

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Unbundled Access to Network Elements

Review of the Section 251 Unbundling  
Obligations of Incumbent Local Exchange  
Carriers

WC Docket No. 04-313

CC Docket No. 01-338

**REPLY OF VERIZON TO PETITIONS FOR RECONSIDERATION**

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June 16, 2005

**TABLE OF CONTENTS**

	Page
INTRODUCTION AND SUMMARY.....	1
DISCUSSION.....	2
I. THE COMMISSION SHOULD GRANT IOWA TELECOM’S PETITION FOR RECONSIDERATION.....	2
II. THE COMMISSION SHOULD DENY THE CLEC PETITIONS FOR RECONSIDERATION.....	4
CONCLUSION.....	7

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**INTRODUCTION AND SUMMARY**

In its petition for reconsideration, Iowa Telecom argued that the Commission's impairment test for dedicated transport should also take into account the presence of fiber-based networks in the geographic area served by a wire center, even if that carrier chooses not to collocate at the incumbent's premises. As Verizon has explained, such fiber-based networks show that it is possible for CLECs to compete by completely bypassing the incumbent's network in that wire center, as well as in comparable wire centers. Only two commenters oppose Iowa Telecom's petition for reconsideration, but neither provides any basis for ignoring such evidence of actual competition and refusing to draw reasonable inferences across wire centers regarding where competition is possible without using UNEs.

In contrast to Iowa Telecom, the CLECs that filed petitions for reconsideration seek to expand unbundling requirements, primarily with respect to DS1 and DS3 high-capacity loops and dedicated transport. As Verizon has shown, the Commission's decision not to require

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<sup>1</sup> The Verizon telephone companies ("Verizon") are identified in Appendix A to Verizon's response comments, filed June 6, 2005.

unbundling of DS1 and DS3 loops in a handful of wire centers and of DS1 and DS3 transport on a handful of routes did not go nearly far enough, and the petitions for reconsideration provide no basis for reimposing unbundling requirements in any of those wire centers or on any of those routes. Only one commenter has filed in support of any of the CLEC petitions for reconsideration, and that commenter primarily repeats the claims found in those petitions, which Verizon and the other commenters have already rebutted at length. The few new points raised are without merit.

## DISCUSSION

### I. THE COMMISSION SHOULD GRANT IOWA TELECOM'S PETITION FOR RECONSIDERATION

In its petition for reconsideration, Iowa Telecom argued that the Commission should have considered the existence of competitive fiber networks that provide alternative transport facilities between the areas served by ILEC wire centers without collocating in each of those wire centers, as such networks are evidence that competition is possible without UNE transport. In fact, evidence strongly suggests that focusing on fiber-based collocation substantially understates the existence of competitive facilities and, therefore, of the evidence that other carriers are not impaired without UNE access to transport. For example, even though fiber deployment has increased substantially since 2002, the number of collocation arrangements in Verizon's territory has increased only slightly and remains well below the level in 2001.<sup>2</sup> In addition, although other carriers are the best source of information on their networks, based on their own public statements, numerous carriers — including ITC DeltaCom, NTS Communications, and WilTel Communications — have deployed fiber networks in many Verizon wire centers where they

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<sup>2</sup> See Verizon Comments at 25 n.18, WC Docket No. 05-25 (FCC filed June 13, 2005) (“Verizon Special Access Comments”).

have not collocated.<sup>3</sup> Verizon, therefore, supports Iowa Telecom's proposal, and the Commission should revise its rules to permit incumbents to count known fiber-based networks, and not just collocators, in determining the number of fiber-based competitors in that wire center. The Commission should also require other carriers to provide detail on where they have deployed fiber networks and points of presence in wire centers in which they have not collocated. *See Verizon* at 24-25.

In opposing Iowa Telecom's petition, *Birch et al.* largely reprise their argument that the Commission should have adopted a conjunctive test for classifying wire centers for purposes of its impairment analysis for dedicated transport. *See Birch et al. Opp.* at 2-6. Verizon has already demonstrated that *Birch et al.*'s criticisms of the Commission's decision lack merit and provide no basis for the Commission to require more unbundling of dedicated transport. *See Verizon* at 22-25.

*Birch et al.* also claim that these alternative fiber-based networks are irrelevant to the analysis because they are not "facilities between two ILEC wire centers" and, therefore, other carriers might not easily be able to use them to access unbundled loops. *Birch et al. Opp.* at 7 (emphasis omitted); *see also MCI* at 18. But the Supreme Court long ago held that the "Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 389 (1999). The fact that alternative fiber networks do not precisely duplicate the point-to-point routes within an ILEC's network is irrelevant to the impairment analysis. The dispositive point is that these alternative networks demonstrate that competition is possible without UNEs — indeed, these alternative networks permit other carriers to compete while bypassing ILEC networks entirely.

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<sup>3</sup> *See Declaration of Quintin Lew* ¶ 14, WC Docket No. 05-25 (FCC filed June 13, 2005) (Attachment D to Verizon Special Access Comments).

*See USTA v. FCC*, 359 F.3d 554, 571, 575 (D.C. Cir.) (“*USTA II*”), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004) (explaining that the relevant issue is whether “competition is possible” or “whether a market is suitable for competitive supply”).

Equally irrelevant are the assertions that these alternative facilities are not ideally suited to use by *other* CLECs. Indeed, it is immaterial to an impairment analysis whether the carriers that have deployed these networks choose to make their facilities available to other CLECs on a wholesale basis. The purpose of the 1996 Act is to promote competition, not to further the interests of particular competitors or to ensure that individual competitors have enduring wholesale suppliers. *See id.* at 576 (the “purpose of the Act” is to “stimulate competition”). Therefore, as long as “competition is possible” without UNEs in a particular market, *id.* at 575, there can be no finding of impairment because consumers will obtain the benefit of that competition, even if particular competitors are unable to enter using wholesale facilities offered by the carriers that are actually competing. In any event, fiber networks that pass through the area served by an ILEC’s wire center but where the carrier has not collocated can provide easy access to the loops served from the ILEC’s switch. Other carriers — whether they deploy their own fiber-based networks or lease capacity from these alternative providers — can self-deploy or lease an additional, short link to the ILEC’s wire center, and thereby access any UNE loops they may obtain pursuant to the Commission’s rules.

## **II. THE COMMISSION SHOULD DENY THE CLEC PETITIONS FOR RECONSIDERATION**

As Verizon and other commenters have demonstrated, the CLEC petitions that seek to expand unbundling should be denied. *See Verizon* at 6-22, 25-43; *BellSouth* at 6-13, 15-47; *Iowa Telecom* at 4-6; *Qwest* at 2-10; *SBC* at 8-26, 29-51. These CLECs have not satisfied their heavy burden — under both the 1996 Act and the Commission’s rules for petitions for

reconsideration, *see* 47 C.F.R. § 1.429 — of demonstrating that the Commission erred in finding that there is no impairment and that unbundling is not required. In fact, in those few wire centers and on those few routes where the Commission did not require unbundling of DS1 and DS3 high-capacity loops and dedicated transport, the Commission can expect to see increased facilities-based competition, just as such increases have occurred where the Commission has previously eliminated unbundling obligations, such as for broadband facilities. *See TRRO*<sup>4</sup> ¶ 36 (recognizing that eliminating unbundling removes “disincentives for incumbent LECs and competitive LECs to deploy innovative services and facilities”). In the meantime, CLECs are continuing to compete successfully in these wire centers (and numerous others) without UNEs, both by using their own or other alternative facilities and by using discounted special access services. *See Verizon* at 1-2.

The only commenter to support any of the CLEC petitions limits its comments to DS1 and DS3 high-capacity loops and transport and to the Commission’s decision to have its new rules take effect on March 11, 2005. Thus, no commenter supports the arguments raised by APCC *et al.* seeking UNE-P for payphone service providers, by T-Mobile seeking UNEs for wireless carriers, or by PACE seeking to more than double the period for moving existing UNE-P arrangements to lawful, alternative arrangements.

With respect to the CLEC petitions to expand unbundling for DS1 and DS3 high-capacity loops and transport and to eviscerate the Commission’s transition plan, Verizon and other

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<sup>4</sup> Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 & CC Docket No. 01-338, FCC 04-290, 20 FCC Rcd 2533 (rel. Feb. 4, 2005) (“*Triennial Review Remand Order*” or “*TRRO*”), *petitions for review pending, Covad Communications Co., et al. v. FCC, et al.*, Nos. 05-1095, *et al.* (D.C. Cir.).

commenters have already refuted at length the arguments presented in support of those petitions. Verizon here addresses two additional points, both of which are without merit.

*First*, as Verizon and others have explained, Birch *et al.* are wrong in claiming that the Commission should have used a conjunctive test for classifying wire centers for purposes of its dedicated transport no impairment findings. Nor is there any merit to claims that wire centers that satisfy the business-line test (38,000 or 24,000) but where no fiber-based collocators exist likely are “materially different” from wire centers that would satisfy a conjunctive test. In fact, there are any number of reasons why CLECs may not be collocated in a particular wire center — the most obvious being that they are serving customers in that wire center while bypassing the ILEC’s network entirely — that have nothing to do with the “structural impediments to competition” that the D.C. Circuit held are necessary for a finding of impairment. *USTA II*, 359 F.3d at 572, 575. In any event, virtually all of the wire centers that meet the Commission’s business-line tests — 95 percent and nearly 92 percent, respectively — also had one or more fiber-based collocators as of year-end 2003. *See TRRO* ¶¶ 114, 118. The fact that a few wire centers did not have a fiber-based collocator at that specific point in time provides no reason for distinguishing those wire centers from the others that meet the business-line test. It certainly provides no basis for requiring, as Birch *et al.* propose, that the Commission require unbundling in *all* wire centers with fewer than *four* or *three* fiber-based collocators.

*Second*, Verizon and other commenters have already explained that the Commission should reject CLEC proposals to eliminate or further dilute the Commission’s EEL eligibility criteria. The Commission should also reject claims that EELs can be used exclusively for long-distance service if a different company is providing the long-distance service from the company that obtained the EEL — let alone that it therefore should be permissible for an IXC to self-

provide access using EELs. Neither the petitioners nor their supporting commenter call into question the D.C. Circuit's and the Commission's conclusion that IXCs provided no evidence that they "are impaired with respect to the provision of long distance services" without access to UNEs or that "the costs of requiring . . . unbundling" for long-distance services would outweigh any "incremental benefits" that conceivably might exist. *USTA II*, 359 F.3d at 592; *TRRO* ¶ 36. In any event, a CLEC may not obtain an EEL and use it exclusively for long-distance service as long as another carrier provides the long-distance service. On the contrary, just as a CMRS carrier may not evade the prohibition on the use of UNEs for wireless service by getting a CLEC to purchase the UNE on their behalf, CLECs may not purchase UNEs on behalf of IXCs. That is because, in both cases, there is no impairment and can be no unbundling.

### CONCLUSION

For the foregoing reasons, and those set forth in Verizon's comments, the petition for reconsideration of Iowa Telecom should be granted and all the other petitions should be denied in their entirety.

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June 16, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 16th day of June 2005, I caused a copy of the foregoing Reply of Verizon to Petitions for Reconsideration to be served upon each of the parties on the attached service list by first-class mail, postage prepaid.

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Kathryn A. Himstedt

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