STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-777

PUBLIC UTILITIES COMMISSION
Investigation of Cornerstone Communication Inc.'s 10/15/03 Rapid Response Complaint

December 2, 2003

EXAMINER'S REPORT

NOTE: This Report contains the recommendation of the Hearing Examiner. Although it is in the form of a draft of a Commission Order, it does not constitute Commission action. Parties may file responses or exceptions to this Report on or before **December 9, 2003**. It is expected that the Commission will consider this report at its deliberative session on **December 15, 2003**.

I. SUMMARY

In this Order, we find that Verizon must provide Cornerstone Communications, Inc. (Cornerstone) access to Verizon's copper distribution subloops as requested in Cornerstone's October 15, 2003 Rapid Response Complaint.

II. BACKGROUND

On October 15, 2003, Cornerstone filed a Complaint under the Commission's Rapid Response Process (RRP). In its Complaint, Cornerstone alleged that Verizon was unwilling to give Cornerstone access to Verizon's facilities in and around its remote terminal (RT) enclosures for the purposes of accessing Verizon's distribution subloops and possible collocation within Verizon's RT. Cornerstone alleged that Verizon's actions were inconsistent with the terms of the Interconnection Agreement between Cornerstone and Verizon, Verizon's Collocation Tariff, the Telecommunications Act of 1996, and the public policy interests of the State of Maine. Cornerstone requested that the Rapid Response Team (RRT) order Verizon to: (1) immediately schedule and perform the splicing requested by Cornerstone; (2)

immediately make its RT site available for inspection; and (3) assign a Commission Staff member to observe and mediate the process of developing procedures for collocation and access to Verizon's subloop unbundled network elements (UNEs).

On October 17, 2003, the RRT, Cornerstone, and Verizon held a conference call during which it was determined that resolution of Cornerstone's Complaint would require an interpretation of certain provisions of the Federal Communications Commission's (FCC) Triennial Review Order[1] by the full Commission. On November 4, 2003, the Commission opened this Investigation and requested that the parties submit legal briefs on the TRO legal issues.

III. LEGAL STANDARDS

Paragraph 254 of the TRO, which discusses competitive local exchange carrier (CLEC) access to incumbent local exchange carrier (ILEC) copper subloops, contains the following language:

> We define the copper subloop UNE as the distribution portion of the copper subloops that is technically feasible to access at terminals in the incumbent LEC's outside plant.... including inside wire. We find that any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal. As HTBC [High Tech Broadband Coalition] points out, a non-exhaustive list of these points includes the pole or pedestal, the serving area interface (SAI), the NID itself, the MPOE [minimum point of entry], the remote terminal and the feeder/distribution interface. *To facilitate competitive LEC access to the copper subloop UNE, we require incumbent LECs to provide, upon site-specific request, access to the copper subloop at a splice near their remote terminals.*

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (rel. August 21, 2003) (*Triennial Review Order or TRO)*.

(emphasis added) The FCC's Rules contain a similar statement regarding the definition of accessible terminal and site-specific requests:

> A point of technically feasible access is any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. *An incumbent LEC shall, upon a site-specific request, provide access to a copper subloop at a splice near a remote terminal.* The incumbent LEC shall be compensated for providing this access in accordance with §§ 51.321 and 51.323.

47. C.F.R. § 51.319(b)(1)(i) (emphasis added).

IV. PARTIES' POSITIONS

A. Cornerstone

Cornerstone contends that the application of statutory interpretation principles leads to the conclusion that the FCC intended to create an additional point of access to an ILEC's subloops which is not limited by the necessity of an accessible terminal and which involves splicing CLEC and ILEC cables at a point near the ILEC's remote terminal. Cornerstone argues that a "plain meaning" reading which gives effect to all of the words in the FCC Rules supports its position. Cornerstone argues that a splice near the remote terminal is not an accessible terminal under Paragraph 254 of the TRO but does constitute a point of technically feasible access. Cornerstone argues that the FCC was acknowledging the fact that a LEC typically constructs an "entrance cable" to the remote terminal's Feeder-Distribution Interface (FDI) that is an oversized cable, with an excess of cable pairs that terminate on the FDI's cross-connect field, but which typically extends no further than the first splice in the distribution plant on a pole

reasonably near to the remote terminal and FDI location. By allowing a CLEC to access that first splice, the FCC was trying to facilitate CLEC access to ILEC copper subloops. Cornerstone also contends that the FCC's language requiring ILECs to perform "routine" modifications of their networks, including splicing, in order to provide CLECs with access to UNEs, reflects the FCC's determination to allow access to certain splice points in the network.

B. Verizon

Verizon contends that the Telecommunications Act of 1996 as well as the FCC's Rules limit Verizon's obligation to provide access to subloops to only where technically feasible, which the FCC has ruled is at "accessible terminals." Verizon argues that splice cases are not technically feasible "accessible terminals" because the FCC previously found in the *UNE Remand Order*[2] that the UNE subloops cannot be reached at splice cases without breaching the splice enclosure, which will compromise the physical integrity of the network, leading to network reliability concerns and potential loss of service to all customers served from the FDI. Verizon contends that the language included in Section 51.319(b)(1)(i) of the new FCC Rules as well as the language from Paragraph 254 of the TRO must be read in conjunction with other parts of the document which limit access to accessible terminals. It argues that the new language only requires it to "consider the feasibility of a hand-off [with an] interconnection cable, terminated on one end at the F1 binding posts in the FDI, at a meet point splice directly to the CLEC's feeder cable." Verizon asserts that if the FCC

[2] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket 96-98, Third Report and Order And Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, rel. November 5, 1999 ("UNE Remand Order").

had intended to overturn its decision regarding access at splice points, it would have provided a more detailed explanation.

III. DECISION

After carefully considering the parties' arguments and reviewing the relevant portions of the TRO and FCC rules, we find that Verizon must allow Cornerstone to access Verizon's subloops at the splice point located next to Pole No. 85/3. While we agree with Verizon that the FCC did not adequately explain why the new language regarding CLEC access at a "nearby splice" was added to the FCC's Rules, that fact does not relieve us of our duty to apply traditional statutory interpretation principles and reach a determination regarding Cornerstone's complaint. We believe that when looked at in their entirety, Paragraph 254 of TRO and 47 C.F.R. § 51.319(b)(1)(i) support Cornerstone's interpretation and require Verizon to provide the requested access.

First, we agree with Cornerstone that the first step in analyzing an ambiguous statute or order requires review of the plain language meaning of the terms involved. In both Paragraph 254 and Section 51.319(b)(1)(i), the FCC first lists examples of accessible terminals where CLECs can access subloops and then immediately states that an ILEC must provide access at "a splice near" the ILEC's remote terminal. We believe this choice of language and sentence structure implies that access at a nearby splice is something different from, and in addition to, access at accessible terminal. Even Verizon concedes this point at page 7 of its Brief when it describes the additional type of access that it believes is required by the language.[3]

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[3]Verizon concedes that the new language requires it to "consider the feasibility of a hand-off [feeder cable][of an] interconnection cable, terminated on one end at the F1 binding posts in the FDI, at a meet point splice directly to the CLEC's feeder cable."

Having determined that the FCC clearly intended to provide an additional avenue of access to Verizon subloops, we must determine exactly what that access is. Verizon argues that the language requires making a new splice between the CLEC's plant and a cable used to interconnect to Verizon's remote terminal. Verizon further asserts that if the FCC had intended access to an existing splice, it would have used the term splice case when describing the access. Cornerstone argues that the language requires access at existing splices in Verizon's outside plant that are located near a remote terminal and that the splice in question at Pole 85/3 is covered by a "splice closure" which was designed for easy re-entry.[4]

The first appearance of the word "splice" in the TRO is found in Paragraph 254. There the FCC uses the term "splice case" to help define what is and is not an "accessible terminal" where CLECs may access copper distribution subloops. As correctly pointed out by Verizon, in the *UNE Remand Order*, the FCC differentiated an accessible terminal from a splice case by the fact that an accessible terminal contains screw posts which allow technicians to make cross-connections whereas a splice case would require breaching the case to access the wires inside. The FCC never discussed "splice closures" or described exactly what "breaching" a splice case entailed.

Returning to Paragraph 254, after using the term "splice case" in the second sentence of the paragraph, the FCC uses only the term "splice" in the fourth sentence,

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[4]We must reach a conclusion regarding these differing interpretations because, in the specific situation described by Cornerstone's complaint, access according to Verizon's interpretation would result in Cornerstone incurring the costs to dig up Verizon's concrete pad, install a new trench and conduit, and then repair Verizon's concrete pad. (This is because of Verizon's assertion that the underground conduit running in and out of the remote terminal is full, i.e. there is no room for any additional cables to be pulled through the conduit.)

when describing the additional point of access that will "facilitate competitive LEC access to the copper subloop UNE." As Cornerstone points out, the FCC could have used additional terms such as "terminal" or "binding posts" or "accessible," but chose not to do so. Yet, as Verizon notes, the FCC could have used the term "existing splice," but did not. It simply remains unclear exactly what the FCC intended.

The only other provisions in the TRO that may further explain the FCC's intended meaning are Paragraphs 637-638 and Section 51.319(a)(8) of the Rules which state that an ILEC must perform routine modifications of its network on behalf of a CLEC. Of particular importance is the FCC's statement that routine maintenance includes "splicing into existing cable." The FCC clearly contemplated a less "hands-off" approach to the ILEC network when the requested activity was routinely done by Verizon for itself. Unfortunately, we do not have a factual record before us regarding whether and/or how often Verizon performs for itself splices similar to that requested by Cornerstone.

Thus, in order to answer the question before us, we turn to the policy arguments espoused by Cornerstone and Verizon and review them in the context of the policies reflected in the TRO. Cornerstone contends that both federal and state policy support expansion of broadband capabilities to rural areas which currently have no access to high-speed Internet connections. Cornerstone argues that granting it the access requested will enable it to provide broadband services to areas which currently have no access to such services. Verizon argues that all access to its network is limited by technical feasibility and network security considerations and that granting Cornerstone's access might compromise Verizon's network. As for the FCC's policies embodied in the TRO, most commenters would agree that the FCC drew a clear line regarding

unbundling requirements for the ILEC's legacy copper network versus the newer fiber portions of the network. The FCC generally supported access to the legacy copper network while it substantially limited access to fiber. TRO ¶ 253, 278. The FCC also favored access to end-users through copper distribution subloops rather than use of the fiber feeder portion of the network. Id.

The access requested by Cornerstone would certainly support the policy of facilitating CLEC access to copper distribution subloops and it does not entail use of any Verizon fiber facilities. Further, granting Cornerstone's request will result in the expansion of broadband to rural areas where no company, including Verizon, has chosen to offer advanced services. We see great benefit to both individual citizens as well as the State as a whole when broadband facilities are deployed to new areas using Verizon's legacy systems, that would otherwise go unused, for providing high-speed Internet access.

In addition, the access requested by Cornerstone is similar to that which even Verizon concedes it must provide; it involves splicing CLEC and Verizon cables together to provide access to subloops. The only difference is the fact that Cornerstone's feeder facilities would enter Verizon's FDI on the distribution side of the FDI. Verizon contended in its Brief that it would have to "re-engineer" the interior of the cabinet to accommodate Cornerstone. However, during a subsequent teleconference with the Advisors and other parties, Verizon conceded that the term "re-engineer" might have overstated the amount of work needed and that perhaps only labeling or tagging of Cornerstone wires would be required.

As for Verizon's concerns regarding potential difficulties due to the splicing of CLEC and Verizon facilities, we expect that there may be technical solutions to these problems, such as using some sort of terminal in conjunction with the splice between Verizon and the CLEC.[5] There apparently is already in place a "splice closure" which allows for repeated entry to the area of the splice. We hope that the parties, with the Advisors help as needed, will be able to resolve any remaining issues concerning the specific configuration of the Cornerstone's access. If not, the Advisors will schedule a hearing in this matter and we will resolve all remaining disputes.

Thus, based upon our interpretation of the language of the TRO as well as considerations of both federal and state policies regarding CLEC access to copper distribution subloops, we find that Verizon must provide Cornerstone with the access it requests.

Respectfully submitted,

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Trina M. Bragdon
Hearing Examiner

[5] The splice between Cornerstone and Verizon need not occur at the current splice point, but might occur at some point on the pole which Verizon uses to bring the cable to the underground conduit and into the FDI and could involve installing a pole-mounted splice case which allows for repeated entry and connections/disconnections. It would seem to us that such a splice case is a logical and efficient place to effectuate the "splice near a remote terminal" ordered by the FCC.