable interval (such as 20 days).

Q. DOES THIS COMPLETE YOUR TESTIMONY?

A. Yes.

I, E. Christopher Nurse hereby swear and affirm that the foregoing direct testimony was prepared by me or under my direct supervision or control and is true and accurate to the best of my knowledge and belief.

Signed: E. Christopher Nurse

Melissa K. Weaver
Witness

State : Virginia
County : Fairfax

I, Melissa K. Weaver do hereby swear and affirm that _____
E. Christopher Nurse appeared before me this 27th day of July, 2001.

Signed:

Melissa K. Weaver
Notary

Notary Qualification Expires: My Commission Expires 03/31/04

[Stamp or Seal]