

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: VERIZON-RHODE ISLAND'S : DOCKET NO. 3662  
FILING OF FEBRUARY 18, 2005 TO AMEND :  
TARIFF NO. 18 :

REPORT AND ORDER

I. PLEADINGS

On February 4, 2005, the FCC issued the Triennial Review Remand Order (“TRRO”), which adopted new unbundling rules (“UNE Rules”). The FCC’s new unbundling rules indicate that competitive local exchange carriers (“CLECs”) are not impaired without unbundled access to UNE Platform (“UNE-P”). Regarding loops, the FCC determined that CLECs are not impaired without unbundled access to DS1 loops served from a wire center with at least 60,000 business lines and four fiber-based collocators, and that CLECs are not impaired without unbundled access to DS3 loops served from a wire center with at least 38,000 business lines and four fiber-based collocators. Also, the FCC found that CLECs are not impaired without unbundled access to dark fiber loops. As for transport, the FCC ruled that CLECs are not impaired without unbundled access to dedicated DS1 transport between wire centers that each serve at least 38,000 business lines or four fiber-based collocators, and that CLECs are not impaired without unbundled access to dedicated DS3 transport or dark fiber transport between wire centers that each serve at least 24,000 business lines or three fiber-based collocators. Furthermore, the FCC created a transition period of twelve to eighteen months commencing March 11, 2005 during which CLECs will pay higher rates for utilizing these unbundled network element (“UNEs”) to serve their embedded customer base.

On February 18, 2005, Verizon-Rhode Island (“VZ-RI”) filed with the Rhode Island Public Utilities Commission (“Commission”) proposed amendments to RIPUC Tariff No. 18 to implement the FCC’s TRRO. Because the effective date of the FCC’s TRRO was March 11, 2005, VZ-RI requested that tariff revisions be put into effect on that date notwithstanding the 30 day notice requirement of R.I.G.L. §39-3-11 because implementing preemptive federal law constitutes good cause.<sup>1</sup>

On March 2, 2005, Conversent filed comments regarding VZ-RI’s proposed tariff revisions. Conversent recommended that the Commission reject or at least suspend VZ-RI’s proposed tariff revisions. At the outset, Conversent argued that the TRRO should be implemented through a negotiation and arbitration process of Section 252 of the Telecommunication Act of 1996 (“Telco Act”) rather than through tariff revisions. Also, Conversent indicated that VZ-RI’s tariff revisions should specifically indicate which wire centers are no longer eligible for various UNEs. Thus, Conversent emphasized that VZ-RI must submit a list of the effected wire centers to determine if they meet the criteria of the FCC’s TRRO. In addition, Conversent noted that VZ-RI’s tariff is phrased so as to require CLECs to undertake a diligent inquiry in order to request UNEs from wire centers where, according to VZ-RI, certain UNEs are no longer eligible. Furthermore, Conversent noted that VZ-RI’s proposed tariff restricts CLECs to receiving only 10 dedicated DS1 transport circuits when according to a provision of the TRRO, this cap should only be applied to routes where DS3 transport is no longer available as a UNE. In addition, Conversent argued that the VZ-RI’s proposed tariff should be altered to specifically eliminate the language that links the availability of UNEs solely to Section 251 of the Telco Act. Lastly, Conversent indicated that because MCI has agreed to be

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<sup>1</sup> VZ-RI’s tariff filing of 2/18/05.

acquired by VZ, then MCI should be considered an affiliate of VZ and thus not counted as a fiber-based collocator for purposes of determining if VZ-RI must unbundle DS1 and DS3 loops, and DS1, DS3 and dark fiber dedicated transport at various wire centers.<sup>2</sup>

On March 4, 2005, CTC Communications and Lightship Telecom (“Swidler CLECs”) filed comments urging the Commission to reject VZ-RI’s proposed tariff or at least suspend it. At the outset, the Swidler CLECs argued that the implementation of the TRRO should be addressed in the arbitration proceeding of Docket No. 3588. The Swidler CLECs argued that VZ-RI’s proposed tariff inappropriately bars new UNE orders for current CLEC customers. Also, the Swidler CLECs noted that VZ-RI’s proposed tariff lacks specific language from the TRRO requiring VZ-RI to provide UNEs upon a CLEC’s self-certification and then allowing VZ-RI to seek resolution of the dispute. In addition, the Swidler CLECs stated that the proposed tariff has unclear language about the timeliness of CLEC conversion orders and instead, the Swidler CLECs suggested that VZ-RI provide the UNEs at the transitional TELRIC rate beyond the transition period if VZ-RI has not completed processing the CLEC conversion order. Furthermore, the Swidler CLECs argued that VZ-RI should not be allowed to revise this tariff until it files a Section 271 tariff. Also, the Swidler CLECs maintained that VZ-RI should be required to submit back-up data regarding wire centers where certain UNE’s are no longer available. In addition, the Swidler CLECs noted that the tariff omits provisions that memorialize VZ-RI’s obligation to offer interconnection facilities. Lastly, the Swidler CLECs argued against VZ-RI having a true-up of rates for UNEs that a CLEC improperly requests and receives.<sup>3</sup>

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<sup>2</sup> Conversent’s comments of 3/2/05.

<sup>3</sup> Swidler CLECs’ comments of 3/4/05.

On March 7, 2005, A.R.C. Networks d/b/a InfoHighway Communications, Covad, Broadview Networks and Broadview NP Acquisition Corporation, and DSCI Corporation (“Adler CLECs”) filed comments with the Commission requesting that VZ-RI’s proposed tariff be rejected or suspended. At the outset, Adler CLECs argued that the FCC’s TRRO must be implemented through the negotiation and arbitration process of Section 252 of the Telco Act instead of through a tariff revision. The Adler CLECs argued that VZ-RI’s proposed tariff language is not sufficiently detailed as to what constitutes a timely order for conversion, and VZ-RI’s obligations are written in a negative rather than affirmative manner. Also, the Adler CLECs noted that the TRRO does not entitle VZ-RI to back-bill CLECs if they wrongly request and receive discontinued UNEs. In addition, the Adler CLECs noted that if a timely CLEC conversion order is not completed by the end of the transition period, then the existing arrangement should continue until the conversion is completed by VZ-RI. Furthermore, the Adler CLECs noted that VZ-RI improperly places a universal cap of 10 dedicated DS1 transports on all routes instead of only those routes where dedicated DS3 transport is no longer unbundled. Lastly, the Adler CLECs argued that if a current CLEC customer moves to a different location, they should still receive UNE-P at the transition rate during the transition period.<sup>4</sup>

On March 7, 2005, the Division of Public Utilities and Carriers (“Division”) filed a matrix comparing the parties’ position. Overall, the Division agreed with VZ-RI’s tariff revision except to suggest that the list of wire centers that are no longer eligible for certain UNEs should be subject to review and limited to monthly charges.<sup>5</sup>

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<sup>4</sup> Adler CLECs’ comments filed on March 7, 2005.

<sup>5</sup> Division’s filing of March 7, 2005.

On March 7, 2005, VZ-RI filed two responses to the CLECs comments. VZ-RI explained that the TRRO does not prohibit VZ-RI from revising its tariff to reflect the TRRO while simultaneously engaging in arbitration pursuant to Section 252 of the Telco Act to revise interconnection agreements (“ICAs”). VZ-RI elaborated that the FCC’s TRRO has preempted state utility commissions. As to the specific tariff language, VZ-RI stated that the list of non-eligible wire centers is not conclusive but CLECs must make a reasonably diligent inquiry as required by the TRRO before submitting an order for UNE loops or transport. Also, VZ-RI stated that if CLECs are allowed to receive transition rates after the conclusion of the transition period, CLECs may wait to the last moment to submit their conversion orders. In addition, VZ-RI cited the FCC’s UNE rules that specify that the cap of 10 dedicated DS1 transport applies to all routes eligible for dedicated DS1 transport. Furthermore, VZ-RI cited a provision of the FCC’s TRRO referencing a transition plan for the embedded base of unbundled local circuit switching as not allowing existing CLEC customers to continue to receive UNE-P if the customer moves. In regards to interconnection facilities, VZ-RI pointed out that interconnection facilities are currently available to CLECs under rates approved by the Commission and the TRRO does not affect that availability.<sup>6</sup> In its second response to CLECs, VZ-RI indicated it was immaterial if VZ-RI’s tariff revisions used negative language.<sup>7</sup>

At an open meeting on March 8, 2005, the Commission reviewed the pleadings and adopted VZ-RI’s proposed tariff revision on an interim basis.

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<sup>6</sup> VZ-RI’s first response filed on 3/7/05.

<sup>7</sup> VZ-RI’s second response filed on 3/7/05.

## II. BRIEFS

On March 29, 2005, the Division filed a brief, which enclosed a recent decision by the New York Public Service Commission (“NYPSC”). Based on this order, the Division recommended that VZ-RI amend its tariff to allow for conversion of DS1 and DS3 loops and transport services to analogous services at the applicable resale rate if an order for conversion is placed before the end of the FCC mandated transition period concludes even if the conversion order cannot be completed within the transition period. Also, the Division recommended that VZ-RI forward to the Commission and the Division a list of wire centers which no longer qualify for UNEs along with supporting documentation for review and analysis. Lastly, the Division indicated that the tariff should be revised so the cap of 10 DS1 transport circuits should be applied only where there is non-impairment for DS3 transport.<sup>8</sup>

On April 1, 2005, Conversent filed its brief. Conversent stated that VZ-RI’s tariff should specifically list the wire centers where certain UNEs are no longer available in order to subject the list to review and provide a clear effective date for any changes. Also, Conversent argued that the FCC’s TRRO on the whole only places a cap of 10 DS1 dedicated transport circuits on routes where DS3 dedicated transport is no longer unbundled. In addition, Conversent emphasized that the tariff should be revised to clearly state that VZ-RI’s unbundling obligations are based on applicable law such as Section 271 and state law, which goes beyond Section 251 of the Telco Act and the FCC’s UNE Rules. Furthermore, Conversent opined that VZ-RI’s tariff should be revised to specifically allow the Commission to set rates for wholesale services provided under Section 271 and/or state law. Also, Conversent noted that there is no special

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<sup>8</sup> Division’s brief.

access tariff at the FCC or in Rhode Island that establishes a rate for conversion of existing dark fiber dedicated transport to analogous VZ services. In addition, Conversent stated that VZ-RI should not be allowed to disconnect a service if the CLEC submits the conversion order before the end of the transition period. Lastly, if VZ-RI should be allowed to back-bill CLECs for improperly receiving a UNE, then the wire centers, the effective date, and the applicable rate should be clear in the tariff.<sup>9</sup>

On April 19, 2005, VZ-RI filed its brief. In response to the Division, VZ-RI argued that the NYPSC's decision to allow conversion orders of DS1 and DS3 loop and transport to resale would encourage CLECs to hold their conversion orders and is inappropriate because special access is more comparable to UNE loops and transport. Also, VZ-RI stated it was unnecessary to set forth in the tariff the list of wire centers where certain UNEs are not available. VZ-RI added that this list can change over time. In addition, VZ-RI pointed out that the FCC's UNE Rules expressly stated that the cap of 10 DS1 dedicated transport circuit applies on any route where DS1 transport is unbundled. In response to Conversent, VZ-RI argued that Conversent's use of "applicable law" which includes Section 271 and state law would be confusing, ambiguous and unlawful. Also, VZ-RI noted that not including any reference to Section 271 or state law in the tariff does not prevent the Commission from considering these issues in the future. VZ-RI maintained that there is no gap in the FCC's UNE Rules to allow state utility commissions to make findings of impairment for CLECs. As for Section 271, VZ-RI vigorously argued that the FCC alone has the authority to enforce Section 271 wholesale obligations and set the rates for these obligations.<sup>10</sup>

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<sup>9</sup> Conversent's brief.

<sup>10</sup> VZ-RI's brief.

At an open meeting on June 20, 2005, the Commission reviewed the pleadings and the arguments. The Commission determined it would adopt as final VZ-RI's proposed tariff except for the three revisions adopted by the NYPSC and recommended by the Division. However, the Commission indicated it would consider anew the cap of 10 DS1 dedicated transport circuits if VZ-RI filed a timely data response with new information on the issue of DS1 dedicated transport. On June 23, 2005, VZ-RI filed a data response indicating no CLEC in Rhode Island receives more than 10 DS1 dedicated transport on any route.<sup>11</sup> At an open meeting on July 7, 2005, the Commission determined that it would allow for a cap of 10 DS1 dedicated transport circuits on all routes where DS1 dedicated transport is available.

#### COMMISSION FINDINGS

As an initial matter, the Commission must determine if it is appropriate to implement the FCC's TRRO through tariff revision. It is clear that the Commission has implemented FCC orders through tariff revision.<sup>12</sup> Also, although paragraph 233 of the TRRO does indicate that the FCC expects carriers will implement its UNE rule changes through the arbitration process of Section 252, there is no prohibition in the TRRO or in federal law from implementing the FCC's orders through tariff revision. In fact, since some CLECs are not participants in the arbitration in Docket No. 3588, RIPUC Tariff No. 18 can serve as a vehicle for CLECs to purchase UNEs and permits ICAs that have provisions allowing for amendments through the tariff change process to be amended. Furthermore, even if some of the issues to be decided in this docket may impact the arbitration in Docket No. 3588, this will likely only reduce the number of new issues the

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<sup>11</sup> VZ-RI PUC Data Response filed 6/23/05.

<sup>12</sup> Order No. 18017, and Order No. 18036.



Commission must address arising from arbitration. Lastly, the Commission simply sees no harm in implementing federal changes-of-law through the parallel paths of tariff revisions and ICA arbitrations. The tariff revision process balances the CLECs' interest in avoiding unilateral changes by VZ-RI and the interest of VZ-RI in avoiding unnecessary delay in implementing the TRRO.

The next issue to be addressed by the Commission is whether to revise the tariff to specifically include wholesale obligations arising under "applicable law" such as Section 271 and state law. The Commission has addressed these issues repeatedly. In regards to Section 271 obligations, "Section 271 is a federal statute" and "it is inherently logical to have the FCC interpret the statute."<sup>13</sup> Also, "there is no pressing need for this Commission to interpret Section 271."<sup>14</sup> Once again, the Commission urges the CLECs to "petition the FCC immediately for relief" if VZ-RI is not appropriately providing access to its facilities pursuant to Section 271.<sup>15</sup> The FCC has not clearly indicated what role, if any, a state utility commission plays in the Section 271 process other than providing a consultation to the FCC on a Bell Operating Company's ("BOC") initial application to enter the long distance market.<sup>16</sup> In fact, the FCC recently indicated it has the authority to enforce Section 271.<sup>17</sup> In addition, the FCC has clearly stated that it will undertake a "fact-specific inquiry" as to whether a BOC's rates for Section 271 facilities are just and reasonable under Section 201 and 202.<sup>18</sup> At this time, it is apparent to the

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<sup>13</sup> Order No. 18281.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Section 271(d)(2). A federal district has already indicated that enforcement of Section 271 is for the FCC. Bell South v. Mississippi PSC (S.D. Miss., 4/13/05). Furthermore, there are cases pending in various federal courts due to the attempts by some state utility commissions to enforce Section 271.

<sup>17</sup> TRO para. 665.

<sup>18</sup> Id. para. 664.

Commission that at the bistro serving up the BOCs' wholesale obligations, the kitchen door numbered 271 is for "federal employees only."

As for state law, the FCC has made it clear that in regards to various UNE obligations it would be "unlikely" that a state utility commission decision which contradicts the FCC's UNE Rules "would fail to conflict" with federal law and would, therefore, be preempted.<sup>19</sup> This Commission has repeatedly declared that it "should not attempt to exercise the authority if it is likely to be preempted."<sup>20</sup> The FCC has preempted the states in a rather comprehensive manner as to VZ-RI's wholesale obligations. The Commission does not discount the possibility that there may be gaps in the FCC's UNE Rules. However, there is no need for the Commission to attempt to find and address any potential gaps at this time. By approving this tariff and omitting any citation to "applicable law" does not relinquish the Commission's state law authority but merely avoids the inclusion of an ambiguous phrase which would lead to certain confusion and possible unnecessary litigation. If and when the Commission determines that a wholesale obligation should be imposed on VZ-RI that would not be preempted by the FCC, then the Commission can certainly order VZ-RI to revise this tariff as it has done so in the past.<sup>21</sup>

The CLECs raised various objections to the phrasing or omissions in VZ-RI's proposed tariff. As to the "negative" phrasing of certain aspects of VZ-RI's proposed tariff, the FCC at times in its UNE Rules also has negative phrasing regarding an incumbent local exchange carrier's ("ILEC") UNE obligations. More importantly, the

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<sup>19</sup> Order No. 18281 (citing TRO para. 195).

<sup>20</sup> Id. (citing Order No. 18017). Recently, the FCC issued a declaratory ruling that various state utility commissions' decisions were preempted by the TRO. Bell South Declaratory Ruling (3/25/05).

<sup>21</sup> See Order No. 16808.

CLECs have not indicated how this “negative” phrasing materially affects VZ-RI’s obligations. The Commission will not engage in a wordsmithing exercise that will not substantively affect VZ-RI’s wholesale obligations. As for the vagueness surrounding the timeliness of an order for a UNE conversion, the Carrier-to-Carrier Guidelines (“C2C”) are explicit as to provisioning intervals. A timely order for a UNE conversion should certainly be consistent with the provisioning intervals in the C2C. Thus, there is no need to further elaborate in the tariff what is already clear in the C2C. In regards to the omission in the tariff of VZ-RI’s obligation to offer interconnection facilities, the CLECs are correct that the tariff is silent in this area. However, the proposed revision does not cause this omission; the omission has been present in the tariff for some time. More importantly, VZ-RI currently offers interconnection facilities at TELRIC rates.<sup>22</sup> Thus, there is no immediate need for the Commission to address this issue. If a CLEC wishes to require VZ-RI to rectify this omission, the Commission would certainly consider it in a separate docket since this issue does not arise from the TRRO.

A more substantive issue is whether VZ-RI should be allowed to back bill CLECs for the correct wholesale rate if they inappropriately requested a UNE from a wire center in which UNEs are no longer eligible. There is nothing inherently improper about back billing the appropriate rate to competitors. Under state law, the Commission establishes interim rates which are subject to refund. Furthermore, granting VZ-RI the ability to back bill will probably incent CLECs not to inappropriately request UNEs from wire centers where they are not eligible. In all likelihood, back billing should be a rare occurrence since only one wire center satisfies the UNE de-listing criteria for DS3 loops and only seven wire centers qualify for UNE de-listing criteria for DS1, DS3 or dark fiber

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<sup>22</sup> Docket No. 3363 VZ-RI’s PUC Data Resp. 1.

transport.<sup>23</sup> The question is whether the Commission has the federal and/or state legal authority to allow back-billing for wholesale requests. Although the FCC's TRRO does not prohibit back-billing, it does not specifically allow it. However, since the FCC has not specifically addressed this issue, and allowing back-billing does not substantially prevent implementation of the FCC's UNE Rules, the Commission is not preempted in this area. Thus, due to this possible "gap" in the UNE Rules, the Commission has the legal authority to allow for back-billing.<sup>24</sup>

The next issue is whether MCI should be included when counting the number of fiber-based collocators to determine if a wire center should be considered as ineligible for certain UNEs. This is an intriguing problem. However, this issue is not ripe for review because the merger of VZ and MCI has not been concluded and, in fact, many regulatory hurdles must still be overcome. Once the merger is entirely completed then the Commission can consider the issue. The Commission must point out that the FCC appears to have intimated that "once a wire center satisfies the standard" the ILEC "shall not be required in the future to unbundle ... in that wire center."<sup>25</sup> Although the FCC did not want "modest changes in competitive conditions" to result "in the reimposition of unbundling obligations", it is unclear if the FCC would consider the merger of VZ and MCI to be a "modest change" in competitive conditions.<sup>26</sup> Hopefully, the FCC will enlighten the state utility commissions on this issue if it approves the merger. In any case, even if MCI was not included in the number of fiber-based collocators for

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<sup>23</sup> VZ-RI's Brief, p.5, fn. 4.

<sup>24</sup> Ironically, it is the CLECs who have argued that state utility commissions have the legal authority to affect VZ-RI's wholesale obligations when there is a "gap" in the FCC's UNE Rules while VZ-RI has been dismissive of this approach.

<sup>25</sup> FCC's TRRO fn. 466.

<sup>26</sup> Id.

determining which wire centers are not eligible for certain UNEs, it would likely impact only two wire centers in Rhode Island at which DS3 and dark fiber transport are not unbundled.

A major challenge in interpreting the FCC's TRRO is what the phrase "embedded customer base" means for purposes of the FCC's transition plan for discontinued UNEs. The FCC's TRRO establishes a "transition period" for the "embedded customer base" of CLECs and specifically states that an ILEC "shall provide access to local circuit switching on an unbundled basis" for a CLEC "to serve its embedded base of end-user customers."<sup>27</sup> However, the FCC specifies that it is establishing "a transition plan to migrate the embedded base of unbundled circuit switching to serve mass market customers", and in a footnote reiterates that the "transition period" only "applies to all unbundled local circuit switching arrangements used to serve customers ... as of the effective date of this order."<sup>28</sup> In fact, the FCC unequivocally stated that CLECs "may not obtain new local switching as an unbundled network element."<sup>29</sup> Taking the TRRO in its totality, it appears that the phrase "embedded customer base" equates to the embedded base of unbundled circuit switching or other such UNE arrangements. In other words, the transition plan is not for the CLECs' customers as of March 11, 2005 but for the specific UNE arrangements in place as of March 11, 2005, which serve the customers. This interpretation seems sensible because allowing CLEC customers that move within the next year to receive a transitional TELRIC rate could create administrative complexity for the sake of only a small number of customers. Furthermore, this interpretation is consistent with the overall objective of the TRRO,

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<sup>27</sup> TRRO para. 199, and FCC UNE Rule 51.319(d)(2)(iii).

<sup>28</sup> TRRO para. 226 and fn. 625.

<sup>29</sup> FCC UNE Rule 51.319(d)(2)(iii).

which is to transition away from UNE-P. It would seem rather strange to allow UNE-P to follow to wherever a CLEC customer may move if the overall intent of the TRRO is to move away from UNE-P.

Another major issue requiring the Commission to interpret the FCC's TRRO is whether the cap of 10 DS1 transport circuits should apply to all routes where DS1 is unbundled or only on those routes where DS1 transport is available but DS3 transport is no longer unbundled. The FCC's UNE Rule appears rather clear by stating CLECs "may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis."<sup>30</sup> However, the FCC's TRRO, which explains and justifies the FCC's new UNE Rules, only states that "on routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits."<sup>31</sup> Thus, the FCC's TRRO gives no explicit rationale for the rule imposing a cap of 10 DS1 transport circuits on routes where DS3 transport is unbundled. However, the lack of a clear rationale in the TRRO does not diminish the validity or clarity of the FCC's UNE Rules. Furthermore, the FCC in the text of the TRRO stated that "the record reveals that it is efficient for a carrier to aggregate traffic at approximately 10 DS1s."<sup>32</sup> This statement gives an implicit explanation for the cap of 10 DS1 transport circuits, which is to promote efficiency in the wholesale telecommunications market.

The Rhode Island market reflects the efficiency of the cap of 10 DS1 transport circuits. Rhode Island, which is the most competitive state in the nation and is dominated

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<sup>30</sup> FCC UNE Rule 51.319(e)(2)(ii)(B).

<sup>31</sup> TRRO para. 128.

<sup>32</sup> Id.

by facilities-based competition, has no CLEC requesting more than 10 DS1 transport circuits on any route where DS1 and DS3 transport are available on an unbundled basis.<sup>33</sup> Furthermore, it appears more economical for CLECs in Rhode Island to switch to a DS3 transport circuit once it has 10 DS1 transport circuits on any route which is approximately 25 miles or less.<sup>34</sup> Since Rhode Island is geographically small and has high population density, this distance should cover many routes within the state. Thus, the Commission will adopt the interpretation of the FCC's TRRO which imposes a cap of 10 DS1 transport circuits on all routes where DS1 is available to be unbundled because it promotes efficiency, recognizes the economic realities of the Rhode Island marketplace, and will not harm any CLEC in Rhode Island.<sup>35</sup>

One area the Commission needed to address is the issue of avoiding service disruption for CLEC customers at the end of the transition period. VZ-RI's tariff appears to allow VZ-RI to disconnect a CLEC's service to its customer at the end of the transition period even if the CLEC made a conversion order before the end of the transition period. The Commission concurs that allowing CLECs to continue to receive transitional TELRIC pricing beyond the transition period for discontinued UNEs would be an inappropriate windfall to CLECs and would discourage CLECs from submitting timely UNE conversion orders. However, allowing VZ-RI to disconnect CLECs services for orders submitted but not completed by VZ-RI before the end of the transition period is too draconian a solution. Instead, the Commission agrees with the NYPSC that the

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<sup>33</sup> VZ-RI's PUC Data Resp. 1-2 filed on 6/23/05. Only one CLEC has 9 DS1 transport circuits on a single route and the next highest number of DS1s leased by a CLEC on a single route is 3.

<sup>34</sup> VZ-RI's PUC Data Resp. 1-1 filed on 6/20/05. The data response indicated that the rates for DS1 transport (fixed) is \$107.76 per month for DS1 and the DS1 per mile cost is \$0.52 per month while DS3 transport (fixed) is \$839.72 per month and the DS3 per mile cost is \$14.41 per month.

<sup>35</sup> However, if the FCC were to clarify the TRRO in anyway which is inconsistent with this Commission's interpretation of the TRRO, the Commission expects VZ-RI would notify the Commission promptly and revise its tariff accordingly.

proposed tariff must be reviewed to allow “for conversion of DS1 and DS3 loop and transport services to analogous services at the applicable resale rate in the event an order for conversion is placed before” the end of “the FCC-mandated transition period, even if the order for conversion cannot be completed within the transition period.”<sup>36</sup>

Lastly, the Commission must determine if the list of non-UNE eligible wire centers should be placed in the tariff and require VZ-RI to provide supporting documentation to the Commission and the Division. There should be little or no harm to VZ-RI to include this list in its tariff and file it with the Commission. VZ-RI as a public utility is subject to state law which requires it to file its services and rates in a tariff.<sup>37</sup> Since it is the Commission which sets VZ-RI’s TELRIC rates, it is reasonable that VZ-RI must set forth in a tariff what the TELRIC rates are, what services will be charged a TELRIC rate and where TELRIC rates and services are not available.<sup>38</sup> The tariff process of Title 39 ensures adequate notice to the public, a forum for due process to the parties, and appropriate oversight by regulators. Thus, the Commission will follow the approach of the NYPSC. VZ-RI is required to revise the tariff “to include the list of wire centers which no longer qualify for UNEs” and provide to the Commission and the Division “supporting data and documentation upon which it based its determinations ... for review and analysis.”<sup>39</sup>

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<sup>36</sup> NYPSC Order in Case 05-C-0203, (3/16/05), p. 26. The Commission is not currently addressing the issue of what services or rates to which dark fiber transport will be converted at the end of the transition period. The transition period for dark fiber transport is eighteen months so this gives ample time for CLECs to negotiate with VZ-RI or to seek relief from the FCC. If towards the end of the transition period for dark fiber transport the CLECs have made these attempts without resolution, the Commission may need to fill any “gap” which may exist in federal law to avoid service disruption to CLEC customers.

<sup>37</sup> See R.I.G.L. § 39-3-10 and 39-3-11.

<sup>38</sup> See Section 252(d) and (f) of the Telco Act.

<sup>39</sup> NYPSC Order in Case 05-C-0203 (3/16/05), pp. 26-27.



Accordingly, it is

( 18310 ) ORDERED:

1. Verizon-Rhode Island's revisions to Tariff No. 18 filed on February 18, 2005 is approved with the following modifications to the tariff:

(a) allow for conversion of DS1 and DS3 loops and transport services to analogous services at the applicable resale rate in the event an order for conversion is placed before the end of the FCC-mandated transition period, even if the order for conversion cannot be completed within the transition period; and

(b) include the list of wire centers which no longer qualify for UNEs and provide the Commission and the Division supporting data and documentation.

2. Verizon-Rhode Island shall comply with all other findings and instructions contained in this Report and Order.

EFFECTIVE IN WARWICK, RHODE ISLAND PURSUANT TO OPEN MEETING DECISIONS ON MARCH 8, JUNE 20, AND JULY 7, 2005. WRITTEN ORDER ISSUED JULY 28, 2005.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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Robert Holbrook, Commissioner