Verizon Communications
1300 I Street NW, Suite 400W
Washington, DC 20005

December 4, 2001

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon-New England Inc. for Authorization To Provide In-Region, InterLATA Services in State of Rhode Island, Docket No. 01-324

Dear Ms. Salas:

At the request of the CCB staff, attached is Rhode Island PUC's Report and Order regarding UNE Remand. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 01-2746.

Sincerely,

Clint E. Odom

Attachment

cc: J. Veach
J. Stanley
G. Remondino

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: VERIZON-RHODE ISLAND'S TELRIC STUDIES-UNE REMAND : : DOCKET NO. 2681

REPORT AND ORDER

I. VERIZON'S INITIAL UNE REMAND RATES AND PROPOSED TARIFF REVISIONS

On September 29, 2000, Verizon-Rhode Island ("Verizon") filed with the Rhode Island Public Utilities Commission recurring and non-recurring cost studies for approximately 16 additional unbundled network elements ("UNEs") identified by the FCC that were not included in Verizon's original TELRIC cost studies filed on November 25, 1997. These new UNEs were identified by the FCC in its UNE Remand and Line Sharing Orders issued in 1999. On February 2, 2001, Verizon filed proposed revisions to R.I.P.U.C. Tariff No. 18 for the UNEs contained in its September 29, 2000 filing. In support of this tariff filing, Verizon submitted the pre-filed testimony of its witnesses, Frederick Miller, Susan Fox, Barbara Crawford, Margaret Detch, Richard Rousey, and Rosemarie Clayton.

Mr. Miller's testimony discussed the cost studies used for the new UNEs and explained that these cost studies had the same cost methodology as those submitted by Verizon on November 25, 1997. Ms. Fox's testimony discussed Verizon's Enhanced Extended Link ("EEL") offering. Ms. Crawford's testimony discussed Verizon's UNE-Platform ("UNE-P") offering. Ms. Detch's testimony discussed the terms and

conditions upon which Verizon will offer dark fiber to CLECs. Mr. Rousey's testimony discussed Verizon's USLA sub-loop offering. Ms. Clayton's testimony addressed Digital Subscriber Line ("DSL") and Line Sharing portions of the tariff offering.[1]

II. AT&T AND CONVERSENT'S OBJECTION TO TARIFF NO. 18 REVISIONS

On March 1, 2001, AT&T filed a motion requesting suspension of the proposed revisions to Tariff No. 18 filed by Verizon on February 2, 2001. AT&T stated that the tariff did not include service and installation intervals as in Verizon's comparable Massachusetts Tariff No. 17.[2] AT&T recommended that in Tariff No. 18 Verizon be required to provide access to device offering ("HARC/NID"), which is included in Massachusetts Tariff No. 17.[3] Also, AT&T discussed numerous problems with Verizon's EEL offering.[4] AT&T recommended that Verizon provide CLECs with the option to request the establishment of a single point of interface ("SPOI").[5] In addition, AT&T pointed out flaws with Verizon's offering of Collocation at Remote Terminal Equipment Enclosures ("CRTEE").[6] Also, AT&T requested that the Commission strike Verizon's tariff prohibition against accessing unbundled dedicated Interoffice ("IOF") transport from a mid-span meet facility.[7] AT&T argued that Verizon's DSL offerings

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[1] See Verizon's tariff filing of February 2, 2001.
[2] AT&T's Motion of March 1, 2001, p. 3.
[3] Id., pp. 3-5.
[4] Id., pp. 5-6.
[5] Id., pp. 5-6.
[6] Id., pp. 7-10.
[7] Id., pp. 10-11.

have discriminatory impacts.[8] Lastly, AT&T requested that the Commission reject Verizon's interconnection proposal contained in Part A, Section 1.7.12 of Tariff No. 18, known as the Geographically Relevant Interconnection Point ("GRIP") provision. Under GRIP, AT&T indicated, the CLEC would assume Verizon's responsibility and cost of transporting Verizon's customers' calls that are made to the CLEC's network and Verizon could require CLECs to interconnect at every rate center in which they offer numbers. AT&T stated the GRIP is anti-competitive and has been rejected in Massachusetts.[9] On March 8, 2001, Conversent Communications of Rhode Island, L.L.C. ("Conversent") also requested that Tariff No. 18 be suspended and sought rejection of the GRIP provision because it would shift Verizon's costs onto its competitors.[10] At open meetings on February 21, 2001 and March 7, 2001, the Commission granted AT&T's motion, in part, by suspending Tariff No. 18 and indicating it would consider the proposed GRIP provision in this Docket.

III. VERIZONS REVISED UNE REMAND RATES

On May 24, 2001, Verizon filed revised rates and charges for the UNEs originally filed on September 29, 2000 to reflect the Commission's decision of April 11, 2001 that reduced the UNE interim rates by 7.11 percent and made them final rates. In addition, Verizon corrected an

[8] Id., pp. 11-14.
[9] Id., pp. 14-18.
[10] Conversent's letter dated March 8, 2001.

error in the calculation of certain non-recurring costs associated with Line Sharing. The revised UNE rates and charges filed on May 24, 2001 reflected the Commission's earlier open meeting decisions in this Docket requiring Verizon to adopt a 9.5% cost of capital, a 36.5% reduction to non-recurring costs and a 30.8% reduction to loop-related costs and a 7.11% reduction to recurring and non-recurring costs.[11]

On July 18, 2001, the Division of Public Utilities and Carriers ("Division") recommended approval, without modification, of the rates and charges proposed in Verizon's Revised Supplemental/UNE Remand Filing dated May 24, 2001.[12] In response to Conversent's discovery, on July 24, 2001, Verizon acknowledged an error in the method used to calculate conduit structure investments. This resulted in a further cost reduction to the "per mile" Interoffice Dedicated Transport element.[13]

IV. CONVERSENT'S PRE-FILED TESTIMONY ON DARK FIBER

On July 30, 3001, Conversent filed pre-filed testimony by David A. Graham, its Senior Vice President for Engineering. Mr. Graham determined that there are many deficiencies in the manner in which Verizon was proposing to offer dark fiber. Mr. Graham emphasized that the FCC does not define dark fiber as a "continuous" fiber optic strand.[14] He recommended that Verizon be required to splice fiber segments

[11] See Verizon's Revised Supplemental/UNE-Remand Requirements Filing dated May 24, 2001.
[12] Division's letter dated July 18, 2001.
[13] Verizon's letter dated July 24, 2001.
[14] Mr. Graham's testimony, pp.4-6.

together in order to provide continuity between the locations requested by a CLEC. Essentially, Verizon will not provide unbundled dark fiber IOF to a requesting CLEC that runs through an intermediate central office where the CLEC is not collocated. Mr. Graham contended it is technically feasible for Verizon to provide and for CLECs to use dark fiber that runs through an intermediate central office and that Verizon does so in Massachusetts.[15]

In addition, Mr. Graham contended that, as with other UNEs, Verizon must offer dark fiber to CLECs that is of the same quality it provides to itself. However, he stated, Verizon did not provide the specific internal standard it was using to evaluate the transmission quality of dark fiber it provides to itself. Therefore, Mr. Graham urged the Commission to investigate Verizon's internal standard for dark fiber transmission quality so that a parity determination can be made.[16]

V. VERIZON'S REBUTTAL

In response to Conversent's testimony regarding dark fiber, on August 4, 2001, Verizon submitted rebuttal testimony by Margaret Detch. Ms. Detch stated that Conversent essentially wanted Verizon "to design and create continuous dark fiber spans between Conversent-specified offices for its use that do not currently exist in the network". Ms. Detch stated that while it may be "technically feasible to splice

[15] Id., pp. 6-7.
[16] Id., pp. 7-9.

together segments of fiber in order to provide continuity between locations requested by CLEC", Verizon has no legal obligation to do so under the Telecommunications Act of 1996 ("Act"). Ms. Detch noted that a recent order of the New York Public Service Commission held that Verizon's position on this issue was consistent with the FCC's UNE Remand Order and U.S. 8th Circuit decisions relating to the Iowa Utilities Board litigation.[17] Therefore, Ms. Detch concluded, if a CLEC desires to create a continuous fiber route that goes through one or more intermediate central offices, it must establish physical or virtual collocation in the various intermediate offices through which the CLEC desires to create the continuous dark fiber route.[18] Also, Ms. Detch stated that the transmission capabilities of dark fiber are not uniform and that the transmission quality of the dark fiber does not remain constant over time. Therefore, she contended, it is the CLECs' responsibility to determine if the transmission quality of the dark fiber is sufficient to meet the CLECs' needs and to upgrade or retrofit the dark fiber if necessary. A pre-acceptance field survey is available for CLECs to determine the transmission quality of specific dark fiber. In conclusion, Ms. Detch noted that "Verizon provides CLECs with dark fiber of a quality equal to that which it provides itself."[19]

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[17] Ms. Detch's rebuttal testimony dated August 4, 2001, pp. 1-4.
[18] Id., pp. 4-5.
[19] Id., pp. 5-7.

On October 5, 2001, Conversent and Verizon respectively withdrew the testimony of Mr. Graham and the rebuttal testimony of Ms. Detch because they had resolved their dispute regarding dark fiber.[20]

VI. VERIZON'S WITHDRAWL OF THE GRIP ROVISION AND COX'S PRE-FILED TESTIMONY ON THE GRIP PROVISION

On August 23, 2001, Verizon withdrew the GRIP provision contained in Part A, Section 1.7.12.A of Tariff No. 18 from consideration, without prejudice, due to a pending FCC rulemaking which includes issues relating to GRIP.[21] On August 23, 2001, Cox Rhode Island Telecom, L.L.C. ("Cox") requested that the Commission not allow Verizon to unilaterally withdraw its GRIP provision from consideration and instead decide the issue by rejecting the GRIP provision.[22]

On August 27, 2001, Cox submitted pre-filed testimony by Dr. Francis R. Collins. Dr. Collins stated that Verizon's proposed GRIP provision would clarify that the Interconnection Point ("IP") (at which reciprocal compensation charges are assessed) and the Point of Interconnection ("POI") (the physical interconnection point) do not have to be in the same location. This differentiation would enable Verizon to collect money for the transport of its own traffic and that of interconnecting companies from that point of interconnection to its end office and tandem office switches for incoming traffic, while also enabling

[20] Verizon's letter dated October 5, 2001.
[21] Verizon's letter dated August 23, 2001.
[22] Cox's letter dated August 23, 2001.

Verizon to avoid paying for transport for its outbound traffic for the link between the IP and the CLEC switch.[23] As a result, CLECs, such as Cox, which originate traffic directed toward the Verizon network, will be required to either deliver to, or pay for the delivery of its traffic to, Verizon's IPs regardless of the geographical relationship of the POI to the IP. At the same time, if the CLEC is the terminating carrier, it will be required either to carry the Verizon traffic from these IPs to the POI free of charge or purchase transport from Verizon for the costs of delivering the traffic which flows from Verizon's customers to the CLEC's customers.[24] In other words, the GRIP proposal would require Verizon's competitors to pay for both sides of traffic delivery and as a consequence, Verizon would pay an absolute minimum for the transport of its originating traffic while minimizing its costs for terminating the traffic of its competitors.[25] Dr. Collins argued that the GRIP provision would cause CLECs to incur unnecessary and additional costs for establishing additional IPs.[26] Dr. Collins noted that the Oregon and Massachusetts Commissions have rejected the GRIP provision and requested this Commission to do so as well.[27]

VII. COX'S MOTION REGARDING GRIP AND VERIZON'S OBJECTION

[23] Dr. Collins' testimony dated August 27, 2001, p. 2.
[24] Id.
[25] Id., p.3.
[26] Id., pp. 3-4.
[27] Id., pp. 6-7.

On October 1, 2001, Cox requested that Dr. Collins' testimony be admitted into evidence and that the Commission decide the issue of the GRIP provision in favor of Cox even though Verizon had unilaterally withdrawn the provision from consideration.[28]

On October 18, 2001, Verizon objected to the admission of Mr. Collin's testimony into evidence because Verizon had previously withdrawn the GRIP provision from consideration on August 23, 2001. In addition, Verizon did not believe the Commission should address the GRIP provision in this proceeding simply because of Cox's concern that Verizon might refile the same or similar GRIP provision in the future.[29]

VIII. THE DISCUSSION OF DARK FIBER IN DOCKET NO. 3363

Verizon, in its Declaration for Checklist Item 5 in Docket No. 3363 (Verizon's Section 271 checklist compliance proceeding in Rhode Island), indicated that it provides dark fiber to CLECs consistent with the requirements of the FCC in its UNE Remand Order and similar to those in effect in New York. Verizon also noted that the rates, terms and conditions for its dark fiber were pending before this Commission in Docket No. 2681.[30]

CTC Communications Corp. ("CTC"), in Docket No. 3363, noted that Verizon offers dark fiber to CLECs in Massachusetts upon

[28] Cox's Motion dated October 1, 2001, pp. 2-4.
[29] Verizon's Objection dated October 18, 2001, pp. 1-3.
[30] *See* Verizon's July 25, 2001 filing; Verizon's Checklist Declarations filed in Docket No. 3363, pp. 86-95.

significantly more favorable terms and conditions than in Rhode Island, in that: (1) Verizon will perform splicing at the CLEC's request on a time-and-materials basis in order to make a fiber strand continuous by joining fiber at existing splice points within the same sheath, and (2) Verizon will perform splicing to join dark fiber at existing splice points and provide intermediate cross-connection in intermediate wire centers.[31] CTC also indicated that in Massachusetts, while Verizon may reserve a quantity of fibers in a cable as maintenance spares, these spares are limited to a maximum of five percent of the fibers in a sheath with a minimum of two fibers reserved in a cable with 12 to 24 fibers and no more than 12 reserve fibers in larger fiber cables.[32]

In response, Verizon filed a Supplemental Checklist Declaration in Docket No. 3363 regarding CTC's dark fiber issues. Verizon stated it has no obligation under the FCC's UNE Remand Order to provide dark fiber in Rhode Island under the same terms and conditions as in Massachusetts. Verizon noted that the dark fiber offerings in Massachusetts and New Hampshire reflect the results of state arbitration decisions that were issued prior to the FCC's UNE Remand Order.[33] Also, Verizon noted that CTC has not ordered any dark fiber from Verizon in Rhode Island. Furthermore, Verizon argued it is not required to

[31] CTC's Declaration in Docket No. 3363, filed September 10, 2001, pp. 8-9.
[32] Id., pp. 9-10.
[33] Verizon's Supplemental Checklist Declaration in Docket No. 3363, filed October 5, 2001, pp. 23-24.

construct new transport facilities to accommodate specific CLEC point-to-point requirements for facilities that Verizon has not deployed for itself.[34] Lastly, Verizon noted, a CLEC has the opportunity to request a field survey of specific dark fiber prior to acceptance to determine transmission quality.[35]

At the Commission's October 10-11, 2001 hearings in Docket No. 3363, testimony was proffered by CTC on its dark fiber issues. Mr. Russell Oliver, CTC's vice-president, explained that the essential difference between the availability of dark fiber in Massachusetts and Rhode Island is that, in Massachusetts, Verizon will make the dark fiber continuous between intermediate offices.[36] Verizon acknowledged that Conversent had also raised this issue in Docket No. 2681, but withdrew it because Verizon had agreed to amend Conversent's interconnection agreement to allow Conversent to grandfather its existing dark fiber arrangements at UNE rates as of the time of any subsequent change of law.[37]

Ms. Detch testified on Verizon's behalf regarding CTC's dark fiber issues. Ms. Detch acknowledged that Verizon has continued to offer dark fiber through intermediate offices in Massachusetts since the FCC's UNE Remand Order.[38] Ms. Detch assumed that the number of central

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[34] Id., pp. 24-25.
[35] Id., pp. 25-26.
[36] Docket No. 3363, Tr. 10/10/01, p. 110.
[37] Id., pp.114-115.
[38] Id., p. 156.

offices in Rhode Island and the distances between these offices were less than in Massachusetts.[39] Ms. Detch also indicated that Verizon will not undertake to inform a CLEC of an indirect route to provide dark fiber between central offices if no direct route exists.[40] However, Ms. Detch conceded that, in Massachusetts, the burden is on Verizon to find a route for the dark fiber between the central offices desired by the CLEC.[41]

On behalf of the Division, Mr. Thomas Weiss testified that he supported CTC's position to require Verizon to splice the fiber at intermediate offices to create a continuous dark fiber between central offices.[42] Mr. Weiss stated that requiring a CLEC to collocate at each intermediate office through which the continuous dark fiber route would pass constitutes a competitive barrier. He concluded that Verizon should provide dark fiber in Rhode Island on the same basis as it does in Massachusetts.[43]

IX. CTC'S MOTION TO INTERVENE IN THIS DOCKET AND VERIZON'S OBJECTION

On November 5, 2001, CTC filed a motion to intervene late in this Docket and requested the Commission take administrative notice in this Docket of the evidence relating to dark fiber UNEs that was submitted in Verizon's Section 271 checklist compliance proceeding in Docket No.

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[39] Id., p. 159.
[40] Id., pp. 175, 177.
[41] Id., p. 190.
[42] Docket No. 3363, Tr. 10/11/01, pp. 12-13.
[43] Id., pp. 13-14.

3363. CTC noted that the issues it raised regarding dark fiber in Docket No. 3363 were similar to the issues raised by Conversent in this Docket. CTC noted it has approximately 1,300 customers in Rhode Island. Lastly, CTC contended that Verizon had submitted declarations, testimony and briefs regarding these dark fiber issues in both Docket No. 2681 and No. 3363, and would not be prejudiced by CTC's intervention in this Docket because Verizon had the opportunity to cross-examine CTC's witness regarding dark fiber in Docket No. 3363.[44]

On November 12, 2001, CTC filed its brief in this Docket on the dark fiber issues. CTC noted that Verizon does not provide intermediate cross-connections at intermediate central offices where a CLEC is not collocated or provision dark fiber transport where access would require splicing at existing splice points, although it is technically feasible for Verizon to do so, as shown in Massachusetts.[45] CTC requested that Verizon be required to revise Tariff No. 18 to provide for provisioning of dark fiber transport through intermediate offices and to splice dark fiber at existing splice points within the same sheath upon a CLEC's request on a time and materials basis.[46] CTC also noted that in Massachusetts, Verizon is limited in the amount of dark fiber it can reserve as maintenance spares.[47] CTC also pointed out that in New Hampshire,

[44] CTC's Motion dated November 5, 2001, pp. 2-3.
[45] CTC's Brief, pp. 3-5.
[46] Id., p. 5.
[47] Id., p. 9.

upon denying a CLEC request for dark fiber, Verizon must offer an alternative route with available dark fiber.[48]

CTC further argued that the FCC's UNE Remand Order gives a state Commission the authority to impose additional unbundling obligations upon ILECs beyond what is required by the FCC.[49] CTC noted that if, in ordering dark fiber provisioning through intermediate offices, the Massachusetts D.T.E. had exceeded its authority under the Act, Verizon would have challenged that state Commission's authority.[50] In addition, CTC emphasized that state Commissions have authority over intrastate telecommunications unless clearly preempted by Congress and therefore, this Commission has state law authority to order Verizon to provide dark fiber at any technically feasible point.[51]

On November 13, 2001, Verizon filed an objection to CTC's motion for late intervention on the grounds that CTC had unreasonably delayed seeking intervention in this Docket. Verizon also argued it would be unfairly harmed by CTC's intervention because Verizon had already resolved Conversent's dark fiber issues, but would now be required to readdress the same dark fiber issues revived by CTC.[52]

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[48] Id., pp. 11-12.
[49] Id., p. 15.
[50] Id., pp. 14-15.
[51] Id., pp. 16, 19.
[52] Verizon's Objection dated November 13, 2001, pp. 3-4.

COMMISSION FINDINGS

I. UNE RATES

At an open meeting held on November 15, 2001, the Commission found that the UNE rates and charges filed by Verizon on May 24, 2001 and revised by Verizon on July 24, 2001 were TELRIC compliant and consistent with the Commission's open meeting decision of April 11, 2001. Accordingly, the Commission approved these additional UNE rates and charges for effect February 1, 2002. As noted in previous TELRIC orders, at its April 11, 2001 open meeting, the Commission decided to make final the interim UNE rates with a downward adjustment of 7.11% to reflect merger savings. This decision was based on recommendations made by Verizon, the Division (the ratepayer advocacy branch of the Rhode Island Public Utilities Commission) and Cox, one of Verizon's prominent competitors in Rhode Island. Like the UNE rates approved on April 11, 2001, the additional UNE rates addressed in this Order are based on Verizon's cost studies filed in 1997. The Commission is aware that new technologies and methodologies have developed since 1997. As a result, although the Commission has approved the UNE rates based on these 1997 cost studies as TELRIC-compliant, in Commission Order No. 16793, we recently ordered new UNE cost studies to be filed not later than May 1, 2002. Accordingly, the Commission also directs Verizon to file new recurring and nonrecurring cost studies for the additional UNE's

addressed in this Order, utilizing the same parameters outlined in the Commission's previous TELRIC orders.[53]

II. GRIP PROVISION

The Commission is pleased that Verizon decided to voluntarily withdraw the controversial GRIP provision from Tariff No 18. AT&T, Conversent and Cox found the provision objectionable and anti-competitive. Furthermore, the Massachusetts D.T.E. has found Verizon's GRIP provision anti-competitive and rejected it.

With regard to Cox's motion that Dr. Collins' testimony regarding the GRIP provision be admitted into evidence and that the Commission decide the issue of the GRIP provision in favor of Cox, the Commission will admit Dr. Collins' testimony into evidence but will not rule on the GRIP provision at this time. As a quasi-judicial body, the Commission need only decide issues that are properly before it. If a party withdraws an issue from the Commission's consideration, the Commission will not attempt to decide the issue unless there is clear and overwhelming need to do so to further the public interest. When a party withdraws a provision from the Commission's consideration the issue becomes moot, and judicial economy dictates that the Commission refrain from deciding the issue.

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[53] *See* Commission Order No. 16615 (issued May 18, 2001), and Commission Order No. 16793 (issued November 18, 2001).

Notwithstanding the foregoing, the Commission is compelled to point out that if the GRIP provision were to be refiled, the Commission could well find the GRIP provision to be anti-competitive based on AT&T and Conversent's comments, as well as Dr. Collins' testimony. From the evidence filed with the Commission, it appears that the GRIP provision could cause CLECs to incur unnecessary and additional costs for establishing additional IPs that could constitute significant barriers to local competition.

III. DARK FIBER

A. PROCEDURAL BACKGROUND

At the outset, the Commission notes the unusual procedural route in which the dark fiber issues were raised in this docket. Conversent first raised concerns regarding dark fiber which were withdrawn after Verizon and Conversent reached an agreement on other issues of concern to Conversent. CTC raised similar dark fiber concerns in a parallel proceeding (Docket No. 3363) and intervened very late in this Docket. The Commission does not look kindly upon late motions to intervene. Tardiness in intervening can cause undue delay. Under normal circumstances, the Commission might well have denied CTC's motion. However, CTC's dark fiber issues were raised in the context of Verizon's Section 271 checklist compliance proceeding in Docket No. 3363. The Commission is very mindful that the FCC will review our actions in Docket No. 3363 to determine if the Commission gave CLECs

appropriate due process as well as appropriate consideration to CLECs' objections.

Accordingly, the Commission finds it would be inappropriate to reject consideration of CTC's arguments simply because they may have been raised in the wrong docket or because of the lateness of CTC's request to intervene in the proper docket. The Commission does not render justice when it allows mere technicalities to outweigh equity. As to the prejudice alleged to Verizon, the Commission is cognizant that Verizon reached a settlement with Conversent regarding the dark fiber issues raised by CTC.[54] However, Verizon must have been aware that these dark fiber issues would be resurrected by CTC because its declaration regarding dark fiber was filed on September 10, 2001, well before Verizon and Conversent reached their agreement on October 5, 2001. Under these circumstances, Verizon could have attempted to reach an agreement with CTC as well, or have failed to reach agreement with any of the parties.

Regarding Verizon's due process rights, in reaching this decision the Commission considered Ms. Detch's pre-filed dark fiber testimony in this Docket although it was withdrawn by Verizon. During the hearings in Docket No. 3363, Verizon had the opportunity to cross-examine CTC's witness and to present its own witness, Ms. Detch, on dark fiber issues.

[54] Indeed, the Commission commends Verizon for resolving its outstanding issues with Conversent. Verizon's initiative allows the Commission to use its time and resources more efficiently.

The Commission took administrative notice in this Docket of the evidence regarding dark fiber presented in Docket No. 3363. While Verizon might argue that further briefs should have been filed or further hearings should have been conducted, the Commission did not believe it appropriate to make a final determination regarding Verizon's Section 271 checklist compliance filing in Docket No. 3363 without having fully addressed CTC's dark fiber concerns. The Commission could have delayed its decision in Docket No. 3363 in order to more fully litigate the dark fiber issues raised in this Docket. However, throughout the course of Docket No. 3363, Verizon has urged the Commission to speedily review and make its determination regarding Verizon–Rhode Island's compliance with the Section 271 checklist items, so that Verizon can file with the FCC for approval to enter the interLATA long distance market in Rhode Island. Consequently, the Commission has rendered a decision on CTC's dark fiber issues in this Docket so as not to unduly delay our consideration of Verizon's Section 271 checklist compliance filing in Docket No. 3363.

B. ANALYSIS

As to the substantive merits of CTC's dark fiber concerns, the Commission concurs with CTC that Verizon should be required to splice dark fiber at any technically feasible point so as to make dark fiber continuous through one or more intermediate central offices without requiring a CLEC to be collocated at any such intermediate offices. At

the outset, the Commission notes that nowhere in the FCC's UNE Remand Order are state Commissions prohibited from imposing additional unbundling obligations upon CLECs. To the contrary, the FCC has made it explicitly clear that state Commissions under Section 251 (d)(3) of the Act have the authority to impose additional unbundling obligations. For instance, the Massachusetts D.T.E. has used its authority under the Act to impose additional obligations on Verizon regarding the splicing of dark fiber, so as to require Verizon to provision dark fiber through intermediate offices in Massachusetts.

Verizon argues that the FCC's UNE Remand Order prohibits this Commission from requiring Verizon to splice dark fiber so as to make dark fiber continuous through one or more intermediate central offices without requiring a CLEC to be collocated at any such intermediate offices. The Commission notes, however, that since the issuance of the FCC's UNE Remand Order in 1999, Verizon has continued the practice of splicing dark fiber at the request of CLECs in Massachusetts. Actions speak louder than words. If Verizon truly believed that, in light of the UNE Remand Order, the Massachusetts D.T.E. had exceeded its legal authority in ordering the splicing of dark fiber, Verizon presumably would have challenged the legality of the requirement imposed by the Massachusetts D.T.E. As this is clearly not the case, this Commission therefore presumes that it is not prohibited by any FCC order from

requiring Verizon to offer a product or service to CLECs in Rhode Island that Verizon is similarly offering to CLECs in another Verizon state.

It is apparent that the Commission has the legal authority under the Act to impose on Verizon the dark fiber obligation it currently accepts in Massachusetts. In addition, the Commission has ample authority under state law to impose these dark fiber obligations upon Verizon in Rhode Island.

Although the Commission has the legal authority to require Verizon to provision dark fiber through intermediate offices, the Commission must decide whether this requirement is reasonable as a matter of policy. In making this determination, this Commission will first look to see if any other states in Verizon's service territory have adopted the policy in question. In this instance, both the Massachusetts and New Hampshire Commissions have adopted this policy. The Massachusetts D.T.E. is a large state Commission with a great deal of expertise and resources, and it is the Massachusetts D.T.E.'s review of Verizon's Section 271 checklist compliance in Massachusetts upon which this Commission is indirectly relying to make its evaluation of Verizon's Section 271 checklist compliance in Rhode Island.

Secondly, the Commission will weigh the benefits of a proposed policy for the CLECs against the burden placed upon Verizon. The Commission notes that CTC has not ordered dark fiber from Verizon in Rhode Island, and therefore, the Commission could have determined that

CTC's argument was primarily theoretical. Since Conversent also raised similar dark fiber concerns earlier in this proceeding, however, it is clear that CTC's recommendation could benefit CLECs actually competing in Rhode Island. On the one hand, the policy may somewhat burden Verizon with additional administrative time that may be required to splice dark fiber and find alternate routes through intermediate offices. On the other hand, we find that this policy will significantly benefit CLECs by lowering the costs to establish their networks by reducing the number of central offices at which CLECs must collocate. Moreover, we anticipate that this policy will be less burdensome for Verizon to administer in Rhode Island than in Massachusetts, because there are fewer central offices in this state. We also note that Verizon can avoid splicing dark fiber by offering an alternative route where dark fiber is available, as Verizon does in New Hampshire.

Lastly, since Verizon is the entity most familiar with its own network configuration, the Commission finds it appropriate to assign to Verizon the responsibility of identifying dark fiber routes between the central offices requested by a CLEC. Accordingly, upon a CLEC's request, Verizon is required to splice dark fiber at any technically feasible point on a time and materials basis, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC is to be collocated at any of such offices. At an open meeting held on November 15, 2001, the Commission found that, with the

foregoing modifications, Verizon's Tariff No. 18 was in the best interest of the ratepayers and approved the same.

Accordingly, it is

(16808) ORDERED:

1. The unbundled network element rates filed by Verizon on May 24, 2001 and revised by Verizon on July 24, 2001 are hereby approved for effect February 1, 2002.
2. Cox Communication's motion for the Commission to decide the issue of the GRIP provision which was withdrawn from Tariff No. 18 is hereby denied.
3. CTC Corporation's motion to intervene late in this Docket and for the Commission to take administrative notice in this Docket of the dark fiber evidence presented in Docket No. 3363 is hereby granted, provided that CTC Corporation shall be bound by all prior agreements reached and orders entered in this Docket.
4. Upon a CLEC's request, Verizon is required to splice dark fiber at any technically feasible point on a time and materials basis, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC to be collocated at any of such offices.
5. As modified in accordance with Ordering Paragraph 4 hereof, Verizon's proposed Tariff No. 18 is hereby approved.

6. Verizon shall act in accordance with all other findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSAUNT TO AN OPEN MEETING DECISION ON NOVEMBER 15, 2001. WRITTEN ORDER ISSUED DECEMBER 3, 2001.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner