

Harrington on November 8, 2001. In that proceeding, Verizon VT has proposed certain tariff modifications that will resolve some of the issues identified by the Department and NECTA in that docket, and that are also addressed in the Larkin Declaration.

57. Many of the issues identified in the Larkin Declaration concern extremely technical aspects of the relationship between pole owners and attaching entities and have no effect on Verizon VT's provision of nondiscriminatory access to pole, ducts, conduits, and rights of way. These issues are more appropriately addressed in the concurrent tariff proceeding than this Section 271 investigation. Verizon VT has addressed these issues fully in testimony in the tariff proceeding. Nonetheless, Verizon VT is providing a response in this Reply Declaration to each issue identified in the Larkin Declaration
58. In paragraph 11 of the Larkin Declaration, the Department states that Verizon VT is not in compliance with Rule 3.700 and 30 V.S.A. § 225 because significant procedures and requirements associated with the application process are not within the Tariff. Verizon VT does not agree with this assertion, Rule 3.703(B) allows a utility's tariff to incorporate a standard license agreement, which was the basis on which Verizon VT designed its amended tariff. Nonetheless, to reduce any confusion on this issue, Verizon VT has agreed to include rates and charges where they are not currently in the Tariff and will file these with the Board in the next week. It is not necessary, however, to include in the tariff all aspects of the Administrative Forms and Procedures Package ("AFAPP"), as the Department claims.

59. The AFAPP contains the forms and procedures that a Licensee follows when submitting an application for access to poles and conduit, which are essentially identical but for state-specific variations to the procedures followed by licensees in the other New England states that operate under a standard license agreement rather than a tariff. Furthermore, the Department fails to consider that the forms contained within the AFAPP are subject to continual update based on changes initiated by either Verizon VT or input from licensees during the on-going workshops. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.
60. In paragraph 15 of the Larkin Declaration, the Department alleges that Verizon VT places artificial and unnecessary limits on the number of poles (200) that will be considered in a single application, and requires multiple applications for single jobs if there are more than 200 poles involved. Verizon VT disagrees with the Department's position regarding the limit of 200 poles per individual application as being artificial and unnecessary. As noted in Verizon VT's response to Information Request DPS 1-21 in this proceeding, the 200 pole limit is based upon historical experience in administering license applications, and consistency with the other New England states. Verizon VT's experience shows this to be a reasonable number of poles to efficiently administer and for which surveys can be coordinated and make-ready performed, if needed. The applicant can specify the order in which the applications are to be processed. In a large project, several 200 pole applications can be processed simultaneously. Furthermore, the 200 pole

limit per application is a carryover from the previous Tariff in effect since 1989. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

61. In paragraph 15 of the Larkin Declaration, the Department cites Ms. Harrington's reference to an ability to impose a limit of 2000 poles on all applications pending from one applicant at one time in the same Planning Manager's area. Verizon VT agrees that this was a misstatement in the Checklist Declaration. This limitation is not applicable under Vermont Rule 3.700 and in fact does not appear in Verizon VT's amended Tariff No. 26. Verizon VT intends to correct the statement in the Checklist Declaration.
62. In paragraph 18 of the Larkin Declaration, the Department alleges that Verizon VT utilizes its standard licensing agreements and joint-use agreements to impose unjust, unreasonable and unnecessary terms on licensees, such as requiring the licensee to apply to the non-owning joint user for a license, and under some of the joint user agreements between Verizon VT and power companies, permitting the non-owning joint users to collect annual pole attachment fees. Verizon disagrees. Amended Rule 3.703(D) specifically provides that it does not disturb existing contractual arrangements. When Verizon VT has that right under an existing Joint Use agreement to charge pole attachment fees to attaching entities, Verizon VT may do so. Joint Use agreements have never been found inappropriate by the Board.

63. Furthermore, Verizon VT believes that if each Joint Owner or Joint User operate separately and independently of each other during the pole application process only serves to introduce a climate of confusion and non-cooperation, not to mention that the joint agreements between Verizon VT and the power companies call for coordination and cooperation when pole work which may affect both parties is involved. It is very efficient for an applicant to simultaneously submit applications to both the power company and Verizon VT, and will ensure timely scheduling of the joint pole survey and only serve to benefit the applicant. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.
64. In paragraph 21 of the Larkin Declaration, the Department objects to Section 3.5.1 of the Tariff that allows Verizon to refuse to perform make-ready work in a case where the charges have been paid yet a licensee has other unpaid charges which are subject to dispute. The Department believes that such policies and procedures lead to unwarranted delay and impose unnecessary burdens on those seeking to attach to Verizon's poles. Verizon VT disagrees. Verizon VT agrees that it will not refuse to perform make-ready work for a party providing charges are pre-paid and the unpaid charges involve a bona fide billing dispute between parties. Verizon VT will refuse to perform make ready work, even if the work is pre-paid, when the party owes Verizon VT prior attachment fees not in dispute. Otherwise, it would be similar to having a landlord complete remodeling work for a business tenant to occupy additional space when they are not paying rent for the

space the tenant already occupies. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

65. In paragraph 16 of the Larkin Declaration, the Department alleges that Verizon VT fails to provide non-discriminatory access to its poles on reasonable terms because it imposes an unreasonable burden on parties seeking attachment with respect to applicable construction standards. Section 6.1.1A of the Tariff references four construction standards (Blue Book, NEC, NESC and OSHA), and requires licensees to research and use the most stringent of the four standards for any aspect of system construction. The Department continues to misunderstand Verizon VT's use of the Cable Placing Handbook. As Verizon VT clarified in response to Information Request DPS 1-64 in this proceeding, Verizon VT does not require attaching entities to design and construct in compliance with the Handbook. The reference material cited in the Tariff are standard industry documents that any party seeking attachments to a pole can obtain. Additionally, there are other governing authorities having jurisdiction over this subject; for example, municipal and state zoning and permitting requirements. There is no single set of rules that can take into account all of the issues that can arise in the context of a single pole attachment. Verizon VT should not be required to provide its internal Cable Placing Handbook to other parties. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

- Furthermore, Verizon VT's reply testimony addresses this more fully, including the additional points regarding this issue raised by NECTA, in Docket No. 6553.
66. In paragraph 28 of the Larkin Reply Declaration, the Department suggests discriminatory treatment of licensees, when Verizon VT appears to be imposing more stringent liability standards on licensees for damage they might cause when working on their facilities located on a Verizon pole, than Verizon imposes on itself for damage it might cause to others when working on its own facilities. Verizon VT disagrees. First, Rule 3.703(C) states... "The tariff may include terms that are just and reasonable subject to approval by the Board, and it may include limitations on liability, indemnification, insurance requirements, and restrictions on access to Pole-Ownning Utility facilities". The liability language in the Tariff is just and reasonable. Nondiscriminatory access does not include perfectly reciprocal liability protection. Further, the language is from Verizon New England's Standard Pole Attachment Agreement which Verizon VT used as the basis of the Tariff, and therefore consistent with Section 3.703(C) of Rule 3.700. The exact language that the Department questions is the language that was inserted in the Agreement at the request of NECTA. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.
67. In paragraphs 17 and 22 of the Larkin Declaration, the Department questions why Verizon VT's AFAPP application forms require the location of poles by means of the exact street and the number of the dwelling served. The Department further proposes that since Verizon should maintain records based on pole and route

numbers that are sufficient to locate the poles in question without the need to impose increased administrative burdens on licensees, and that Verizon VT also should be able to determine if make-ready should be required based on records in a database. Contrary to the Department's position, Verizon VT does not currently have a system in which the location and each the height of each attachee is identified. Furthermore, even if this database existed, it would only assist in the field survey and not be a substitute. It would not account for changes in field conditions and weather constraints, or for illegal attachees and inaccuracies in the database. Second, the Department and attaching entities could likely oppose any of the costs associated with the maintaining of a database. Third, Verizon VT believes the information requested on the form is reasonable and necessary in order to perform the field survey. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

68. In paragraphs 23 and 24 of the Larkin Declaration, the Department states that VerizonVT' s Tariff fails to recognize its obligations under the Rule to utilize least cost methods in completing make-ready work that it would utilize if placing its own facilities, and that its use of the unit costs set forth in the AFAPP calls into question the company's intent to comply with this provision of the rule. Furthermore, the DPS alleges that the tariff fails to recognize the right of licensees to have make-ready work completed from a list of approved contractors if Verizon is unable to complete the work in compliance with the time frames set out in the Board's Rule. Verizon VT has agreed to modify its Tariff to include

such language. As noted throughout the process when the Rule was developed, Verizon VT uses its own employees in performing the vast majority of make-ready work in accordance with the terms of its labor contract. As noted in Verizon VT's responses to Information Requests DPS 1-22 and DPS 1-23 in this proceeding, Verizon VT does use some outside contractors for specific make-ready work, including blasting holes for pole or anchor placement, and tree trimming. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

69. In paragraph 25 of the Larkin Declaration, the Department alleges that Section 5.1.1B.4. of the Tariff is in direct conflict with PSBR 3.708(B)(2). The Department alleges that Verizon exempts itself from the Board imposed deadlines for make-ready work for delay occasioned by the failure of an existing licensee to complete work on its facilities in a timely fashion. In Ms. Harrington's Reply testimony filed in Docket 6553, Verizon VT has committed to modify certain sections in the Tariff that should address the Department's concerns in this area. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.
70. As noted previously, there are also a few cases in the Department's Reply Declaration where the Department apparently misunderstands Verizon VT's position. Verizon VT will clarify these issues. First, in paragraph 19 of the Larkin Declaration, the Department expresses concern that in Verizon VT's

Declaration, Verizon VT states that it schedules work for itself and for telecommunications providers seeking attachment on a non-discriminatory basis. The Department notes that Board Rule 3.702(B) requires non-discriminatory access to poles by any entity holding a Certificate of Public Good in Vermont, including, but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities. Verizon VT's intention is not to limit the extent to which it provides non-discriminatory access to poles and conduit to just telecommunications carriers. Verizon VT re-iterates that it continues to provide non-discriminatory access in compliance with both the Communications Act and VT Rule 3.700.

71. Second, in paragraph 27 of the Larkin Declaration, the Department suggests that Verizon's AFAPP appears to require licensees to submit a separate and complete application when a licensee has questions for a specialist, rather than have the specialist and the individual processing the original application share the document internally. The Department misunderstands Verizon VT's AFAPP. Verizon VT requires one application to be submitted and not duplicate applications.
72. As also noted previously, Verizon VT is willing to modify certain tariff provisions, and these modifications should resolve some of the Department's issues. First, Verizon VT has agreed to incorporate in its tariff and file with the Board any items specifically associated with rates and charges in the tariff that are not currently included in the Tariff. This should address the concerns identified in

paragraph 12 of the Larkin Declaration. Second, the Department's concern about the penalty for illegal attachments that it identifies in paragraph 14 of the Larkin Declaration is resolved since Verizon VT has agreed to revise its Tariff, regarding the penalty associated with unauthorized attachments, to indicate that Verizon VT will back bill a minimum one year rent for any unauthorized attachments if Verizon VT cannot determine the date the unauthorized attachment was made. Third, the Department's concern about Verizon VT's ability to change late fees without Board approval that it identifies in paragraph 15 of the Larkin Declaration is resolved since Verizon VT has agreed to revise this language which could be interpreted as allowing Verizon VT to change late fees without requiring Board approval.

73. In paragraph 12 of the Larkin Declaration, the Department alleges that Verizon is charging unsubstantiated and unapproved unit costs for certain make-ready procedures in violation of the Rule's requirement that only actual costs be paid, with any excess of prepayments refunded to the applicant. See PSBR 3.708(H). The Department also noted that Verizon's Declaration states that, "The requesting carrier is charged only for work necessary to prepare facilities for its attachments and occupancy", ⁷ while Rule 3.700 has several conditions under which the requesting carrier would pay none, or only some portion of the cost of the work necessary to prepare facilities for its attachments and occupancy. See PSBR 3.708(H)(1)-(3) & (J). This issue should be resolved since Verizon VT intends to incorporate its unit costs in the Tariff. In addition, Verizon VT has provided the

⁷ Checklist Declaration at ¶ 120.

Department with documentation that includes the components that make up the unit cost for each task. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

74. In paragraph 26 of the Larkin Declaration, the Department objects to an additional cost for the Verizon VT project manager since it is not approved by the Board, and suggests that they should be part of the make ready process. Verizon VT has developed the Project Management Option at the urging of Licensees at the Workshop Sessions, and provides additional assistance for customers to perform tasks that are normally the responsibility of the applicant and therefore beyond the scope of Verizon's responsibility to respond to an application. Examples include identifying, or designing and recommending a route to accommodate the placement of a customer's facilities, or managing a large project that involves a combination of pole attachments and conduit occupancy, or a project that involves miles of poles or conduit across state boundaries. Verizon VT does not believe that this issue has a direct bearing on the issues before the Board in this proceeding and should be properly addressed in Docket No. 6553.

CHECKLIST ITEM 4: LOCAL LOOP TRANSMISSION FROM THE CENTRAL OFFICE TO THE CUSTOMER'S PREMISES, UNBUNDLED FROM LOCAL SWITCHING AND OTHER SERVICES

75. Verizon VT demonstrated in its Checklist Declaration, ¶¶ 130-211, that it has satisfied its obligations under Checklist Item 4. Only the Department's witness, Christopher Campbell, filed comments regarding Verizon VT's performance

under Checklist Item 4. Mr. Campbell's Declaration was limited to a narrow set of alleged issues regarding the availability of subloops in Vermont.

76. Mr. Campbell takes issue with Verizon VT's unbundled subloop practices and suggests those practices "substantially undermine this offering for CLECs." Campbell Declaration at 3. Mr. Campbell complains that "Verizon does not readily provide information about the location of remote terminals, making it difficult and expensive for the CLEC to do so." *Id.* at 4. Mr. Campbell criticizes Verizon for not having a "set price" for obtaining a remote terminal serving address inquiry. *Id.* Mr. Campbell asserts that Verizon's practices can inhibit the growth of facilities-based competition and the ability of CLECs to deploy certain advanced services by imposing an unwarranted delay and costs. Finally, Mr. Campbell recommends that "... the Board should find that Verizon is not in compliance with Checklist item 4 until such time as Verizon is readily able to provide information to CLECs on the location of its remote terminals and their geographic serving areas at a reasonable cost and without undue delay." *Id.* at 5.
77. Mr. Campbell's recommendation is based on misinformation and, therefore, is not valid. As explained in greater detail below, Verizon VT enables CLECs to obtain information on the location of Verizon VT's remote terminals. Accordingly, given that Verizon VT makes this information available today, this Board should find that Verizon VT satisfies its obligations under Checklist Item 4.
78. In his declaration, Mr. Campbell states that "In reviewing Verizon's tariff and SGAT sections on collocation at remote terminal equipment enclosures, and its SGAT on the Unbundled Sub-Loop Arrangement, I have been unable to discover

any service that would provide CLECs with information about the location of remote terminals." Campbell Declaration at 5. The mere lack of a Statement of Generally Available Terms and Conditions ("SGAT") offering to provide CLECs with information about the location of remote terminals would not provide a basis for a Board finding that Verizon VT fails to satisfy Checklist Item 4 requirements. The FCC considers the totality of the ILEC's unbundled loop offerings to determine its Checklist compliance. This Board, therefore, cannot reasonably conclude that Verizon VT has failed to satisfy its Checklist Item 4 requirements simply because Verizon VT's SGAT does not presently include an offering that enables a CLEC to obtain specific information on the location of Verizon VT's remote terminal equipment enclosures ("RTEE"). Mr. Campbell's recommendation noted earlier is especially inappropriate given that Verizon has not received a single request for information on the location of remote terminals in Vermont and has received only six such requests in the former Bell Atlantic region.

79. Furthermore, Verizon VT's subloop offering essentially is the same offering Verizon makes available to CLECs throughout its various state jurisdictions, including New York, Massachusetts and Pennsylvania. Verizon VT's current offering fully complies with FCC requirements, and the FCC recently found in the Pennsylvania 271 proceeding that Verizon Pennsylvania ("Verizon PA") satisfied its obligations to provide unbundled subloops.⁸

⁸ *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*; CC Docket No. 01-138, (September 19, 2001) ¶ 76. ("Verizon PA 271 Order")

80. Section 5.15 of Verizon VT's SGAT includes comprehensive terms, conditions and rates for access to unbundled subloops and related interconnection services.⁹ Verizon VT's subloop offering also includes optional services such as a Feeder Distribution Interface ("FDI") Serving Address Inquiry service and a Preliminary Engineering Records Review service. Verizon's FDI Serving Address Inquiry identifies the range of customer addresses served by an FDI location. Verizon's Preliminary Engineering Records Review service provides information about an FDI location from Verizon VT's records, such as the type of enclosure and the number of distribution pairs that terminate at the FDI. Where either the FDI Serving Address Inquiry or Preliminary Engineering Records Review is specified on an application, the CLEC will be notified of the results of these inquiries before Verizon processes the remainder of the application. The CLEC will be given the option of canceling the application based on the results of these inquiries.
81. Although Verizon VT has developed and made generally available (via its SGAT) an unbundled subloop offering that permits a CLEC to locate its own DSLAM equipment at remote sites, interconnect at Verizon FDIs where technically feasible, and access Verizon VT's distribution subloops, neither Verizon nor CLECs have any real experience with these offerings. Consequently, Verizon is working with various CLECs to enhance its current subloop offering. For example, as Mr. Campbell correctly points out, Verizon VT's SGAT does not presently include a specific process for CLECs to obtain information regarding

⁹ Section 4.5.11 includes terms, conditions and rates that enable a CLEC to install its DSLAM

the exact location of remote terminal equipment enclosures. In response to CLEC requests, Verizon is currently developing (with CLEC input) a Central Office Remote Terminal (CORT) Inquiry service. The CORT inquiry service is intended to provide a requesting CLEC the following information:

- The address of each Remote Terminal that subtends an identified Central Office;
- The corresponding Remote Terminal CLLI (Common Language Location Identifier) codes;
- A list of customer addresses served by each Remote Terminal;
- The quantity of distribution pairs fed from each Remote Terminal
- The type of feeder cable (*i.e.*, copper, fiber, or both) of each Remote Terminal.

82. Although certain terms and conditions for a CORT inquiry offering are still under development, CLECs in Vermont can request a CORT inquiry today pursuant to the terms of an interconnection agreement. The CORT is requested using the CRTEE (Collocation Remote Terminal Equipment Enclosure) form. This form is available on Verizon's CLEC website. The requesting CLEC submits the completed CRTEE form to the Verizon Collocation Office listed on the form using either e-mail or fax. Once the request is submitted, it takes approximately 14 business days to process. A non-recurring charge will be assessed for each CORT requested on a per central office basis.¹⁰ As is the case with Verizon's Serving Address Inquiry offering, no CLEC has requested a CORT inquiry in any of Verizon's jurisdictions. Verizon VT intends to file SGAT terms, conditions and rates plus supporting cost studies for Board approval in Vermont at the same

equipment at nearby outside plant remote terminal equipment enclosures (RTEE).

¹⁰ Currently, Pennsylvania is the only state where Verizon has performed a cost study. The cost assessed for a CORT inquiry in Pennsylvania is \$526.11 per request.

time that it files tariff language for this offering in Massachusetts, New York and in other states where Verizon makes UNE offerings available under tariffs or SGATs.

83. Mr. Campbell's recommendations clearly are not based on any factual evidence and appear to be based on misinformation. As explained above, Verizon VT already provides, pursuant to interconnection agreement, information on the location(s) of remote terminals that Mr. Campbell believes is paramount to Verizon VT's unbundled subloop offering and this Board's approval of Verizon VT's 271 application. Moreover, it is worth noting that no CLEC has complained about the issues put forth by Mr. Campbell in his declaration.
84. Finally, Mr. Ostrander states, in his declaration, that the percent of installation troubles reported by CLECs in the month of August 2001 was three times greater than VADI, with CLECs reporting 6% installation troubles and VADI reporting about 2% installation troubles. Ostrander Declaration, ¶ 14. Mr. Ostrander then claims that this result is "a strong indication of an absence of parity favoring VADI over CLECs" *Id.* Mr. Ostrander is wrong on the facts.
85. Over the period March through September 2001, Verizon VT provided high quality xDSL loop installation service to CLECs. Contrary to Mr. Ostrander's testimony, Verizon VT's Carrier-to-Carrier ("C2C") reports show excellent results for measurement PR-6-01 (% Installation Troubles Reported Within 30 Days). In fact, not a single CLEC installation trouble report for xDSL loops was isolated to a trouble in Verizon VT's network. More specifically, Verizon VT's C2C reports show zero network troubles were reported for measurement PR-6-01

(i.e., 0.00% troubles reported within 30 days) in every month between March and September 2001. These excellent results also compare favorably to Verizon VT's retail results, which show roughly 3% of installations experienced a network trouble within 30 days.

86. Mr. Ostrander apparently assumed, erroneously, that measurement PR-6-03 (% Installation troubles Reported Within 30 Days (FOK/TOK/CPE) was a measure of Verizon VT's installation quality performance, when in fact it is a measure of troubles reported by CLECs where no trouble was found (i.e., Found Okay (FOK) or Tested Okay (TOK)) or where the trouble was isolated to the CLEC's or its customer's equipment. Consequently, this Board should dismiss Mr. Ostrander's inaccurate testimony and find that Verizon VT completely satisfies its obligations under Checklist Item 4.

CHECKLIST ITEM 5: LOCAL TRANSPORT FROM THE TRUNK SIDE OF A WIRELINE LOCAL EXCHANGE CARRIER SWITCH UNBUNDLED FROM SWITCHING OR OTHER SERVICES

87. Verizon VT demonstrated in its Checklist Declaration, ¶¶ 212-237, that it has satisfied its obligations under Checklist Item 5. Only one party, CTC Communications, filed comments regarding Verizon VT performance under Checklist Item 5. CTC's comments were limited to only one area under this Checklist item.

A. Dark Fiber

88. CTC states that "Verizon's claim that it provides access to network elements on an unbundled basis in Vermont 'on rates, terms and conditions that are just,

reasonable, and nondiscriminatory' is patently false with respect to unbundled dark fiber." CTC adds that "Verizon's assertions that it provides access to network elements in Vermont 'in the same manner as provided by Verizon MA' and using the same procedures it employs in Massachusetts are patently false with respect to unbundled dark fiber loops, subloops and transport." CTC further adds that "Verizon 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. CTC Declaration at 9. CTC alleges that "Verizon's policies in Vermont regarding the splicing of dark fiber, the routing of dark fiber through intermediate offices, and the availability of dark fiber to CLECs are also more onerous in Vermont than in Massachusetts." *Id.* at 10.

89. CTC also claims that "Verizon's policies 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," and that Verizon VT "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." Finally, CTC complains that "As a result of Verizon's onerous policies regarding dark fiber in Vermont in comparison with its practices in Massachusetts and New Hampshire, dark fiber UNEs are less likely to be available to CTC and other CLECs in Vermont. *Id.* at 12-13.

90. CTC's complaints are totally without merit. Contrary to CTC's claims, Verizon VT is neither obligated to provide dark fiber in Vermont in accordance with its dark fiber offering in Massachusetts or in compliance with past dark fiber rulings issued by the Massachusetts Department of Telecommunications and Energy ("DTE"), nor is it required to provide dark fiber in accordance with its dark fiber offering in New Hampshire or in compliance with past dark fiber rulings issued by the New Hampshire Public Utilities Commission. Verizon VT is obligated to provide nondiscriminatory access to dark fiber in Vermont solely in accordance and compliance with the requirements of the Act and the FCC's *UNE Remand Order*.¹¹
91. 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), including New York, Connecticut, and Pennsylvania. The FCC found Verizon's unbundled loop and transport offerings, including dark fiber, in New York, Connecticut and Pennsylvania to be in compliance with its Checklist requirements.
92. Verizon's dark fiber offerings in Massachusetts and New Hampshire reflect the results of state arbitration decisions, which were issued *before* the FCC clarified the obligation of incumbent local exchange carriers to provide dark fiber in its *UNE Remand Order*. Those early state arbitration decisions do not expand the

¹¹ Verizon VT's Checklist and Supplemental Checklist Declarations discuss compliance with the Act's dark fiber unbundling requirements under Checklist Item 5 (local transport), as the vast majority of dark fiber orders received to date request access to unbundled dark fiber interoffice transport facilities. Nevertheless, Verizon VT's demonstration of dark fiber checklist compliance under Checklist Item 5 (in these declarations) apply equally to its dark fiber unbundling obligations under Checklist Items 2 and 4.

- requirements of the Act or the FCC's orders interpreting the Act, and therefore cannot be used to determine whether Verizon VT's offerings comply with the Act and the Checklist.
93. Furthermore, CTC does not present any factual evidence to support its conclusion that the more "onerous" requirements imposed in Massachusetts and New Hampshire have in fact increased the availability of dark fiber in those states as compared to Vermont. CTC's unfounded assertions simply are not valid.
94. In addition and contrary to CTC's claim, Verizon VT does not "severely" limit the amount of dark fiber available by characterizing it as "maintenance spares." CTC Declaration at 11. The availability of Verizon VT's dark fiber conforms strictly to the limitations imposed in the FCC's *UNE Remand Order*. Verizon VT provides access to available dark fiber terminated at accessible terminals in accordance with the *UNE Remand Order*. The quantity of fiber strands Verizon VT currently uses for maintenance spares is the same as it used prior to the offering of dark fiber as an unbundled network element. In addition, Verizon VT uses (*i.e.*, assigns) fiber optic strands for new fiber optic systems to serve near term aggregate customer growth and for network survivability projects.
95. Moreover, Verizon VT is *not* required to construct new transport facilities to accommodate specific CLEC point-to-point requirements for facilities that the incumbent LEC has not deployed for itself. See *UNE Remand Order*, at ¶ 324 ("In the *Local Competition First Report and Order*, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's

requirements where the incumbent LEC has not deployed transport facilities for its own use.”)

96. Verizon VT also does not refuse to repair dark fiber loops, subloops, and transport, as CTC states on page 12 of its Declaration. The transmission characteristics of Verizon VT’s inventoried fiber strands conformed to Verizon/vendor standards at the time it was installed. Over time, the transmission characteristics of the fiber may deteriorate due to weather factors, accidental damage and repair activities. Therefore, there is no guarantee that the transmission characteristics of fiber deployed in Verizon VT’s network at a particular time will remain constant. CLECs, like Verizon, are responsible for determining whether the current transmission characteristics of available dark fiber can be utilized in their network design based on the requirements of the service offering they plan to deploy over the fiber. Verizon VT provides CLECs with an opportunity to request a field survey of specific dark fiber pairs prior to submitting a firm order to determine the transmission characteristics of the available dark fiber. A CLEC may request a field survey in order to verify the availability of dark fiber pairs and that such pairs are not defective or have not been used by Verizon VT personnel for prior emergency restoration activity. Fiber pairs are tested by placing a light source on the individual fibers and measuring the end-to-end loss utilizing industry standard fiber optic test equipment. Results are documented and provided to the CLEC. Additionally, once a CLEC has accepted the dark fiber circuit(s), the CLEC can request that Verizon VT retrofit or clean the connectors on its dark fiber circuits, on a time

and materials basis, in an effort to improve the transmission characteristics of the fiber. Verizon VT cannot guarantee that this work will improve the transmission characteristics of the optical fiber. Thus, with these optional services, a CLEC is able to obtain dark fiber that meets its particular needs in the same manner that Verizon VT does, and can make an effort to improve the transmission characteristics of the optical fiber in the same manner that Verizon VT does.

97. Contrary to CTC's claim, Verizon permits CLECs in Vermont to request a fiber layout map for a wire center for preliminary network design purposes. Section 5.16.4.C of Verizon VT's SGAT specifically provides for the provision of serving wire center fiber layout maps. These fiber layout maps are created using Verizon VT's existing records and are provided subject to a proprietary agreement. The serving wire center fiber map will show the streets within the wire center where there are existing Verizon VT fiber cable sheaths.
98. Moreover, fact-specific or carrier-specific issues like those raised by CTC are best resolved through the negotiation and arbitration process set forth in Section 252 of the Act, or through a complaint, not through the 271 process. The FCC reached precisely this conclusion regarding dark fiber issues raised by a CLEC in Pennsylvania as part of the FCC's review and approval of Verizon Pennsylvania's 271 application. *See* Verizon PA 271 Order, ¶ 113.
99. CTC is currently operating in Vermont under the terms of the Verizon-GNAPs agreement which CTC elected to adopt earlier this year. That agreement, which was approved by this Board on January 6, 1999, and expired on November 1, 2001, does not include specific terms or conditions for access to unbundled dark

fiber. On October 26, 2001, CTC submitted a request to Verizon to negotiate a new interconnection agreement for the state of Vermont. A copy of CTC's request is on Attachment E to this Declaration. As explained above, the interconnection agreement negotiation process is the proper forum for CTC to request and negotiate terms and conditions for access to unbundled dark fiber in Vermont. Upcoming negotiations on an interconnection agreement presumably will address the issues CTC raises in its Declaration and this Board should permit that process to run its course. It is not appropriate, therefore, for CTC to try to circumvent the negotiation and arbitration process by injecting pre-negotiation issues, such as dark fiber, into the 271 process.

100. More importantly, CTC does not dispute that Verizon VT's dark fiber offering conforms to the terms and conditions of its interconnection agreements with other CLECs or the provisions of Section 5.16 of Verizon VT's SGAT. CTC's comparisons of Verizon VT's dark fiber offering to the so-called more "onerous" requirements ordered in Massachusetts and New Hampshire (which, as noted earlier, were issued prior to the FCC's *UNE Remand Order*) and its unfounded conclusions that dark fiber UNEs are less likely to be available in Vermont (versus Massachusetts or New Hampshire) provide no basis for this Board to find that Verizon VT has not satisfied its Checklist Item 5 obligations. This Board should disregard CTC's complaints in this inquiry. In doing so, this Board also should find that Verizon VT meets the requirements of Checklist Item 5.

CHECKLIST ITEM 13: RECIPROCAL COMPENSATION

101. In Part III, paragraph 8 of his Declaration dated October 15, 2001, Mr. Brevitz, on behalf of the Department, states that “at least one CLEC – the largest one in the State of Vermont – has recently filed a declaratory judgement action before the Board alleging that Verizon has wrongfully withheld \$25 million in reciprocal compensation payments for compensable minutes of exchanged traffic.” Mr. Brevitz goes on further to conclude that “this ongoing controversy with the largest CLEC in Vermont strongly suggests that Verizon’s compliance with Checklist item 13 is far from complete or satisfactory.” In paragraph 9, Mr. Brevitz suggests that Verizon was not forthright in its Declaration by his stating that “Significantly, however, Verizon’s Declaration makes no mention of this matter” and “Verizon provides no indication of when or how the dispute will be resolved.”
102. In general, the facts presented by Mr. Brevitz in his Declaration are accurate, but his conclusions are incorrect. Both his conclusion that Verizon VT’s compliance with Checklist Item 13 is “far from complete or satisfactory” and his determination that Verizon’s failure to mention an on-going billing dispute is “significant” are based on a misunderstanding of the requirements of this Checklist item, and are wrong.
103. While it is true that an on-going billing dispute exists between Verizon and the largest CLEC in Vermont [Adelphia], the fact remains that this is a billing dispute and only a billing dispute and that fact, in no way, reflects a failure on the part of

Verizon VT to comply with the requirements of Checklist Item 13. The fact that on October 5, 2001, Adelphia filed a Complaint and Petition for Declaratory Ruling with the Board does not alter that conclusion. Furthermore, the relationship between billing disputes and Checklist Item 13 compliance has been addressed by the FCC in both the Massachusetts and New York 271 Approval Orders. In those orders, the FCC rejected a claim made by CLECs that Verizon fell short of satisfying Checklist Item 13 because it failed to pay compensation for traffic terminated by competitive LECs to Internet Service Providers. *See* New York Approval Order ¶ 377; Massachusetts Approval Order ¶ 215. In both instances, the FCC concluded that, in light of its prior ruling that ISP-bound traffic is non-local interstate traffic and that the reciprocal compensation requirements of section 251(b)(5) of the Act do not govern inter-carrier compensation for this traffic, these arguments were irrelevant to its assessment of Verizon's compliance with Checklist Item 13. New York Approval Order ¶ 377; Massachusetts Approval Order ¶ 215.

104. If and when this Board takes action on Adelphia's Complaint and Petition for Declaratory Ruling, Verizon VT will present evidence in that proceeding and ultimately abide by a final determination of the compensation issue in dispute.
105. As stated in Verizon VT's Checklist Declaration, Verizon VT has complied with the reciprocal compensation provisions contained in interconnection agreements. *See* Declaration ¶¶ 384-385. Additionally, Verizon VT is paying reciprocal compensation pursuant to those agreements and, in so doing, complies with the requirements of this Checklist Item 13.

106. This completes Verizon VT's Supplemental Checklist Declaration.