

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FAX (202) 424-7643
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 973-0111 FAX (212) 891-9598

January 14, 2002

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington., DC 20554

Please deliver to:
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

**Re: Comments of Consolidated Edison Communications and CTC
Communications Corp., Re: Application of Verizon New Jersey, Inc., et al.,
for Authorization to Provide In-Region, InterLATA Services in New Jersey
CC Docket No. 01-347**

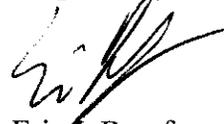
RECEIVED
JAN 14 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

On behalf of Consolidated Edison Communications, Inc., and CTC Communications Corp., and pursuant to the Commission's Public Notice issued in the above-referenced docket, transmitted herewith are an original and four copies of the companies' comments regarding the application of Verizon New Jersey, Inc., et al., to provide in-region interLATA services in New Jersey.

Please date stamp and return the enclosed extra copy of this filing. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Eric J. Branfman
Edward W. Kirsch

Counsel for Consolidated Edison
Communications, Inc., and
CTC Communications Corp.

Enclosures

No. of Copies rec'd 014
List ABOVE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application of Verizon New Jersey, Inc.,)
et al., For Authorization To Provide)
In-Region, InterLATA Services)
in New Jersey)

CC Docket No. 01-347

COMMENTS OF
CONSOLIDATED EDISON COMMUNICATIONS, INC., AND
CTC COMMUNICATIONS CORP.

Pamela Hintz
Director of Regulatory & Tariff Compliance
CTC Communications Corp
360 Second Avenue
Waltham, Massachusetts 02451
(781) 466-1242 (Telephone)
(781) 466-1306 (Facsimile)

David W. Robinson
General Counsel
Consolidated Edison Communications, Inc.
132 West 31st Street
13th Floor
New York, NY 10001
(212) 324-5010 (Telephone)

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Dated: January 14, 2002

TABLE OF CONTENTS

SUMMARY ii

I. VERIZON’S DARK FIBER POLICIES DO NOT COMPLY WITH APPLICABLE
LAW 2

A. Contrary to the Plain Meaning of the Act and Checklist Items 2, 4, and 5, Verizon
Does Not Provide Dark Fiber at Any Technically Feasible Point 2

B. Verizon’s Dark Fiber Terms and Conditions Are Unreasonable When Compared
to the Terms It Offers In Massachusetts and New Hampshire 4

1. Verizon Splices Dark Fiber for CLECs in Massachusetts and New Hampshire
But Has Refused to Splice in New Jersey..... 5

2. Verizon’s Policies Regarding Routing of Dark Fiber Through Intermediate
Offices Violate the Act and Have Been More Restrictive in New Jersey Than in
Massachusetts or New Hampshire 6

3. Verizon’s Refusal to Include in Its Inventory Dark Fiber That is Not Currently
Terminated at Both Ends Results in a Gross Understatement of the Amount of
Dark Fiber Available to CLECs in New Jersey..... 8

4. Verizon’s Policies Regarding Reservation of Dark Fiber Result in Lower
Availability of Dark Fiber in New Jersey Than in Massachusetts..... 8

5. Except For Minor Items, Verizon Does Not Repair Dark Fiber
For CLECs 11

6. Verizon’s Responses to a CLEC Inquiry Regarding the Availability of Dark
Fiber are Deficient as Compared to Its Practices in New Hampshire..... 10

II. UNTIL VERIZON EVIDENCES INTENT TO COMPLY WITH THE NEW JERSEY
UNE ORDER, IT IS NOT IN COMPLIANCE WITH SECTION 271
REQUIREMENTS 13

III. CONCLUSION..... 15

SUMMARY

Verizon would have this Commission conduct only a cursory review of its dark fiber offering. Verizon claims that its dark fiber offering is the same as what it offers in other states and that this Commission has previously found this product offering to be compliant with Section 271 requirements. Verizon's representations are inaccurate on both points. Its dark fiber offering in New Jersey is significantly inferior to what it offers in other states in its region such as Massachusetts and New Hampshire. In addition, the Commission has not approved this deficient product offering in its orders granting Verizon Section 271 authority. In New York, the Commission did not require Verizon to show compliance in regard to the new unbundled network elements, including dark fiber, that it designated in its *UNE Remand Order*.¹ In Massachusetts, as CEC/CTC shall demonstrate, Verizon's dark fiber offering is far superior to what it is offering in New Jersey. In Pennsylvania, the Commission declined to address the particulars of Verizon's dark fiber offering because the Pennsylvania Public Utilities Commission was addressing those issues in a pending arbitration.² In Connecticut, there was negligible demand for interoffice facilities given Verizon's limited presence in the state so the Commission did not conduct an extensive analysis on dark fiber.³

Thus, there is no basis for truncated review of Verizon's dark fiber offering. In fact, the New Jersey Board of Public Utilities had to issue an order in a separate docket requiring Verizon to make significant improvements to its dark fiber offerings to bring it even close to being in conformance to what it offers in other states, such as Massachusetts and New Hampshire, and the

¹ *BANY 271 Order* at ¶ 31, n. 70.

² *Verizon PA 271 Order*, at ¶ 113.

³ *Verizon CT 271 Order*, at ¶¶ 65.

requirements of Checklist Items 2, 4 and 5. This Commission should require that Verizon evidence an unequivocal intent to abide by the terms of that New Jersey order before finding its dark fiber offering to be in compliance with Checklist Items 2, 4, and 5. Without such a representation on the part of Verizon, Verizon cannot be found to be in compliance with these checklist items.

Moreover, contrary to the unambiguous language of Section 251(c)(3),⁴ Verizon has refused to provide dark fiber at “any technically feasible point” in New Jersey. Specifically, Verizon has steadfastly refused to provision dark fiber transport through intermediate offices and in situations where access would require splicing at existing splice points, despite the fact that it has not demonstrated that such access is not technically feasible. In fact, Verizon cannot demonstrate that such access is technically infeasible because it currently provides such access in Massachusetts and New Hampshire. As CEC/CTC demonstrate in these Comments, as a result of Verizon’s policies, continuous dark fiber routes are often unavailable in New Jersey and other Verizon operating territories where similar unlawful policies are in place. Verizon should be required to demonstrate, as a condition of approval of this Application, that it will accede to the requirements ordered by the New Jersey Board of Public Utilities, and implement changes to its dark fiber practices – including its practices regarding splicing.

⁴ 47 U.S.C. § 251(c)(3).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Application of Verizon New Jersey, Inc.,) CC Docket No. 01-347
et al., For Authorization To Provide)
In-Region, InterLATA Services)
in New Jersey)

**COMMENTS OF
CONSOLIDATED EDISON COMMUNICATIONS, INC., AND
CTC COMMUNICATIONS CORP.**

Consolidated Edison Communications, Inc. (“CEC”), and CTC Communications Corp. (“CTC”) (collectively, “CEC/CTC”) submit these comments concerning the above-captioned Application by Verizon New Jersey, Inc., *et al.*, (collectively, “Verizon” or “Applicants”) for Provision of In-Region, InterLATA Services in New Jersey filed on December 20, 2001 (“Application”).⁵ For the reasons stated herein, the Federal Communications Commission (“Commission”) should condition its approval of the Application based on Verizon’s demonstration that it will comply with the requirements of Competitive Checklist Items 2, 4, and 5 as set forth in this petition.

CEC is a reseller and facilities-based provider of local and long distance services, dedicated access, and other services to customers in New Jersey. CTC currently provides resold services in New Jersey, and is certificated to provide facilities-based services in the state. It is currently deploying its network throughout New Jersey.

⁵ Comments Requested on the Application by Verizon for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New Jersey, Public Notice, CC Docket No. 01-347, DA 01-2994 (rel. December 20, 2001).

I. VERIZON'S DARK FIBER POLICIES DO NOT COMPLY WITH APPLICABLE LAW

A. Contrary to the Plain Meaning of the Act and Checklist Items 2, 4, and 5, Verizon Does Not Provide Dark Fiber at Any Technically Feasible Point

Section 271(c)(2)(B)(ii) of the Communications Act of 1934 ("Act") requires an RBOC seeking in-region interLATA authority to offer "nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1)."⁶ Section 251(c)(3), in turn, requires incumbent LECs "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁷ As demonstrated more fully below, Verizon does not provide access to dark fiber network elements in New Jersey, and several other states, at "any technically feasible point" and on "reasonable" terms as required by Section 251(c)(3) and Checklist Items 2, 4 and 5.

In its checklist affidavit, Verizon claims that it has made dark fiber available in accordance with the FCC's *UNE Remand Order*, and that thirteen (13) dark fiber circuits have already been provisioned during the period January through October 2001.⁸ These claims cannot, however, be taken at face value. In the Section 271 proceeding before the Rhode Island Public Utilities Commission ("PUC"), CTC provided compelling evidence that demonstrates that Verizon's affiliate there, Verizon New England, Inc., d/b/a Verizon Rhode Island ("Verizon RI"), is not making dark fiber facilities available in Rhode Island consistent with its obligations under

⁶ 47 U.S.C. § 271(c)(2)(B)(ii) ("Checklist Item 2").

⁷ 47 U.S.C. § 251(c)(3) (emphasis added).

⁸ Verizon Application, Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at ¶¶ 199, 205 ("Lacouture/Ruesterholz Declaration.").

the Act.⁹ The relevance of this evidence to the present matter is that Verizon RI's counsel has asserted that its dark fiber policies in Rhode Island are "substantially similar" to those in all other states, including New Jersey, except for Massachusetts and New Hampshire.¹⁰ Additionally, the dark fiber terms and conditions that Verizon has offered to CTC for its interconnection agreement in New Jersey are identical to those Verizon RI has offered to CTC for Rhode Island.¹¹ Verizon's dark fiber practices and policies in New Jersey are substantially similar to those of Verizon RI. Accordingly, the evidence that CTC presented in Rhode Island that indicates that Verizon RI's dark fiber policies and practices do not comport with its Section 271 obligations, serves to demonstrate in New Jersey that Verizon is not in compliance with its Section 271 obligations regarding dark fiber.

Contrary to the unambiguous language of Section 251(c)(3), Verizon has refused to provide dark fiber at "any technically feasible point" in New Jersey. Specifically, Verizon has steadfastly refused to provision dark fiber transport through intermediate offices and in situations where access would require splicing at existing splice points, despite the fact that it has not demonstrated that such access is not technically feasible.¹² Rather, in these situations Verizon's response to a CLEC inquiry has been that no facilities are available. In fact, Verizon cannot

⁹ Rhode Island Public Utilities Commission, Docket Nos. 3363 and 2681. R.I. PUC Docket No. 3363 is a Section 271 proceeding. R.I. Docket No. 2681 addresses, *inter alia*, the TELRIC pricing of unbundled network elements provided by Verizon in Rhode Island.

¹⁰ Transcript, Oct. 10, 2001, in Rhode Island PUC Verizon Section 271 proceeding, Docket No. 3366 (hereinafter "Tr."), at 112:14-113:7 (Verizon counsel stated that: "The dark fiber offering that we're making available here in Rhode Island is substantially similar to the offering that we have in every state except for Massachusetts and New Hampshire."); 134:10-24. Cited pages from the Rhode Island proceeding are attached as Attachment A to the hard copies of this submission.

¹¹ The dark fiber terms and conditions offered to CTC by Verizon for Rhode Island and New Jersey are the same and are attached herein as Attachment B ("Verizon's Proposed Interconnection Agreement").

¹² Tr., Oct. 10, 2001, at 112:14-18; 124-126; 127:1-14; 129:9-15; 155:5-12; 194:18-21 (Ms. Detch: "Verizon will not splice dark fiber.").

demonstrate that such access to dark fiber is not technically feasible because it presently provides access to dark fiber at intermediate offices and performs splicing at existing splice points upon a CLEC's request in Massachusetts and New Hampshire.¹³

Further, Verizon's terms, conditions and practices in New Jersey regarding its reservation of fiber for maintenance purposes and future growth, repair of dark fiber, and its response to CLEC inquiries regarding dark fiber are unreasonable, and therefore violate the Act, because as a practical matter, they provide Verizon with unlimited discretion to severely limit the quantity of dark fiber and routes that are deemed by Verizon to be available to CLECs. The unreasonableness of Verizon's terms, conditions and practices regarding dark fiber in New Jersey is especially evident when these terms, conditions and practices are contrasted with the far more reasonable terms, conditions and practices that Verizon has already implemented in nearby Massachusetts and New Hampshire as shown below.

B. Verizon's Dark Fiber Terms and Conditions are Unreasonable When Compared to the Terms it Offers in Massachusetts and New Hampshire

Verizon claims in its application that it "provides access to each of the individual unbundled network elements specified by the FCC's Rule 319 in essentially the same manner as in the other Verizon states the FCC found to be checklist-compliant."¹⁴ Specifically, Verizon contends that it provides unbundled local loops, including high capacity loops, and local transport using substantially the same processes and procedures in New Jersey that it uses in its 271-approved States.¹⁵ Notwithstanding these facile assertions, Verizon admitted before the Rhode Island Public Utilities Commission ("RI Commission") that it offers CLECs significantly

¹³ Tr., Oct. 10, 2001, at 110:10-24; 127:1-14; 129:9-15; 155:5-12.

¹⁴ Lacouture/Reusterholz Declaration at ¶ 70.

¹⁵ Verizon Application, p. 30.

more favorable terms and conditions regarding the dark fiber unbundled network element in Massachusetts (and in New Hampshire) than it offers to CLECs in Rhode Island and New Jersey.¹⁶ Moreover, Verizon has steadfastly refused to provide CLECs operating in Rhode Island with the same reasonable dark fiber terms that are available in Massachusetts and New Hampshire.¹⁷ As mentioned above, Verizon's policies in Rhode Island are substantially similar to those in New Jersey, and are therefore germane to this proceeding.

1. Verizon Splices Dark Fiber for CLECs in Massachusetts and New Hampshire But Has Refused to Splice in New Jersey

In Massachusetts, Verizon MA will perform splicing at the CLEC's request on a time-and-materials basis in order to make a fiber strand "continuous by joining fibers at existing splice points within the same sheath" to facilitate, *inter alia*, routing of fiber through intermediate offices.¹⁸ Also, in New Hampshire Verizon will perform splicing at the CLEC's request on a time-and-materials basis "at existing termination points."¹⁹ As a result, more dark fiber routes are potentially available to CLECs in Massachusetts and New Hampshire, including routes through intermediate offices, than are likely to be available in New Jersey. In sharp contrast to the terms it offers in Massachusetts and New Hampshire, in New Jersey, Verizon refuses to "open existing splice points" and perform splicing upon a CLECs request in order to make dark

¹⁶ Tr., Oct. 10, 2001, at 112:14-18; 124-126; 127:1-14; 129:9-15; 155:5-12; 194:18-21.

¹⁷ Tr., Oct. 10, 2001, at 112:14-18; 116:4-10.

¹⁸ Verizon New England, Inc., Rates and Charges Effective in the Commonwealth of Massachusetts, DTE MA Tariff No. 17, Miscellaneous Network Services, Part B, § 17.1.1.A.1 ("Mass. DTE No. 17"); Verizon MA's Unbundled Dark Fiber Service Description, Aug. 31, 2000, at ¶ 1.1 ("Mass. Service Description"). The Massachusetts Service Description was submitted as required by the DTE in *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts*, Decision P.U./D.T.E. 96-83, 96-94-Phase 4-N (Mass. DTE Dec. 13, 1999).

¹⁹ *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 9 (May 19, 1998) ("N.H. Dark Fiber Order"); Section 5.16 of the New Hampshire SGAT.

fiber available for unbundling.²⁰ Verizon's policy regarding splicing of dark fiber in New Jersey is inconsistent with the plain language of Section 251(c)(3) of the Act and Checklist Items 2, 4, and 5, which require Verizon to provide dark fiber at "any technically feasible point."²¹ As a result of Verizon's policies, continuous dark fiber routes are often unavailable in New Jersey and other Verizon operating territories.²² Verizon must satisfy its checklist obligations under the Act by allowing the splicing of dark fiber before its Application can be approved.

2. Verizon's Policies Regarding Routing of Dark Fiber Through Intermediate Offices Violate the Act and Have Been More Restrictive in New Jersey Than in Massachusetts Or New Hampshire

Verizon's current policies in New Jersey regarding the routing of dark fiber through intermediate offices, and the availability of dark fiber to CLECs render dark fiber less available to CLECs in New Jersey than in Massachusetts and New Hampshire.²³ For example, in New Jersey, Verizon provides dark fiber transport only where at least one end of the dark fiber transport terminates at a Verizon accessible terminal in a Verizon central office that can be cross-connected to the CLEC's collocation arrangement. Further, in New Jersey, dark fiber is only "offered on a route-direct basis" (*i.e.*, no intermediate offices). Indeed, on December 17, 2001, the New Jersey Board issued a Summary Order directing Verizon to permit CLECs to route dark fiber through intermediary central offices in order to cure this shortcoming.²⁴ In Massachusetts

²⁰ Tr., Oct. 10, 2001, at 112:14-18; 116:4-10; 194:7-21 ("Verizon will not splice dark fiber . . .")

²¹ 47 U.S.C. § 251(c)(3).

²² On September 5, 2001, for example, CTC received notice from Verizon that there were "no fibers" available between Verizon's Burlington, Vermont Central Office (CLLI BURLVTMA) and CTC's office at Williston, Vermont (CLLI WLSTVT07); Tr., Oct. 10, 2001, at 121-122 ("access to each Verizon central office via dark fiber ubiquitously is only provided by Verizon").

²³ Tr., Oct. 10, 2001, at 112:14-18; 116:4-10; 110:9-24 ("the major differences are in the access to the interoffice facilities that we were able to get in Massachusetts as well as the ability to have Verizon make splices").

²⁴ *NJ UNE Order*, p. 11.

by contrast, a CLEC may access dark fiber, including dark fiber transport, at hard termination points (e.g., fiber distribution frames), or for collocation arrangements, at the fiber tie augment on the POT bay, and, significantly, “at existing splice points.”²⁵ Most important, Verizon will perform splicing to join fibers at existing splice points in Massachusetts.²⁶

Further, in Massachusetts and New Hampshire, Verizon will provide intermediate cross connections in intermediate wire centers²⁷ so that CLECs can obtain dark fiber at intermediate offices without collocating in the intermediate office. However, at present, Verizon will not provide such cross connects at intermediate wire centers in New Jersey, although it has recently been directed by the New Jersey Board to do so.²⁸ As a result, dark fiber is potentially more widely available to CLECs in Massachusetts and New Hampshire than it is in New Jersey.²⁹

Verizon’s restrictive policies in New Jersey regarding routing of dark fiber through intermediate offices where a CLEC does not have a collocation arrangement and cross connects at intermediate wire centers are unreasonable and violate the mandate of the Act to provide access to UNEs at any technically feasible point. Although the New Jersey Board has directed Verizon to cure such defects, Verizon must conclusively demonstrate that it is in compliance with the Board’s *NJ UNE Order* before its Application may be granted.

²⁵ Mass. DTE No. 17, § 17.1.1.D; Mass. Service Description, at ¶¶ 1.1, 1.2, 1.15 and 1.16.

²⁶ Mass. DTE No. 17, §17.2.1.B; Mass. Service Description, at ¶¶ 1.1, 1.2, 1.15 and 1.16 (“In the case of interconnection at an existing splice point, Verizon-MA, using current Verizon-MA approved splicing methods, will connect to a fiber optic cable provided, installed and maintained by the CLEC.”).

²⁷ Mass. DTE No. 17, §§ 17.1.2.A.1; 17.2.1.B, 17.2.1.G (Verizon “will provide intermediate cross-connections between fiber distribution frames in intermediate wire center(s).”); N.H. SGAT, § 5.16.6(G).

²⁸ *NJ UNE Order*, p. 11.

²⁹ Tr., Oct. 10, 2001, at 121-122 (“access to each Verizon central office via dark fiber ubiquitously is only provided by Verizon”).

3. Verizon's Refusal to Include in Its Inventory Dark Fiber That is Not Currently Terminated at Both Ends Results in a Gross Understatement of the Amount of Dark Fiber Available to CLECs in New Jersey

In New Jersey and Rhode Island, Verizon will not make dark fiber available to CLECs where the fiber is located in a cable vault, manhole, or other location outside the Verizon wire center and is not terminated. Verizon admitted in the Rhode Island Section 271 proceeding that when Verizon constructs and installs fiber routes, the fiber is not inventoried and is not available to CLECs "until it is terminated at both ends along the route."³⁰ These practices result in Verizon grossly understating the amount of dark fiber in New Jersey and Rhode Island that should be characterized by Verizon as "available" to requesting CLECs as unbundled network elements. Such fiber is usable to Verizon, and should be considered usable by CLECs.

4. Verizon's Policies Regarding Reservation of Dark Fiber Result in Lower Availability of Dark Fiber in New Jersey Than in Massachusetts

Verizon's policies in New Jersey and Rhode Island regarding maintenance spares and reservation of dark fiber severely limit the quantity of dark fiber that is characterized as "spare" and "available" to CLECs in these states as compared to Massachusetts. While in Massachusetts Verizon may reserve a quantity of fibers in a cable as "maintenance spares" that are not available to CLECs as unbundled dark fiber,³¹ maintenance spares are limited to a maximum of five percent of the fibers in a sheath with a minimum of two fibers reserved in cables with 12 to 24 fibers and no more than 12 reserve fibers in larger fiber cables.³² In New Jersey, however, Verizon reserves significantly more fiber for maintenance spares, as illustrated in Table 1 below.

³⁰ Tr., Oct. 10, 2001, at 195:1-8.

³¹ Mass. DTE No. 17, § 17.4.2.A; Mass. Service Description, at ¶ 1.6.

³² Mass. DTE No. 17, § 17.4.2.A; Mass. Service Description, at ¶ 1.6.

For cables containing up to 24 fibers for example, Verizon reserves 100 percent more fibers as maintenance spares (4 fibers versus 2 fibers) in New Jersey as compared to Massachusetts. For cables containing up to 48 fibers, Verizon reserves triple the number of fibers as maintenance spares (6 fibers versus 2 fibers) in New Jersey as compared to Massachusetts.³³ Moreover, Verizon MA must inform the CLEC in writing if it denies a request for dark fiber and has reserved fibers for its own business needs in excess of these amounts for maintenance spares.³⁴

TABLE 1: Comparison of Maintenance Spares in Vermont and Massachusetts

Terminated Cable Size	Maximum # of Maintenance Spares in New Jersey & Other States ³⁵	Maximum # of Maintenance Spares ³⁶ in Massachusetts	Percent Increase
Up to 24 Fibers	4 Fibers	2 Fibers	100
25 to 48 Fibers	6 Fibers	2 Fibers	200
49 to 96 Fibers	8 Fibers	4 Fibers	100
97 to 144 Fibers	10 Fibers	6 Fibers	66
> 144 Fibers	12 Fibers	12 Fibers Maximum	

Additionally, in Massachusetts Verizon will not reserve fiber pairs for unknown and unspecified future growth and, in fact, will not reserve fiber pairs unless such fibers have been

³³ Tr., Nov. 30, 2001, at 115:2-116:16.

³⁴ Mass. DTE No. 17, § 17.4.2.A.1; Mass. Service Description, at ¶ 1.6.

³⁵ The quantity of maintenance spares for Maine was determined from three concurring sources: Vermont Tr., Nov. 30, 2001, at 1167-16; Verizon's Response to CTC's First Set of Requests, dated Nov. 8, 2001, in Vermont Section 271, Response VZ#267 which responds to CTC request CTC 1-69 and Verizon's Response to the Requests of the Joint CLECs, Set #1, in New Hampshire Docket No. DT 01-206, dated Nov. 7, 2001, Verizon Response No. VZ#5 to Request ITEM JC-VZ-5 in Vermont Section 271.

³⁶ In Massachusetts maintenance spares are limited to a maximum of 5% of the fibers in a sheath with a minimum of two fibers reserved in cables with 12 to 24 fibers and no more than 12 reserve fibers in larger fiber cables. The data for Massachusetts were obtained by multiplying the maximum number of fibers in a given row by 5% and rounding downward to the nearest pair of fibers.

“installed or allocated to serve a particular customer in the near future.”³⁷ Further, Verizon has agreed to provide documentation in Massachusetts supporting any assertion by Verizon that spare dark fiber is not available for lease as an unbundled network element.³⁸ By contrast, in New Jersey and Rhode Island, Verizon’s dark fiber terms in its proposed interconnection agreement vaguely provide that dark fiber allocated by Verizon for “maintenance purposes” or for “near term” customer growth is not in Verizon’s view “spare” dark fiber and is not included in the dark fiber inventory that is made available to CLECs by Verizon.³⁹ The terms “maintenance purposes” and “near term” customer growth are not defined. Accordingly, Verizon maintains nearly unbridled discretion to determine the amount of dark fiber that is considered part of the inventory available to CLECs and to assert that dark fiber is not “available” to CLECs as an unbundled network element. Additionally, Verizon will not agree to support any such assertion by providing relevant documentation to CLECs.⁴⁰

5. Except For Minor Items, Verizon Does Not Repair Dark Fiber For CLECs

Notwithstanding Verizon’s assertion that it provides CLECs nondiscriminatory access to network elements, Verizon has failed to carry its burden of showing that what little dark fiber unbundled network elements it has provided to CLECs receive similar treatment to what it provides to itself and its affiliates. For example, except for the cleaning or retrofitting of connectors and other minor repairs, Verizon refuses to repair dark fiber loops and transport that

³⁷ Mass. Service Description, at ¶ 1.7; *see*, Mass. DTE No. 17, § 17.4.1.A (Where Verizon “has received a specific order for fiber-related service from a given customer, the fiber will be reserved for that customer.”).

³⁸ Mass. Service Description, at ¶ 1.8; *see*, Mass. DTE No. 17, § 17.4.2.A.1.

³⁹ Verizon’s Proposed Interconnection Agreement, § 8.5.11.

⁴⁰ Tr., Oct. 10, 2001, at 112:14-18; 116:4-10. *See, e.g.*, Verizon’s Proposed Interconnection Agreement, § 8.5.11.

have been provided to CLECs so long as such dark fiber is “capable of transmitting light,” even if the transmission characteristics have deteriorated such that the fiber is useless.⁴¹

6. Verizon’s Responses to a CLEC Inquiry Regarding the Availability of Dark Fiber are Deficient as Compared to Its Practices in New Hampshire

The unreasonableness of Verizon’s current terms, conditions and practices regarding dark fiber in New Jersey is especially evident when these terms, conditions and practices are contrasted with the far more reasonable terms, conditions and practices that Verizon has already implemented in New Hampshire as shown below. Verizon’s current practices regarding its response to a CLEC inquiry and the availability of unbundled dark fiber are significantly less favorable to CLECs in New Jersey than in New Hampshire. Specifically, the New Hampshire Dark Fiber Order requires that Verizon provide a written reply to a CLEC within thirty (30) days when it denies a CLEC request for unbundled dark fiber that includes specific reasons why the request cannot be granted including the following information:

total number of fiber sheath and strands between points on the requested routes, number of strands currently in use and the transmission speed on each strand (e.g. OC-3, OC-48), the number of strands in use by other carriers, the number of strands reserved for Bell Atlantic's use, the number of strands lit in each of the three preceding years, the estimated completion date of any construction jobs planned for the next two years or currently underway, and an offer of any alternate route with available dark fiber. In addition, for fibers currently in use, Bell Atlantic shall specify if the fiber is being used to provide non-revenue producing services such as emergency service restoration, maintenance and/or repair.⁴²

Such information is essential in order for a CLEC to determine the veracity of any claim by Verizon that dark fiber is not “available” on a particular route and to determine whether

⁴¹ Verizon’s Proposed Interconnection Agreement, § 8.5.18; R.I. Tariff No. 18, at § 10.2.1(D) (Verizon “will not re-terminate or re-splice fibers in order to improve transmission characteristics.”).

⁴² Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996, Order No. 22,942, DE 97-229, at 8 (May 19, 1998) (emphasis added).

alternative routes are available.⁴³ In contrast to the extensive information required to be provided when Verizon New Hampshire finds that no dark fiber is available, Verizon recently responded to CTC's inquiry for dark fiber in Vermont, where Verizon uses the same practices as in New Jersey,⁴⁴ providing only the following terse explanation: "NO DIRECT ROUTE BURLVTMA-WLSTVT07 NO FIBERS." This explanation is insufficient for CTC to examine the accuracy of Verizon's claim that dark fiber is not available.

Most important, the paucity of information provided in New Jersey, Vermont and other states does not as a practical matter enable a CLEC to determine whether alternative routes are available.⁴⁵ In fact, under Verizon's current practices, a CLEC in New Jersey must make a separate inquiry regarding each segment along each potential route to determine if a viable alternative route is available. This is unworkable because of the large number of possible routes.⁴⁶ In New Hampshire by contrast, upon rejecting a CLEC inquiry for dark fiber, Verizon is required to identify "any alternate route with available dark fiber," including routes through intermediate offices.⁴⁷

In sum, the New Hampshire Commission obviously views the terms mandated by its Dark Fiber Order as "just" and "reasonable" terms for the provisioning of unbundled dark fiber

⁴³ In September, 2001, for example, Verizon rejected a request by CTC for dark fiber transport from Verizon's central office at 266 Main Street, Burlington, Vt. CLI BURLVTMA to CTC's POP at 1193 South Brownell Rd. CLI VLSTVT07. Verizon's sole explanation for the rejection was "NO DIRECT ROUTE BURLVTMA-WLSTVT07 NO FIBERS." CTC is unable to determine from this type of terse explanation whether an alternate route is available.

⁴⁴ Tr., Oct. 10, 2001, at 112:14-113:7 (Verizon counsel stated that: "The dark fiber offering that we're making available here in Rhode Island is substantially similar to the offering that we have in every state except for Massachusetts and New Hampshire."); 134:10-24.

⁴⁵ Tr., Oct. 10, 2001, at 124-125; 127.

⁴⁶ Tr., Oct. 10, 2001, at 117:14-24.

⁴⁷ N.H. Dark Fiber Order, at 8.

in conformance with Section 251(c)(3) of the Act. Verizon has refused to make similar terms regarding dark fiber UNEs available to CLECs in New Jersey in violation of Section 251(c)(3) of the Act. Although the *NJ UNE Order* directs Verizon to take actions that address these issues to some extent, Verizon does not indicate in its Application that it is currently in compliance with the order, nor does it detail a timeframe in which it will implement the Board's requirements.

II. UNTIL VERIZON EVIDENCES INTENT TO COMPLY WITH THE NEW JERSEY UNE ORDER, IT IS NOT IN COMPLIANCE WITH SECTION 271 REQUIREMENTS

The New Jersey Board's action in the *NJ UNE Order* should result in Verizon modifying its practices in New Jersey towards increasing compliance with the Act and Checklist Items 2, 4 and 5. However, it appears that the time for Verizon to appeal the Board's decision has not passed. The FCC should order Verizon to provide dark fiber in accordance with the *NJ UNE Order* and make compliance with the Order a condition of any approval of its Application in the instant proceeding.

Until the Commission has evidence that Verizon has complied with the *NJ UNE Order* requirements, it cannot find that Verizon is in compliance with Checklist Items 2, 4, and 5. Verizon asserts that its current dark fiber offering in New Jersey, as well as its processes and procedures are substantially the same as that in Pennsylvania and Connecticut, which the Commission found satisfy the Act.⁴⁸ The Commission, however, did not address the terms and conditions of Verizon's dark fiber products in either of those proceedings. In Pennsylvania, the Commission explicitly declined to address challenges to the restrictions Verizon places on the

⁴⁸ Lacouture/Ruesterholz Declaration, at ¶ 199.

provisioning of dark fiber because the issues were being addressed in an arbitration being conducted by the Pennsylvania Commission.⁴⁹ In Connecticut, the Commission noted:

[W]e conclude that the extremely limited extent of Verizon's service area in Connecticut renders the provision of interoffice transport of relatively limited significance for purposes of determining whether Verizon's Connecticut local exchange market is open to competition. As detailed above, there is very little competitive LEC demand for interoffice local transport facilities in Connecticut, and this limited demand will continue in the future because Verizon only has one central office in Connecticut.⁵⁰

Verizon had only four IOF orders in Connecticut in total so the demand for dark fiber would have been negligible at best.⁵¹ Thus, Verizon's approvals in those two states provide no basis for finding that its terms and conditions are appropriate here. The Commission determined that challenges raised to the terms and conditions of Verizon's dark fiber offering in Pennsylvania were best raised through the Section 252 negotiation and arbitration process, or the Section 208 complaint process.⁵²

In its *NJ UNE Order*, the New Jersey Board found Verizon's dark fiber product offering to be deficient and required that Verizon modify its dark fiber terms and policies. In particular, the Board required Verizon to, *inter alia*, permit CLECs to route dark fiber through intermediary central offices without the need to establish collocation facilities in each central office; provide cross connects at cost-based rates; provide specific details to the CLEC and Board staff for review within five (5) calendar days of a rejection of an order for dark fiber; and provide CLECs with the actual number of working dark fibers it orders regardless of how many it needs to

⁴⁹ Verizon PA 271 Order, at ¶ 113.

⁵⁰ Verizon CT 271 Order, at ¶ 65.

⁵¹ Verizon CT 271 Order, at ¶ 64.

⁵² *Verizon PA 271 Order*, at ¶ 113.

evaluate to do so.⁵³ In its application, Verizon notes these requirements in the *NJ UNE Order*, but it is conspicuously silent regarding the actions it has taken, or will take, to fulfill its obligations thereunder.⁵⁴ Verizon should be required to demonstrate that it complies with the dark fiber terms and conditions ordered by the New Jersey Board before Verizon is found to be in compliance with its checklist obligations in regard to dark fiber. Further, Verizon should be required to offer terms to CLECs regarding splicing, maintenance spares, and reservation of fiber that are substantially similar to the terms it offers in Massachusetts in order to demonstrate compliance with Checklist items 2, 4 and 5.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Consolidated Edison Communications, Inc., and CTC Communications Corp. urge the Commission to condition its approval of Verizon's application on Verizon evidencing its intent to adhere to the New Jersey Board's December 17, 2001 UNE Order in regard to dark fiber.

Respectfully submitted,



Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Dated: January 14, 2002

⁵³ *NJ UNE Order*, at 11-12.

⁵⁴ Lacouture/Ruesterholz Declaration, at ¶ 206.

ATTACHMENT A

1 MR. BRANFMAN: Thank you. I have no
2 further questions.

3 MR. FRIAS: Would Verizon like to go
4 first; or would they rather have the Commission
5 go first?

6 MR. BEAUSEJOUR: I'd like to have the
7 Commission go first, if that's agreeable to you,
8 Mr. Frias.

9 EXAMINATION BY MR. FRIAS

0 Q. As I understand, CTC's assertion in a nutshell is
1 that dark fiber is not made available in Rhode
2 Island under the same terms and conditions as in
3 Massachusetts?

4 A. That's correct.

5 Q. Okay. Could you elaborate real quickly and
6 succinctly where you see the differences?

7 A. Well, the major differences are in the access
8 to the inter office facilities that we were able
9 to get in Massachusetts as well as the ability to
0 have Verizon make supplies cents to make the
1 fiber continuous and make it whole between
2 interoffice facilities, whether those would be
3 CTC or other CLECs' POPs and the different
4 Verizon central offices where we collocate.

MR. FRIAS: Okay.

Q. As I understand it, dark fiber is an UNE as required in the UNE remand?

A. That's correct.

Q. And if Verizon were to provide dark fiber in the same manner as it does in Massachusetts, your objection in this area would, how would I phrase it, go away?

A. Yes, for the most part it would go away. I believe that CTC and other CLECs would like to have even more access than Massachusetts; but it's having at least that minimum access would make it more equal.

MS. RACINE: Is Verizon-Rhode Island willing to provide what they're providing in Massachusetts?

MR. BEAUSEJOUR: No, we're not. Commissioner Racine. And the own is the Massachusetts arbitration proceeding took place in October of 1996, which was well before many of the rules established by the FCC relating to the unbundling obligations, and most particularly the UNE remand proceeding. So it came well before what the FCC stated our unbundling obligation was

1 with respect to dark fiber. The dark fiber
2 offering that we're making available here in
3 Rhode Island is substantially similar to the
4 offering that we have in every state except for
5 Massachusetts and New Hampshire where they're the
6 subject of early arbitration proceedings well
7 before, for example, the UNE remand order.

8 MR. FRIAS: I'm going to ask the
9 question of Verizon's counsel, but as I
0 understand it, in New York, for instance, they do
1 not require the same requirements for dark fiber
2 as Massachusetts does; correct?

3 A. That's correct.

4 Q. ?

5 MR. CLEMONS: And if it will assist the
6 Commission, we actually have a copy available,
7 and I'd be happy to submit it to the Commission,
8 of the New York decision addressing how dark
9 fiber is to be handled.

10 MR. FRIAS: The Commission -- if
11 Verizon's counsel wants to do that, I'd also
12 appreciate a copy of the Massachusetts decision
13 as well.

14 MR. CLEMONS: That's fine.

1 MR. CLEMONS: The terms and conditions
2 that are part of the agreement will be those that
3 are reflected in the current pending tariff.

4 MR. FRIAS: Okay. That was basically
5 almost my next question, which is, you're not
6 adopting -- this interconnection agreement
7 amendment does not allow for any Massachusetts
8 terms or intermediate offers to be in offered
9 Rhode Island; is that correct?

10 MR. CLEMONS: No, it does not.

11 MR. FRIAS: Is that your understanding
12 of the situation, Mr. Sawyer?

13 MR. SAWYER: Yes, it is.

14 MR. FRIAS: And you're satisfied with
15 that situation; correct?

16 MR. SAWYER: Yes. Yes, I am.

17 Q. Does the witness for CTC understand what has been
18 discussed?

19 A. No, I'm not familiar with that particular
20 docket.

21 Q. Do you understand that they have reached -- maybe
22 the witness for -- counsel for CTC, do you
23 understand that Verizon and Conversent is about
24 to enter or has entered into an interconnection,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

amendment to the interconnection agreement which provides a grandfathering in for UNE rates for dark fiber? Do you understand that?

MR. BRANFMAN: I think I understand that. I'm not sure that it's going to do any good for CTC; because CTC doesn't have any dark fiber to be grandfathered in in Rhode Island.

MR. FRIAS: That's what I wanted to understand, if that amendment arrangement made -- did anything for your business. Since that docket is open and there has not been made a decision by the Commission, correct, on UNE remand?

MR. CLEMONS: That's correct.

MR. FRIAS: If the Commission, of course you reserve every right to appeal, but the Commission could of course require you to provide dark fiber through intermediate facilities?

MR. CLEMONS: That, the ability to order us to do that is clearly within the Commission's authority. We would -- it's certainly our position that it's inconsistent with the requirements set by the FCC and as recognized by New York. If the Commission

1 **EXAMINATION BY MS. RACINE**

2 Q. I think it's very important from where I sit to
3 try to be fair and make sure you're doing as best
4 you can with the playing field. However, it's
5 also important to know, you're dealing with
6 players, what your revenues dollars are in a
7 certain change, how much involvement do you have
8 in the State of Rhode Island?

9 A. I when's know the total revenue that we get
10 from just a particular state. I don't have that
11 with me.

12 Q. Because I think it's, you know, on the one hand
13 you can come in and you can ask for certain
14 things, and I respect that, but then I find that
15 often you're not a party to any of it to begin
16 with, and we've spent untold hours trying to, you
17 know, get people where they need to go. How
18 important is it to your doing business in this?
19 You're not exercising it in Massachusetts, but
20 you've come in where it as very much critical to
21 CTC. So how important is it truly to CTC, the
22 horse that you have's ridden in on?

23 A. Well, I think it's very important, because
24 access to each Verizon central office via dark

fiber ubiquitously is only provided by Verizon. I'm not aware of any other company, north will Verizon share that with us.

Q. Now you're using a different method in Massachusetts. Would that method be available to you in Rhode Island, the utilities?

A. In certain cases, yes, it is to some of the COs, clearly not to all of them.

Q. You've chosen not to exercise it in Massachusetts, you're coming into Rhode Island and saying it's critical. Why is it critical here and it's not in Massachusetts?

A. Well it's also critical in Massachusetts. I should clarify. We have some existing applications for dark fiber in Massachusetts that we haven't heard back on.

Q. How long have you been working on that?

A. Those have probably only been in several weeks. We're just entering Rhode Island with dark fiber this. Our collocation facilities are not quite finished, when they're finished, our first two will be Warwick and Providence. When we grow throughout the state, it's going to be necessary for us to get to other places.

1 roll it out with the building, let's say, in
2 Warwick or whatever? How long would you
3 anticipate you'd need to know whether or not you
4 got it, the approval?

5 A. That's part of the difficulty of this
6 situation. According to the current process with
7 Verizon, in order to have dark fiber between two
8 facilities, you must be collocated there. In
9 order for us to even check with any great degree
0 of availability between those two collocation
1 cents we have to go through a process where they
2 will do a survey of their records and records
3 only. That process so far has taken from a few
4 weeks and some we've never heard back on.

5 Q. When you say you've never heard back, you
6 literally make an application, you never hear
7 from them again?

8 A. In the case of the Verizon one, which we
9 submitted as an article here, that was a second
10 request. The first request was not responded to.

11 Q. So how long do you wait till somebody follows it
12 up?

13 A. That particular case, because it was our
14 Williston (phonetic) POP, I would say it was

1 about 60 to 90 days.

2 Q. So you waited that long? I mean, I don't know
3 what normally the time frame would be; but I know
4 if I made a call to somebody and they didn't call
5 back, I'd call them back.

6 A. Yes. And in this particular case, this was
7 part of a larger build and only one piece of a
8 build; and because finding dark fiber is very
9 difficult, we were pursuing several different
10 opportunities, none of which worked out,
11 including the Verizon opportunity.

12 Q. Well, I just think that it's critical from where
13 I sit to be able to figure out exactly what it
14 is. I think you're giving me some sense that
15 you're building here and that you have a need for
16 this and that you're saying that, "Commission,
17 without it we're not going to be effective"?

18 A. That's correct. Or it's not just CTC, I
19 mean, any CLEC under the current provisioning
20 guidelines that they have, making sure that the
21 fiber strand is continuous would be next to
22 impossible from any Point A to any Point B in
23 Rhode Island.

24 Q. Do you have any agreements with Verizon in Rhode

Island, CTC?

1 A. I believe we have an interconnect agreement
2 that covers --

3 Q. And have you reviewed your agreement up against
4 Conversent's?

5 A. No, I have not. I personally have not.

6 Q. I think that might be a good place to start, like
7 tonight, like get a copy of their agreement, back
8 it into your agreement, take a look at them and
9 see if your agreement is lacking something. As
0 we're going forward doing this hearing, that
1 might be something that you could address that
2 would look like you may have some, I hate the
3 word discrimination in this case because
4 discrimination to me is much, much more serious
5 than what we're using it for, I'll use
6 differences, we have got some differences in this
7 one and, therefore, if the differences -- as I
8 understand, Verizon, if it's providing it to
9 itself and providing it to Conversent would have
0 to provide it to CTC. Is that your
1 understanding?
2

3 A. That's my understanding, yes.

4 Q. So I would suggest, do your homework tonight,

take a look at yours,, the person that's going to follow, get a copy of Mr. Sawyer's. I think what's key is who's getting what, when and where and do we have certain people getting things that other people aren't. Is that your understanding of what's going on?

A. No, that isn't. I'm not asserting that anybody is getting dark fiber, and CTC is not. What I'm asserting is that the access to the dark fiber is limited because of the wording in the document that requires that that fiber be in one continuous strand and the likelihood of that fiber being in one continuous strand from any Point A and Point B in Rhode Island.

Q. And you're interested in the splicing and splice point, but you haven't exercised that in Massachusetts; is that correct?

A. We have not had the opportunity yet to do that.

Q. Have you made a request of this company to do that?

A. We made a request for dark fiber.

Q. For splicing and splice points?

A. We haven't had them turned down for option of

interconnections in those intermediate offices and without having the ability to splice, we're shut off from using any of those facilities. And those facilities are some of the only facilities, if not the only facilities that service certain central offices in Rhode Island. So that would preclude us from getting dark fiber to those central offices at this time.

MR. FRIAS: Let me just ask you this question. This is going back in a circle. Again, the fundamental issue in Massachusetts is they allow under a tariff for intermediate, connections for, dark fiber connections between intermediate offices?

THE WITNESS: Right.

MR. FRIAS: Between Office A and Office C, you can get fiber going through Office B basically connected?

THE WITNESS: That's right?

MR. FRIAS: Maybe -- this is almost a legal issue as well. And we also do have the opportunity for post-hearing briefs after; and I would suggest possibly that I want to understand Verizon's position. Are you saying that the FCC

1 THE WITNESS: I think -- we don't have
2 any in Rhode Island. We do have plenty of
3 experience in provisioning dark fiber elsewhere
4 in the country and built out a network that goes
5 out to Buffalo and down to Virginia. We have not
6 completed and are just beginning our build in
7 Rhode Island, although we do have along history
8 of having customers here through our resold
9 network.

1 MS. RACINE: All I'm trying to do is
2 get the two of you together in the same telephone
3 booth and figure it out.

4 THE WITNESS: And we have attempted to
5 negotiate it in our own interconnection
6 agreement, which would then be available to other
7 folks, such as Conversent and others, and have
8 not had any success. That's why I'm here today.

9 MR. BRANFMAN: As long as this is a
10 point for oral argument by lawyers, I would just
11 like to point out that Verizon has made it clear
12 that provisioning dark fiber in Rhode Island is
13 the same way as provisioning in all its other
14 states with the exception of Massachusetts and
15 New Hampshire. So I think it's appropriate for

1 afternoon about dark fiber. Are any of you
2 familiar with how Massachusetts provides for dark
3 fiber?

4 MS. DETCH: I am.

5 MR. FRIAS: Okay. As I understand, to
6 make it really simple, in Massachusetts Verizon
7 will provide dark fiber between intermediate
8 offices, between office A and office C, provide
9 it through office B?

10 MS. DETCH: If there's no direct route
11 available through A and C, correct.

12 MR. FRIAS: How long has Verizon been
13 doing that in Massachusetts?

14 MS. DETCH: Since we were ordered. I
15 don't know when the first order was received from
16 a customer; but we were ordered starting back in
17 1996.

18 MR. FRIAS: Does counsel for Verizon
19 know when the FCC UNE remand order came down?

20 MS. DETCH: I do. It was ordered to
21 provide unbundled dark fiber effective May 17th,
22 2000. The order I think came out in late
23 November or December of 1999 -- November 1999,
24 but the effective date was 180 days from that.

terminal?

MR. BRANFMAN: Now is it Verizon's policy --

MS. DETCH: What else would it be terminated to if it's not terminated at an accessible terminal?

MR. BRANFMAN: You've answered my question. I'm moving on to another question. Is it Verizon's policy that dark fiber's never available as a UNE where a splice is required no matter how minor?

MS. DETCH: The UNE remand order very clearly defines unbundled dark fiber as an existing fiber route terminated between two points. It also very clearly states that the ILEC does not need to construct or build to create a route that's not already in existence.

MR. BRANFMAN: So is your answer to my question, yes?

MS. DETCH: Verizon will not splice dark fiber.

MR. BRANFMAN: Does Verizon routinely terminate its fiber at an accessible terminal before it is required to serve a customer?

1 MS. DETCH: Are you talking about dark
2 fiber loop customer premises?

3 MR. BRANFMAN: Yes.

4 MS. DETCH: It's my understanding when
5 Verizon constructs and installs fiber routes the
6 fiber is not inventoried and available to Verizon
7 or any other customer until it's terminated at
8 both ends along the route.

9 MR. BRANFMAN: Does Verizon continually
10 terminate fiber at an accessible -- I'm talking
11 about interoffice fiber, before it is required
12 for serving customers?

13 MS. DETCH: It's my understanding that
14 if Verizon constructs and installs fiber between
15 central offices, the fiber's terminated at each
16 central office. Again, they don't leave it
17 partially constructed.

18 MR. BRANFMAN: Going back to the dark
19 fiber inquiry form that we've been looking at,
20 can you determine whether this is the particular
21 inquiry that you checked about over the
22 telephone?

23 MS. DETCH: No, I'd have to actually go
24 and have them pull all the records for me.

ATTACHMENT B

ATTACHMENT B

**[Verizon's Proposed Interconnection Agreement for Rhode Island and New Jersey,
UNE Attachment]**

RECEIVED
MAIL ROOM

JULY 20 PM 2:58

STATE OF RHODE ISLAND
NEWARK, N.J.

8. Dark Fiber

[FOR NY, MA & CT ONLY – delete the remaining subsections of Section 8 below if for NY, MA, OR CT]:

- 8.1 Subject to the conditions set forth in Section 1 of this Attachment, Verizon shall provide **CLEC with access to Dark Fiber (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in Verizon's [NYPSC No. 916 Tariff] [DTE No. 17 Tariff] [[CT Tariff No. 12], as amended from time to time, that relate to or concern Dark Fiber, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective. Verizon will provide **CLEC access to Dark Fiber, including Dark Fiber Loops, Dark Fiber Subloops and Dark Fiber IOF, in accordance with, but only to the extent required by, Applicable Law.

[8.1 FOR ALL OTHER STATES]:

Access to unbundled Dark Fiber Loops, Dark Fiber Subloops and Dark Fiber IOF (collectively, "Dark Fiber") will be provided by Verizon, where existing facilities are available at the requested availability date, in the loop, subloop and interoffice facilities (IOF) portions of the Company's network. Access to Dark Fiber will be provided in accordance with, but only to the extent required by, Applicable Law.

- 8.2 A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center, and Verizon's main termination point, such as the fiber patch panel, located within a Customer premise, and that has not been activated through connection to the electronics that "light" it, and thereby render it capable of carrying Telecommunications Services.
- 8.3 A "Dark Fiber Subloop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to the electronics that "light" it, and thereby render it capable of carrying Telecommunications Services.
- 8.4 "Dark Fiber Interoffice Facilities (IOF)" consist of continuous fiber strand(s) that are located within a fiber optic cable sheath between either (a) Verizon's Accessible Terminals at two Verizon Central Offices or (b) a Verizon Accessible Terminal at a Verizon Central Office and a **CLEC Central Office, but in either case, that have not been activated through connection to multiplexing, aggregation or other electronics that "light" it and thereby render it capable of carrying Telecommunications Services.