38. Furthermore, further analysis of these orders revealed that where carriers purchased special access after their UNE orders were rejected, there was a wide range of holding periods for those special access circuits. Pursuant to Verizon's interstate access tariffs, carrier customers may convert eligible special access DS1 circuits to UNEs without liability after a minimum service period of 3 months in Verizon's former NYNEX states, *see* Exhibit 17; 2 months in Verizon's former Bell Atlantic states, *see* Exhibit 18; and 1 month in the former GTE states, *see* Exhibits 19 and 20. Carriers who wish to convert their special access circuits to UNEs before the minimum service period elapses may do so but will be liable for a minimum service period charge equal to the monthly recurring charges for the remaining months in the minimum service period. *Id.* These minimum service period requirements allow Verizon to recoup some of its costs for constructing the facilities necessary to provide the service that Verizon otherwise could not recover had it constructed the facilities and provided them at the existing UNE rates. Accordingly, under Verizon's policies, carrier customers can convert eligible DS1 special access circuits to UNEs *at any time*, and can do so without liability, after a minimum service period of only 1 to 3 months.

39. When we examined the holding periods for circuits that carriers purchased as special access after a UNE order was rejected for lack of facilities, we found that, some carriers converted the circuits to UNEs after holding them for only a short period of time while others are continuing to serve their customers using the special access service. We found, for example, that of 1,623 DS1 UNE orders that were rejected in the Verizon East serving territory and subsequently provisioned as special access, 169 of them were converted to UNEs after an average holding period of only 3 months while as many as 1,189 of those DS1s are still being held as special access circuits. This shows first that, contrary to some carriers' claims, carriers

whose UNE orders were rejected for lack of facilities could purchase special access service and then convert the circuits to UNEs after holding them for only a short period of time. More importantly, it demonstrates that, despite being able to convert their special access circuits to UNEs, carriers who purchased special access after their UNE orders were rejected can serve their customers using the special access service, and in fact, are doing so.

B. Holding Periods For DS1 Circuits Converted from Special Access to UNEs.

40. In response to claims by a number of parties that they cannot successfully provide high-capacity services without access to UNEs, we also analyzed the holding periods for carriers that currently are providing service using special access and, in particular, the holding period for circuits that carriers eventually converted to UNEs. We found that, in a few instances, carriers are opting to convert their special access circuits to UNEs after short periods; in other instances, they are serving customers using special access service for as long as 6-10 years before converting the circuits to UNEs. *See* Exhibit 21. Most carriers, moreover, have not converted large numbers of circuits at all and continue to serve their business customers using Verizon's special access services.

41. To determine the holding periods, we analyzed 2,360 DS1s that were converted from special access to UNEs in the Verizon East territory since May 2004, when Verizon began a new procedure that assigns new circuit IDs to circuits that are converted from special access to UNEs. This procedure allows Verizon to more easily track this type of data. We identified the service establishment date for the special access order and then counted the number of months between that date and the completion date of the conversion in Verizon's ordering systems. We found that, in the Verizon East states, carriers held their DS1 special access circuits for periods of up to 174 months, and an average of 41 months, before converting them to UNEs. *Id.*

42. In addition, we analyzed the average holding period before conversion for two carriers, **[BEGIN CLEC PROPRIETARY]**

[END CLEC PROPRIETARY] of the DS1 special access to UNE conversions in the Verizon East serving territory between January 2003 and August 2004. *See* Exhibit 22. In this time frame, **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** converted 1,203 DS1 circuits from special access to UNEs. *Id.* We reviewed 96 percent of these conversions and found that **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** held its DS1 circuits for up to 64 months and on average for 15 months before converting them to UNEs. *See* Exhibit 23. Similarly, we reviewed 77 percent of the 2,374 DS1 circuits **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** converted, *see* Exhibit 22, and found that **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** held its DS1s for an average of 6 months before converting them to UNEs. *See* Exhibit 24.

IV. Verizon's Special Access Services Performance and Quality Assurance.

43. Some carriers claim that they need access to high-capacity loop and transport UNEs because ILEC special access performance and service quality is poor and because there is no ability to monitor ILEC service quality. Pointing to data from 2001, carriers claim performance is particularly poor in states like New York, where Verizon has had long-distance authority since 2000, and argue that, because of this poor performance in providing special access services, the Commission should allow carriers access to UNEs to provide long-distance service. Actual measures of Verizon's performance, however, show that Verizon's special access performance is excellent, and Verizon provides its carrier customers performance reports

that allow them to monitor Verizon's special access ordering, provisioning, and maintenance performance themselves.

44. We looked at three special access performance measures that our carrier customers focus on when reviewing our special access performance: (i) the percent of firm order confirmations ("FOCs") returned within specified intervals; (ii) the percent of circuits installed by the confirmed due date given to the customer; and (iii) the mean time to restore ("MTTR") special access services. *See* Exhibit 25.

45. First, we looked at our performance in returning firm order confirmations within the established interval for each service type (typically 5 days for DS1s and DS3s in the East and 7 for OCns) for the period 2002 through August 2004. We obtained this data from a database that collects information from Verizon's ordering systems about Verizon's performance in returning firm order confirmations. As Exhibit 25 shows, Verizon's performance in this area has remained above 95 percent since 2002, when Verizon began tracking this data internally, and has steadily improved year-over-year. Verizon's performance in this area from January through August 2004, shows that 97 percent of the firm order confirmations Verizon is providing its carrier customers are returned within the specified intervals.

46. Second, we analyzed the extent to which Verizon is installing special access services by the confirmed due date provided to Verizon's carrier customers, referred to in the industry as "on-time performance." Again, we obtained from Verizon's ordering and provisioning systems data for 2001 through August 2004, showing Verizon's performance in installing special access services by the confirmed due date. The data show Verizon's performance in this area has improved from roughly 90 percent "on time" in 2001 to 95 percent in 2002, and Verizon has consistently remained at 94 percent for 2003 and through August 2004.

Id. Furthermore, Verizon has shown the greatest improvement in its on-time performance in states like New York, where Verizon has had long-distance authority the longest. Verizon's on-time performance in New York, for example, has improved significantly from 79 percent in 2001, to 92 percent from January through August 2004. *Id.*

47. Third, we reviewed Verizon's performance in repairing special access service. We obtained data on Verizon's performance in restoring special access services from Verizon's maintenance systems for 2002 through August 2004. This data shows that Verizon's mean time to restore special access services has improved from 5.8 hours to restore service in 2001, to 4.5 hours to restore service in 2004 (January through August), an improvement of more than 22 percent. *Id.*

48. Finally, carriers are able to monitor Verizon's performance through business-to-business performance reports Verizon provides its special access carrier customers. For a number of its carrier customers, Verizon provides reports showing Verizon's performance in several areas in providing special access services to that particular customer. These reports vary among carrier customers because they are tailored to provide information of particular interest to the customer, but include measures such as firm order confirmation timeliness, on-time performance, mean-time-to-restore, new circuit failure rate, and orders where the service was not installed on the due date because the customer was not ready. Verizon provides these reports to more than 30 carriers including: **[BEGIN CLEC PROPRIETARY]**

[END CLEC PROPRIETARY]. Most carriers receive these reports monthly; however, there are some that request and receive weekly reports for some

measures. Verizon staff are available to and regularly meet with its customers to discuss these reports and Verizon's performance. A list of the carrier customers to whom Verizon provides these business-to-business reports along with a description of the type of report each receives and the frequency of the reporting is attached as Exhibit 26.

V. Further Analysis of Carriers' Use of Special Access Instead of UNEs.

49. In addition to our previous analysis of the extent to which Verizon's carrier customers are using Verizon's special access services instead UNEs to serve business end users, *see* Verses/Lataille/Jordan/Reney Decl. ¶¶ 52-59, we also analyzed Verizon's carrier customers' purchase of unbundled dark fiber loops and transport. We obtained information from Verizon's access line database on the number of dark fiber UNE loops and Inter-office transport units carriers obtained between January and June 2004. The data show that as of June 2004, carriers had in service with Verizon only 50 unbundled dark fiber loops and only 936 unbundled dark fiber transport (Inter-office facility) components. *See* Exhibit 27. To put this in context, while Verizon has identified only 50 dark fiber UNE loops that were purchased in this time period, we have identified and mapped addresses for more than 11,000 carrier lit buildings. *See* Verses/Lataille/Jordan/Reney Decl., Ex. 5B.

50. We also confirmed that the non-incumbent carriers who provide loop and transport facilities to Verizon when Verizon serves customers out of region also use predominately non-UNE facilities, such as their own or alternative providers' facilities, to provide service to Verizon. *See* Declaration of Claudia Cuddy. The non-incumbent carriers selected by Verizon to provide out-of-region services include **[BEGIN CLEC PROPRIETARY]**

[END CLEC PROPRIETARY]. To confirm our understanding of how these

carriers operate, we looked at these carriers' purchases *from* Verizon within our serving territory to determine whether they also use predominately special access services, and not UNEs, for purchases from an ILEC when that ILEC is Verizon. Using the same methodology we used before, *see* Verses/Lataille/Jordan/Reney Decl. ¶ 53, we confirmed that when these carriers purchase service from Verizon to serve customers within Verizon's serving territory, they purchase predominately Verizon's special access services, not UNEs. *See* Exhibit 28.

51. Finally, some carriers argue that Verizon's previous comparison of carriers' use of special access services and UNEs overstates the extent to which carriers are using special access because it counted as special access, circuits that actually had been converted to UNEs. Prior to May 2004, when carriers submitted conversion requests, a change was made in Verizon's billing systems to reflect the lower UNE rate but the circuit ID remained the same. Accordingly, some carriers argue that Verizon could have counted as special access, circuits that actually had been converted to UNEs because the circuit IDs would not have changed and would have identified the circuit as a special access circuit, not a UNE, when the data was analyzed.

52. We verified that, in conducting our prior analysis of carriers' use of special access instead of UNEs, special access orders that had been converted from special access to UNEs as of March 2004, the point at which we conducted our prior analysis, were counted as UNEs and were not considered in the special access calculation. Verizon used billing data, not circuit IDs, to count special access and UNE circuits and, therefore, counted as special access only those circuits that were billed as special access and not circuits being billed as UNEs, even if those circuits still contained the same circuit IDs that had been assigned to them as special access circuits. Special access conversions that occurred prior to March 2004, therefore, were already

taken into account and had no effect on Verizon's analysis as described in paragraphs 52-59 and Exhibits 10A-10D of the Verses/Lataille/Jordan/Reney Declaration.

VI. Analysis of Alternative Impairment Proposals and Concerns.

53. Some parties have questioned whether competing carriers can "profitably" provide high-capacity services. This question seems incongruous given that high-capacity services were among the first bastions of competition for telecommunications service. Competitive access providers were competing well before the passage of the 1996 Act. As detailed in the fact report, this competition has grown over time. The result of this growth is reflected in the extensive evidence provided by Verizon of facilities deployment and customers served by carriers using their own facilities and those of other carriers, including ILEC special access.

54. If, after all of that, some question of CLEC viability remains, however, the Commission should rely on an appropriate measure of profitability. While net income is a traditional measure of corporate profitability, no financial measure should be used in a vacuum. Net income, for example, is subject to the effects of financing and accounting decisions. In particular, non-cash depreciation costs can significantly impact net income results. This makes comparison among different companies very difficult. A more appropriate measure in capital-intense industries like telecommunications is Earnings Before Interest Taxes, Depreciation & Amortization ("EBITDA"). CLECs agree that "EBITDA is a measure of operating performance and liquidity that is commonly reported and widely used by analysts, investors, and other interested parties in the telecommunications industry because it eliminates many differences in financial capitalization, and tax structures, as well as non-cash and non-operating charges to

earnings."[4] Because EBITDA excludes the non-cash depreciation and amortization that can distort results, it is commonly used in capital intense industries where assets are written down over long periods of time. Thus, EBITDA can provide a relatively good "apples-to-apples" comparison between companies in the same industry without consideration of how they are financed or how they calculate depreciation.[5] Further, since EBITDA eliminates capitalized long-term costs from its calculation, it is an especially good way to isolate and compare core operating performance for start-up companies. While start-ups would tend to have significant up front costs – both capitalized and expensed – removing the capitalized portion is a better way to compare their results.

55. Attached as Exhibits 29 are excerpts from seven CLECs' SEC reports and earnings press releases, which include their EBITDA. Note that while these carriers employ a variety of business plans and target markets, the vast majority of them experience positive EBITDA. These include carriers such PaeTec that rely exclusively on ILEC special access, and others such as Time Warner that use a combination of their own facilities and ILEC special access rather than UNEs. Interestingly, XO, which purchases relatively more UNEs, does not have positive EBITDA. But even there, the company was able to achieve a gross profit (defined by revenue minus cost of goods sold). While there certainly are examples of particular providers of competing high- capacity services that are failing, that fact alone does not suggest that these carriers cannot profitably compete.

---

4 Time Warner Telecom, Inc., Form 10-K (SEC filed Mar. 12, 2004).

5 Rick Wayman, CFE, *EBITDA: The Good, The Bad, and The Ugly*, Investor's Business Daily (Feb. 06, 2002), *at* http://www.investopedia.com/articles/analyst/020602.asp ("EBITDA can be used to analyze the profitability between companies and industries. Because it eliminates the effects of financing and accounting decisions, EBITDA can provide a relatively good 'apples-to-apples' comparison.").

56. Finally, Verizon analyzed the proposal put forth by the Loop and Transport CLEC Coalition for evaluating high-capacity loop and transport impairment. The Loop and Transport CLEC Coalition proposed that the FCC should find non-impairment "on routes between large urban central offices with the following characteristics: (1) the two end points of the route are in the same LATA in a top 50 MSA, (2) at least four fiber-based collocators have established operational collocations at both ends of the route and (3) each of the end points serves a central office with at least 50,000 switched access business lines." *See* Comments of the Loop and Transport Coalition at 82. Verizon's analysis of wire centers with a minimum of 50,000 business lines and at least 4 fiber-based collocators would result in a finding of non-impairment in only 25 Verizon wire centers – that is in less than one half of 1 percent of Verizon's roughly 7,000 wire centers providing high-capacity services. *See* Exhibit 30. As a result, under this proposal, hundreds of wire centers where Verizon has identified alternative fiber facilities, carrier lit buildings, and carrier use of Verizon's special access services to serve business end users, still would be subject to mandatory unbundling.

57. This concludes our declaration.

I hereby certify under penalty of perjury that the foregoing is true to the best of my knowledge, information, and belief.

Executed on October 19, 2004.

Ronald H. Lataille

I hereby certify under penalty of perjury that the foregoing is true to the best of my knowledge, information, and belief.

Executed on October 19, 2004.

Marion C. Jordan

Marion C. Jordan

I hereby certify under penalty of perjury that the foregoing is true to the best of my knowledge, information, and belief.

Executed on October 19, 2004.

Julie K. Slattery

REPLY DECLARATION OF RONALD H. LATAILLE, MARION C. JORDAN, AND JULIE K. SLATTERY

EXHIBIT 1

REDACTED – FOR PUBLIC INSPECTION

Analysis of Verizon's DS1 Special Access Revenue Concentration

Based on 2003 Total Billed Revenues

Percent of DS1 Revenue	Number of Wire Center Locations	Percent of Verizon's Wire Center Locations
20%	46	0.8%
40%	159	2.8%
60%	387	6.7%
80%	844	14.6%

REDACTED – FOR PUBLIC INSPECTION

REPLY DECLARATION OF RONALD H. LATAILLE,
MARION C. JORDAN, AND JULIE K. SLATTERY

EXHIBIT 2

REDACTED – FOR PUBLIC INSPECTION

Analysis of Verizon's DS3 Special Access Revenue Concentration

Based on 2003 Total Billed Revenues

Percent of DS3 Revenue	Number of Wire Center Locations	Percent of Verizon's Wire Center Locations
20%	16	0.8%
40%	45	2.3%
60%	109	5.6%
80%	253	13.0%

Wire center percentage based on the number of wire centers billing DS3 services

REDACTED – FOR PUBLIC INSPECTION

REPLY DECLARATION OF RONALD H. LATAILLE,
MARION C. JORDAN, AND JULIE K. SLATTERY

EXHIBIT 3

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION

REPLY DECLARATION OF RONALD H. LATAILLE,
MARION C. JORDAN, AND JULIE K. SLATTERY

EXHIBIT 4

Verizon Communications
DS1 Pricing Analysis - New York
2001-2004

Region	Rate Element	2001 Actual Billing Per Channel Term	2001 % of Total Billing	2002 Actual Billing Per Channel Term	2002 % of Total Billing	2003 Actual Billing Per Channel Term	2003 % of Total Billing	Apr 2004 YTD(2) Actual Billing Per Channel Term	Apr 2004 YTD(2) % of Total Billing
East	Channel Term	$ 160	62.2%	$ 147	61.2%	$ 136	63.2%	$ 132	61.7%
	Fixed Mileage								
	Mileage (1)	$ 93	36.0%	$ 89	37.0%	85	39.4%	82	38.1%
	Other	$ 5	1.8%	$ 4	1.8%	(5)	-2.5%	0	0.2%
	Total	$ 257	100.0%	$ 240	100.0%	$ 216	100.0%	$ 214	100.0%
	Percent Change from 2001							-17.0%	

Notes:
1. Actual billing (mileage) reflects both fixed and per mile component
2. 2004 data does not reflect impacts of 2004 price cap filings made effective July 1, 2004

REPLY DECLARATION OF RONALD H. LATAILLE,
MARION C. JORDAN, AND JULIE K. SLATTERY

EXHIBIT 5

Verizon Communications
DS1 Pricing Analysis - Verizon West
2001-2004

Region	Rate Element	2001 Actual Billing Per Channel Term	2001 % of Total Billing	2002 Actual Billing Per Channel Term	2002 % of Total Billing	2003 Actual Billing Per Channel Term	2003 % of Total Billing	Apr 2004 YTD(3) Actual Billing Per Channel Term	Apr 2004 YTD(3) % of Total Billing
West	Channel Term	$ 157	47.8%	$ 157	47.9%	$ 146	47.5%	$ 144	47.6%
	Fixed Mileage								
	Mileage (1)	$ 142	43.0%	$ 138	42.2%	127	41.0%	122	40.3%
	Other (2)	$ 31	9.3%	$ 33	9.9%	36	11.5%	37	12.1%
	Total	$ 330	100.0%	$ 327	100.0%	$ 309	100.0%	$ 304	100.0%
	Percent Change from 2001							-8.0%	

Notes:
1. Actual billing (mileage) reflects both fixed and per mile component
2. Actual billing (other) is primarily clear channel charge
3. 2004 data does not reflect impacts of 2004 price cap filings made effective July 1, 2004