

A. Contrary to the Plain Meaning of the Act, Verizon Does Not Provide Dark Fiber At Any Technically Feasible Point

Verizon's assertion that it "unquestionably satisfies the requirements of the competitive checklist in Vermont"⁶⁰ is false with respect to Checklist Items 2, 4 and 5. Contrary to the unambiguous language of Section 251(c)(3), Verizon refuses to provide dark fiber at "any technically feasible point." Specifically, Verizon will not provision dark fiber transport through intermediate offices when direct routes are not available, despite the fact that it has proven technically feasible to provide access to dark fiber at intermediate offices in Massachusetts and New Hampshire without requiring a CLEC to be collocated at such intermediate office.⁶¹

Moreover, the Massachusetts and District of Columbia. commissions have dismissed many of the arguments raised by Verizon regarding access to dark fiber at splice points. For example the Massachusetts DTE concluded "that it is *technically feasible* and *consistent with industry practice* to lease dark fiber at splice points."⁶² In fact, the Massachusetts DTE concluded that Verizon itself resplices "from time to time" and that those "splice points are

⁶⁰ Verizon Application at 13.

⁶¹ Tr. at 150:14-23 (Q: "Will Verizon ever splice fiber for a CLEC, dark fiber for a CLEC? A: (Ms. Detch) No.") Tr. at 144:5-23; 145:17-25; 147:8-23 ("Q: Now, in Vermont today dark fiber is only offered on a route direct basis - - in other words, not through an intermediate office as it is - - as is required in New Hampshire and Massachusetts? A: (Ms. Detch) Correct."); CTC Declaration paras.18-19; CTC Declaration, Attachment CTC-03; 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")(available for review at http://www.bellatlantic.com/tariffs_info/

http://www.bellatlantic.com/tariffs_info/intra/efftar/ma/ma17/index.htm); CTC Declaration, Attachment CTC-04, Verizon MA's Unbundled Dark Fiber Service Description § 1.1 (Aug. 31, 2000)("Mass. Service Description")(attached hereto as Exhibit 2.A.).

⁶² *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts*, Decision D.P.U./D.T.E. 96-83, 96-94-Phase 4-N at 33 (Mass. DTE Dec. 13, 1999) ("We impose no collocation requirement . . . it is technically feasible and consistent with industry practice to lease dark fiber at splice points.")(“Mass. DTE Phase 4N Order”)(emphasis added).

designated for [Verizon], itself, to use as junction points in its network.”⁶³ Accordingly, the Massachusetts DTE saw “little distinction between a splice performed on behalf of [Verizon] and that performed for another carrier” and ordered Verizon to provide access to dark fiber at any technically feasible point including existing splice points as well as hard termination points.⁶⁴

Verizon suggests that the Massachusetts and New Hampshire requirements are irrelevant, since they were established prior to the *UNE Remand Order*.⁶⁵ However, this argument is quite unpersuasive, considering that the Massachusetts DTE affirmed these requirements in two separate orders after the *UNE Remand Order*.⁶⁶ The D.C. Public Service Commission was unimpressed as well.⁶⁷ And while it is true, as Verizon notes,⁶⁸ that the Commission has accepted a lower level of performance in prior Section 271 proceedings (i.e. Pennsylvania), CTC is not

⁶³ *New England Telephone and Telegraph Company d/b/a NYNEX*, Decision D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3 at 48-49 (Mass. DTE Dec. 4, 1996) (“Mass. DTE Phase 3 Order”); *adopted in Yipes Transmission, Inc., Order on Reconsideration*, D.C. P.S.C. TAC-12, Order No. 12286 (Jan. 4, 2002)(“*D.C. Order*”)(“The MA DTE has found that access to dark fiber at splice points is technically feasible in Massachusetts, therefore the [D.C. Public Service] Commission can determine that access to dark fiber at splice points is technically feasible in the District of Columbia”).

⁶⁴ Mass. DTE Phase 3 Order at 48. The Indiana Utility and Regulatory Commission requires Ameritech to provide access to dark fiber at a splice point upon a CLEC’s request, indicating that it views such splicing as “technically feasible.” *AT&T Communications of Indiana, Inc., TCG Indianapolis Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Co., Inc. d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03, Order at 137 (Nov. 20, 2000)(“Indiana Order”).

⁶⁵ Lacouture/Ruesterholtz Declaration para. 222.

⁶⁶ Mass. DTE Phase 4N Order at 33; *New England Telephone and Telegraph Company d/b/a NYNEX, et al.*, Decision D.P.U. 96/73-74, 96/80-81, 96-84-Phase 4-R Order at 4-5 (Mass. DTE Aug. 17, 2000).

⁶⁷ *D.C. Order* para. 57.

⁶⁸ Lacouture/Ruesterholtz Declaration para. 223.

advocating “a change in the rules.”⁶⁹ It merely suggests that the Commission recognize that there is now a higher standard of reasonableness in Verizon’s region.⁷⁰

Verizon’s other terms, conditions and practices in Vermont regarding, among other things, reservation of fiber, repair of dark fiber and response to CLEC dark fiber requests are also unreasonable, 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.⁷¹ The unreasonableness of Verizon’s terms, conditions and practices with respect to dark fiber in Vermont is especially evident in contrast with the far more reasonable terms, conditions and practices that Verizon has implemented or is in the process of implementing in Massachusetts, New Hampshire, Rhode Island, New Jersey, and the District of Columbia, as shown below.

Verizon’s Terms and Practices In Vermont Regarding Splicing of Dark Fiber, Access to Dark Fiber At Intermediate Offices, Maintenance Spares, Repair, Inventory and Responses to CLEC Inquiries For Dark Fiber Are Unreasonable and Onerous As Compared to Verizon’s Practices in Massachusetts, New Hampshire, and the Practices Recently Ordered in Rhode Island, New Jersey, and the District of Columbia

Verizon’s assertions that it provides access to network elements in Vermont “in the same manner as in Massachusetts”⁷² and uses the same procedures it employs in Massachusetts⁷³ are patently false with respect to unbundled dark fiber loops and transport. Verizon has admitted

⁶⁹ Verizon Application at 45; Lacouture/Ruesterholtz Declaration para. 229.

⁷⁰ It is also significant that the Pennsylvania commission is contemplating dark fiber access at splice points. Further Pricing of Verizon Pa. Inc.’s Unbundled Network Elements, Docket Nos. R-00005621 and R-00005621C0001, *Interim Opinion and Order* at 56-58 (rel. June 8, 2001).

⁷¹ CTC Declaration paras.18-25.

⁷² Lacouture/Ruesterholtz Declaration para. 76.

⁷³ *Id.* paras. 78, 209

that it offers CLECs significantly more favorable terms and conditions regarding the dark fiber unbundled network element in Massachusetts (and in New Hampshire) than it offers to CLECs in Vermont.⁷⁴ Moreover, Verizon steadfastly refuses to provide CLECs operating in Vermont with the same dark fiber terms that are available in Massachusetts and New Hampshire and have been ordered by the commissions in Rhode Island, New Jersey, and the District of Columbia.⁷⁵ As a result of Verizon's highly restrictive policies regarding dark fiber in Vermont, dark fiber is very rarely available when a CLEC requests it. Between January 2000 and September 2001, Verizon received a total of 26 CLEC dark fiber inquiries in Vermont and determined that dark fiber was not available in 23 of 26 instances.⁷⁶ This constitutes a staggering unavailability rate of 88%. In contrast, during a similar time period, the dark fiber unavailability rate in Massachusetts, where Verizon's dark fiber policies are much more reasonable, was only 35%.⁷⁷

1. **Verizon's Policies Regarding the Routing of Dark Fiber Through Intermediate Offices Are More Restrictive in Vermont Than in Massachusetts or New Hampshire and those Ordered in Rhode Island and New Jersey**

Verizon's policies in Vermont 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

⁷⁴ Tr. at 143:14-25; 144: 5-10; 145; 150:12-16; CTC Declaration paras.16-19 ((Ms. Detch) "Correct. In New Hampshire we are meeting the requirements of the New Hampshire Order.").

⁷⁵ Tr. at 143:14-25; 144: 5-10; 145; 150:12-16.

⁷⁶ Tr. at 131:32-132:2; Verizon's Response to Record Request #8, Nov. 30, 2001(attached hereto as Exhibit 4)("Verizon Massachusetts determined that spare fiber was not available between the CLEC specified end points in 197 of the 559 inquiries received between January 2000 and July 2001"); Verizon's Response to CTC's Request No. CTC 1-35 (attached hereto as Exhibit 6)(Verizon Vermont determined dark fiber was not available in 23 of 26 inquiries received between January 2000 and July 31, 2001).

⁷⁷ Verizon's Response to Record Request #8, Nov. 30, 2001 (attached hereto as Exhibit 4) ("Verizon Massachusetts determined that spare fiber was not available between the CLEC specified end points in 197 of the 559 inquiries received between January 2000 and July 2001")

Vermont than in Massachusetts, New Hampshire, Rhode Island, and New Jersey. For example, in Vermont, 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 in that central office. Further, in Vermont, dark fiber is only "offered on a route-direct basis" (*i.e.*, no intermediate offices).⁷⁸ In Massachusetts 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."⁷⁹ Most importantly, Verizon will perform splicing to join fibers at existing splice points in Massachusetts and collocation is not required to access dark fiber.⁸⁰ Likewise, in New Hampshire Verizon will provide intermediate cross connections in intermediate wire centers without requiring the CLEC to collocate in the intermediate central office.⁸¹ The Rhode Island commission recently ordered Verizon 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

⁷⁸ CTC Declaration para.19; Tr. at 144:5-23 ((Mr. Bluhm) "Route direct, basically does this mean just one central office to another pretty much?" (Ms. Detch) "Correct."); Verizon's Proposed Interconnection Agreement, §§ 8.2, 8.3, 8.4, 8.5.1, 8.5.2, and 8.5.3 (attached hereto as Exhibit 5).

⁷⁹ Mass. DTE No. 17, § 17.1.1.D; Mass. Service Description, at ¶¶ 1.1, 1.2, 1.15 and 1.16.

⁸⁰ 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."); Mass. DTE Phase 4N Order, at 33 (Verizon cannot impose a collocation requirement for access to dark fiber).

⁸¹ N.H. SGAT, § 5.16.6(G).

any such intermediate offices.”⁸² In reaching its decision, the RI Commission noted 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.”⁸³ In New Jersey, consistent with the view of the Massachusetts, New Hampshire and Rhode Island state commissions, Verizon was recently directed by the New Jersey Board of Public Utilities (“NJ Board”) to permit CLECs “to route dark fiber through intermediary central offices without the need to establish collocation facilities in each central office” because, *inter alia*, Verizon’s collocation requirement “needlessly inflates CLECs’ costs.”⁸⁴

Verizon will not, however, provide cross connects at intermediate wire centers in Vermont, the way it does in Massachusetts, New Hampshire, New Jersey, and Rhode Island. As a result of Verizon’s policies, continuous dark fiber routes are often unavailable in Vermont and other Verizon operating territories.⁸⁵ As discussed above, Verizon’s policies regarding the splicing of dark fiber and access to dark fiber at intermediate offices in Vermont are inconsistent with the plain meaning of Section 251(c)(3) of the Act and Checklist Items 2, 4, and 5, which require Verizon to provide dark fiber on “reasonable” terms and at “any technically feasible point.”

⁸² *In re: Verizon-Rhode Island’s TELRIC Studies – UNE Remand*, Docket No. 2681, Report and Order at 19, 22-23 (R.I. PUC, Dec. 3, 2001).

⁸³ *Id.* at 22.

⁸⁴ *In the Matter of the Board’s Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Summary Order of Approval, at 11 (N.J. BPU Dec. 20, 2001).

⁸⁵ 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). CTC Declaration paras. 23-24.

In the Maine 271 proceeding, Verizon had a difficult time explaining this inconsistency among states in its region – how the identical procedure can be “technically feasible” in one state and not in another. At a January 29, 2002 hearing, Commissioner Diamond of the Maine PUC pressed Verizon on this point. Not content with Verizon’s attempt to retreat into legalistic arguments, he expressed his hope that Verizon would “giv[e] us good reasons . . . as to why it’s not reasonable for us to expect comparable treatment on this matter in Maine.”⁸⁶

2. **Verizon Provides Access to Dark Fiber at Splice Points for CLECs in Massachusetts, and the District of Columbia, But Will Not Splice Dark Fiber for CLECs in Vermont**

In Massachusetts and the District of Columbia, Verizon provides access to dark fiber at existing termination points (“splice points”)⁸⁷ In sharp contrast to the terms it offers in Massachusetts and the District of Columbia, in Vermont, Verizon refuses to “open existing splice points” and perform splicing upon a CLEC’s request in order to make dark fiber available

⁸⁶ Maine Public Utilities Commission Inquiry Regarding the Entry of Verizon-Maine into the Interlata Telephone Market Pursuant to Section 271 of the Telecommunications Act 1996, Me. P.U.C. Docket No. 2000-849, Transcript of Hearing at 321:24-25, 322:1-2 (Jan. 29, 2002)(“Maine Tr.”)(selected pages attached hereto as Exhibit 7). CTC feels comfortable in referencing the Maine record in regard to Verizon’s dark fiber policies and procedures, since Verizon has indicated that “Verizon’s dark fiber offering in Vermont is the same or similar to Verizon’s dark fiber offering in every state in the former Bell Atlantic service area (except Massachusetts and New Hampshire)” Supplemental Checklist Declaration para. 91..

⁸⁷ CTC Declaration para.18; Mass. DTE No. 17, Miscellaneous Network Services, Part B, § 17.1.1.A.1; Mass. Service Description ¶ 1.1; Mass. DTE Phase 4-N Order at 33 (“We impose no collocation requirement . . . it is technically feasible and consistent with industry practice to lease dark fiber at splice points.”); *Verizon New England, Inc. d/b/a Verizon Massachusetts*, Decision D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-R, at 4 (Mass. DTE Aug. 17, 2000) (Verizon must “permit CLEC access to dark fiber at hard termination points, as well as splice points.”) (“Mass. Phase 4-R Order”); Mass. DTE Phase 3 Order, at 48-49 (“Those splice points are designed for NYNEX itself, to use as junction points in its network.”); *D.C. Order* para. 62. *See also* CTC Declaration para. 23.

for unbundling.⁸⁸ Verizon’s policy regarding splicing of dark fiber in Vermont 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.”⁸⁹

3. Verizon’s Policies Regarding Reservation of Dark Fiber Result in Less Availability of Dark Fiber in Vermont Than in Massachusetts

Verizon’s terms, conditions and practices in Vermont regarding reservation of dark fiber for maintenance purposes and future growth, repair of dark fiber, and its responses to CLEC inquiries regarding dark fiber are unreasonable, and therefore violate the Act, because as a practical matter, they provide Verizon with nearly unlimited discretion to limit severely the quantity of dark fiber and routes that are deemed by Verizon to be available to CLECs. The unreasonableness of these Verizon terms, conditions and practices regarding dark fiber in Vermont 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 neighboring Massachusetts as shown below.

Verizon’s policies in Vermont 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 Vermont 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, 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

⁸⁸ Tr. at 150:12-15; CTC Declaration, Attachment CTC-05, Verizon’s Proposed Interconnection Agreement, §§ 8.5.2, 8.5.3 (“A strand shall not be deemed continuous if splicing is required to provide fiber continuity between two locations.”).

⁸⁹ 47 U.S.C. § 25(c)(3).

than 12 reserve fibers in the largest fiber cables.⁹⁰ In Vermont, by contrast, Verizon reserves significantly more fibers for maintenance spares, as illustrated in Table 1 below. For cables containing up to 24 fibers for example, Verizon reserves 100 percent more fibers as maintenance spares (4 fibers versus 2 fibers) in Vermont 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 Vermont as compared to Massachusetts.⁹¹ Moreover, in Massachusetts (but not in Vermont) Verizon informs 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.⁹²

⁹⁰ Tr. at 111:9-112:4, 115:1-7; CTC Declaration para. 20; Mass. DTE No. 17, § 17.4.2.A; Mass. Service Description ¶ 1.6.

⁹¹ Tr. at 115:2-116:16.

⁹² CTC Declaration para. 20; Mass. DTE No. 17, § 17.4.2.A; Mass. Service Description ¶ 1.6.

a. **TABLE 1: Comparison of Maintenance Spares in Vermont and Massachusetts**

Terminated Cable Size	Maximum # of Maintenance Spares in Vermont & Other States⁹³	Maximum # of Maintenance Spares⁹⁴ 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 “installed or allocated to serve a particular customer in the near future.”⁹⁵ In Massachusetts, Verizon must “clearly document” any decision to reserve dark fiber and cannot reserve dark fiber for “general future growth,” or “even for a particular customer’s potential long-term growth.”⁹⁶ Further, Verizon is required to provide documentation in Massachusetts supporting any assertion

⁹³ The quantity of maintenance spares for Maine was determined from three concurring sources: Vermont Tr. at 116:7-16; Verizon’s Response to CTC’s First Set of Requests, dated Nov. 8, 2001, Response VZ#267 which responds to CTC request CTC 1-69 (attached hereto as Exhibit 8); 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 (attached hereto as Exhibit 9).

⁹⁴ 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.

⁹⁵ CTC Declaration para. 20; Mass. Service Description ¶ 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.”).

by Verizon that spare dark fiber is not available for lease as an unbundled network element.⁹⁷ By contrast, in Vermont, Verizon maintains nearly unbridled discretion to assert that dark fiber is not “available” to CLECs as an unbundled network element, and Verizon will not agree to support any such assertion by providing relevant documentation to CLECs.⁹⁸

4. **Verizon Fails to Take Reasonable Steps to Make Dark Fiber Available by Grooming Fibers**

During the Maine 271 proceeding, CTC examined Verizon witness Donald Albert regarding the information Verizon had provided regarding CTC’s request for dark fiber between Dover and Manchester, New Hampshire. (It should be noted that, as discussed below, Verizon does not provide this information in Vermont.) Mr. Albert admitted that it would be possible to free up fibers on several of the segments where fibers were unavailable, through the grooming process. For example, through the use of electronics, up to four fibers that were each providing service at an OC-12 level could be groomed onto a single OC-48, freeing up the other three fibers for other uses.⁹⁹ Mr. Albert admitted that Verizon sometimes engages in such grooming to free up fibers for its own customers, but stated that it did not do so to free up fibers for a CLEC requesting dark fiber.¹⁰⁰ While Mr. Albert noted that moving service from one fiber to another has its drawbacks,¹⁰¹ the fact that Verizon sometimes engages in this type of grooming for its

⁹⁶ Mass. DTE Phase 3 Order at 50.

⁹⁷ CTC Declaration para. 20; Mass. Service Description ¶ 1.8; *see*, Mass. DTE No. 17, § 17.4.2.A.1.

⁹⁸ CTC Declaration para. 20; *See, e.g.*, Verizon’s Proposed Interconnection Agreement, § 8.5.11.

⁹⁹ Maine Tr. at 240:1-7.

¹⁰⁰ *Id.* at 241:20-23.

¹⁰¹ *Id.* at 240:11-25, 241:1.

own purposes but does not do so for CLECs reflects a discrimination that helps facilitate Verizon's hoarding of dark fiber.

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

Notwithstanding Verizon's facile assertion that it provides nondiscriminatory access to unbundled network elements to CLECs,¹⁰² Verizon has failed to carry its burden of showing that dark fiber unbundled network elements are available and provided to CLECs in the same manner as dark fiber is available and provided to itself and its affiliates. For example, Verizon's policies regarding repair of dark fiber are discriminatory and violate the Act. The transmission characteristics of dark fiber will often degrade over time such that fiber that is useful when installed will become unusable over time due to weather factors, accidental damage, repair activities and other factors.¹⁰³ In such situations, if Verizon is using the installed fiber for its own purposes, Verizon will routinely make the needed repairs to the fiber to restore its transmission characteristics to a usable level.¹⁰⁴ In sharp contrast, if a CLEC has requested spare dark fiber strands or has leased unbundled dark fiber strands from Verizon, Verizon refuses to make any repairs to the dark fiber strands,¹⁰⁵ except for the cleaning and retrofitting of connectors.¹⁰⁶ Verizon's policies are not only discriminatory, but also place CLECs at a competitive disadvantage because degraded fiber may ultimately adversely impact the CLEC's

¹⁰² Lacouture/Ruesterholtz Declaration para. 9.

¹⁰³ Tr. at 118:22-25 ((Mr. Albert) "During the life of the fiber strands, there is a general deterioration that frequently occurs, which has an effect of increasing the amount of loss that occurs across that fiber strand.").

¹⁰⁴ See, e.g., Tr. at 120:8-14 ("we will add a repeater"), 124:5-14.

¹⁰⁵ Tr. at 128:7-22; Verizon's Proposed Interconnection Agreement, § 8.5.18.

quality of service. Depending on the seriousness of the degradation, the fiber may in fact be unusable by the CLEC. Verizon's failure to repair unbundled dark fiber strands for CLECs or to permit CLECs to repair their leased unbundled dark fiber ultimately results in less dark fiber availability for CLECs. Further, Verizon's refusal to repair dark fiber for CLECs is difficult to explain when contrasted with its policy regarding the leasing of unbundled copper loops or interoffice facilities. Verizon will repair loops and interoffice facilities; however, it refuses to repair dark fiber. In sum, Verizon's practices regarding dark fiber are discriminatory because Verizon will repair degraded dark fiber that it is using or has reserved for its own purposes; however, Verizon will not repair degraded dark fiber for CLEC, even if the CLEC will pay for the repair.

6. **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 Vermont**

Verizon's policies regarding the inventory of dark fiber that is available to CLECs are discriminatory and effectively result in less fiber availability to CLECs as a practical matter. In Vermont, 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 at both ends of the route.¹⁰⁷ In fact, Verizon considers fiber that is not terminated at both ends to be "under construction" and not part of the dark fiber inventory available to CLECs.¹⁰⁸ Further,

¹⁰⁶ Tr. at 129:9-17, 130:11-24; 183:10-16 ((Ms. Detch) "we can clean the connectors, or we can retrofit them if there is no other service riding that ribbon.").

¹⁰⁷ CTC Declaration para. 21; Verizon's Proposed Interconnection Agreement, §§ 8.5.2, and 8.5.5 ("Unused fibers located in a cable vault or a controlled environmental vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to CLEC.").

¹⁰⁸ Tr. at 159:12-17.

Verizon admitted that when it constructs and installs fiber routes, the fiber is not available to CLECs until the “route is completely spliced from end to end and terminated at terminals at each end” which could take “a year or two.”¹⁰⁹ Verizon also admitted, in the New Hampshire 271 proceeding, that it has never terminated fiber at the request of a CLEC in order to provide dark fiber to the CLEC.¹¹⁰ These practices result in Verizon grossly understating the amount of dark fiber in Vermont that should be characterized by Verizon as “available” to requesting CLECs as unbundled network elements. Such fiber may readily be made usable by Verizon, and should be considered usable by CLECs.

The District of Columbia Public Service Commission (“DC PSC”) recently concluded that unlit fiber that its not attached at both ends (unattached fiber) is within the scope of the dark fiber UNE and should be included in Verizon’s dark fiber UNE inventory that is made available to CLECs. More specifically, the DC PSC rejected Verizon’s argument that such unattached dark fiber is under construction and therefore should not be part of Verizon’s dark fiber UNE inventory. The DC PSC concluded that “it is clear that unattached dark fiber is *already installed in the network before it is attached* to termination equipment, and easily called into service by the attachment of termination equipment.”¹¹¹ The DC PSC expressly rejected Verizon’s argument that requiring it to attach termination equipment to unattached dark fiber for CLECs would result in the creation of a superior network. The commission concluded that:

The *UNE Remand Order* includes unattached dark fiber in its definition of dark fiber, since it is deployed in Verizon’s network and is easily called into service. It is also analogous to ‘dead count’ or ‘vacant’ copper, which the FCC required to

¹⁰⁹ Tr. at 159:9-24.

¹¹⁰ Verizon New Hampshire Section 271 Application, N.H. PUC Docket No. 01-151, Transcript of Hearing at 155:9-17 (Dec. 10, 2001)(“N.H. Tr.”)(attached hereto as Exhibit 10).

¹¹¹ DC Order para 26 (emphasis added).

be unbundled. The Commission chooses to follow the Indiana Commission's decision in permitting [CLECs] to have access to unattached dark fiber. Approval of [the CLEC's] position *does not require Verizon to create a superior quality network, since it merely permits [the CLEC] to have the same access to dark fiber that Verizon provides to itself.*¹¹²

Moreover, while such unterminated dark fiber could be available to Verizon, Verizon *does not* count fiber that is not terminated at both ends in calculating how much dark fiber it may reserve for maintenance and other purposes, resulting in excessive quantities of “reserved” fibers that are available to Verizon with little effort but not available to CLECs. Verizon's very restrictive policies regarding the dark fiber it considers part of the inventory available to CLECs may explain in part the phenomenal rejection rate of 88 percent CLECs have experienced in requesting dark fiber from Verizon in Vermont. In sum, Verizon has not demonstrated that it treats CLECs in a non-discriminatory manner similar to the manner in which it treats itself and its affiliates with respect to the provision and repair of dark fiber network elements as required by Section 251(c)(3) of the Act.

7. **Verizon's Responses to CLEC Inquiry Regarding the Availability of Dark Fiber Are Deficient**

In Vermont, when Verizon tells a CLEC that no dark fiber is available between two points, it says just that – that no fiber is available. Verizon's practices in Vermont regarding its response to a CLEC inquiry concerning the availability of unbundled dark fiber are unreasonable and violate the Act. The unreasonableness of Verizon's Vermont practices is especially evident when compared to the requirements imposed in New Hampshire. The New Hampshire Public Utilities Commission (“NH Commission”) has ordered that Verizon provide a written response to a CLEC's dark fiber inquiry within thirty (30) days when it determines that dark fiber is not

¹¹² *Id.* para. 33 (emphasis added).

available.¹¹³ The written response must include specific reasons why dark fiber cannot be provided and must include 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.

NH Dark Fiber Order, at 8 (emphasis added). 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 alternative routes are available.¹¹⁴ Following the lead of the New Hampshire Commission, the Rhode Island Commission also required Verizon to assume the responsibility of identifying alternative dark fiber routes between central offices requested by a CLEC where the route requested by the CLEC is unavailable because Verizon “is the entity most familiar with its own network configuration.”¹¹⁵ Similarly, the New Jersey Board of Public Utilities recently directed Verizon “to provide specific details to the CLEC and staff for

¹¹³ 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) (“NH Dark Fiber Order”).

¹¹⁴ 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. CLLI BURLVTMA to CTC’s POP at 1193 South Brownell Rd. CLLI VLSTVT07. CTC Declaration para. 24 and Attachment CTC-08, Dark Fiber Inquiry Form.

¹¹⁵ *In re: Verizon-Rhode Island’s TELRIC Studies – UNE Remand*, Docket No. 2681, Report and Order, at 22 (R.I. PUC, Dec. 3, 2001).

review within five calendar days of the rejection” in order for the CLEC to “have the ability to challenge any claims by Verizon that sufficient dark fiber does not exist.”¹¹⁶

In contrast to the extensive information that Verizon is required to provide upon rejection of an order in New Hampshire, Verizon recently rejected an order by CTC for dark fiber in Vermont and provided only the following terse explanation: “NO DIRECT ROUTE BURLVTMA-WLSTVT07 NO FIBERS.”¹¹⁷ This explanation is insufficient for CTC to examine the veracity of Verizon’s claim that dark fiber is not available.

And CTC has recently had reason to call Verizon’s veracity into question. On December 5, 2001, CTC submitted a Dark Fiber Inquiry Form to Verizon, requesting two fiber pairs from Dover, NH to Manchester NH.¹¹⁸ On December 19, 2001, Verizon replied that this request could not be fulfilled because there were no spare fibers on certain segments of the route,¹¹⁹ as illustrated on the Fiber Blockage map provided.¹²⁰ However, when Verizon provided CTC with the detailed information that the NH Commission requires Verizon to provide when it reports that no fibers are available,¹²¹ it was determined that the reply and the map were erroneous. As clarified by Verizon testimony, the cable assignment reports indicated that there were actually four spare strands on the Dover to Barrington route when the reply stated there were none.¹²²

¹¹⁶ In the Matter of the Board’s Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc., Docket No. TO00060356, Summary Order of Approval, at 11 (N.J. BPU Dec. 20, 2001).

¹¹⁷ See Exhibit 11, attached hereto.

¹¹⁸ *Id.*.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Exhibit 12, attached hereto.

¹²² Maine Tr. at 231:13-25, 232:1-17.

Without this level of information, which is not provided in Vermont, CTC would have been forced to accept Verizon's word, erroneous as it was. When confronted with these discrepancies, Verizon's witness admitted that there may have been a Verizon "goof,"¹²³ but argued that this was still not a problem, because even without this information, CTC could request a time consuming and expensive field survey – for *each* segment of the route, and at CTC's expense!¹²⁴ This is certainly unreasonable considering the obvious ease with which this information can be produced from Verizon's records.

The extraordinary difference between the minimal information Verizon provides in Vermont and the information it provides in New Hampshire is manifest upon comparison of Exhibits 11 and 12 hereto. Exhibit 11 is the information recently provided to CTC in Vermont, while Exhibit 12 is the information provided to CTC in New Hampshire. Apart from hiding the existence of requested routes, the paucity of information provided in Vermont does not as a practical matter enable a CLEC to determine whether alternative routes are available. In fact, a CLEC in Vermont must make a separate inquiry regarding each potential segment to determine if an alternative route is available.¹²⁵ This is unworkable because of the large number of possible routes. 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.¹²⁶

¹²³ *Id.* at 231:18.

¹²⁴ *Id.* at 232:22 to 235:16.

¹²⁵ Tr. at 169:11-18, 170:5-14.

¹²⁶ N.H. Dark Fiber Order at 8.

The Commission should, at a minimum, require Verizon to agree to interconnection terms in Vermont that obligate Verizon to identify all reasonably available alternate dark fiber routes with available dark fiber, the scheduled completion date of fiber construction projects and which segments of the routes are not available so that a CLEC has access to sufficient information to determine whether it can feasibly build or buy a small segment of fiber to complete an alternate route, wait for a Verizon construction project to be completed, or give up entirely on serving the area.

* * *

In sum, Verizon's dark fiber UNE practices in Vermont have made it nearly impossible for CLECs to make use of Verizon Vermont's dark fiber. Verizon has failed to provide an adequate explanation as to why it seeks to frustrate competition in Vermont through its continued use of the onerous practices discussed above.

IV. CONCLUSION

Verizon's actual collocation performance and procedures do not comply with the requirements of its tariffs, the Act, and Competitive Checklist Item 1. More specifically, Verizon's has billed CTC, and continues to demand payment from CTC, for numerous collocation arrangements in Vermont and other states for which Verizon is not entitled to payment under its own tariffs and other documents. These overbillings relate both to nonrecurring and to recurring charges, and collectively entail millions of dollars. Accordingly, Verizon's actual collocation practices do not meet the requirements of the Act and Competitive Checklist Item 1, and the Commission should withhold its endorsement of Verizon's Section 271 application until Verizon adequately addresses these deficiencies.

Further, Verizon's dark fiber UNE practices in Vermont are unreasonable, discriminatory and are onerous compared to its practices in New Hampshire, Massachusetts, Rhode Island, the District of Columbia and New Jersey. Verizon has failed to provide an adequate explanation as to why it seeks to frustrate competition in Vermont through these onerous practices.

For the foregoing reasons, CTC respectfully requests that the Commission deny Verizon's application for 271 authority or condition its approval of the Application upon Verizon's demonstration that it will comply with the requirements of Competitive Checklist Items 1, 2, 4, and 5 as set forth in these Comments.

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February 6, 2002

TABLE OF EXHIBITS

Exhibit 1	Letter from Gregory M. Romano, Verizon Counsel – Interconnection, to Russell Blau, CTC Counsel (August 1, 2001)
Exhibit 2	Declaration of CTC Comms. Corp. (Oct. 15, 2001)
Exhibit 3	Verizon Supplemental Checklist Declaration (Nov. 9, 2001)
Exhibit 4	Verizon’s Response to Record Request #8, Nov. 30, 2001
Exhibit 5	Selected Sections of Verizon’s Proposed Interconnection Agreement
Exhibit 6	Verizon’s Response to CTC’s Request No. CTC 1-35
Exhibit 7	Selected Pages of Maine 271 Hearing Transcript, Jan. 29, 2002
Exhibit 8	Verizon’s Response to CTC’s First Set of Requests, dated Nov. 8, 2001
Exhibit 9	Verizon’s Response to the Requests of the Joint CLECs, Set #1, in New Hampshire Docket No. DT 01-206, dated Nov. 7, 2001
Exhibit 10	Verizon New Hampshire Section 271 Application, N.H. PUC Docket No. 01-151, Transcript of Hearing, Dec. 10, 2001
Exhibit 11	Reply to Vermont Dark Fiber Request
Exhibit 12	New Hampshire Dark Fiber Request