



ORIGINAL
JOURNAL

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Saturday, March 13, 1999

VIA Federal Express

Ms Blanca Bayo, Director
Divisions of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RE: Docket No. 990182-TP
Covad Petition for Arbitration of Interconnection Agreement with GTE

Dear Ms Bayo:

Enclosed for filing are an original and fifteen copies of Covad Communications Company's prefiled testimony relating to its Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with GTE.

Service has been made as indicated on the Certificate of Service.

ACK _____ Please do not hesitate to contact me if you have any questions concerning this matter.

AFA _____
APP _____ Thank you for your assistance.

CAF _____ Sincerely,

CMI _____
CTR _____
EAG _____ James D. Earl

Thomas Koutsky
and Thomas Koutsky
Assistant General Counsel

LEG 2 _____
LIN *3 to Bayo* Enclosures

OPC _____
RCH _____ cc: Attached Service List

SEC 1 _____
WAS _____
OTH _____

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing prefiled testimony regarding Covad's Petition of Interconnection Rates, Terms, Conditions and related Arrangements with GTE was sent via overnight Federal Express delivery on this 13th day of March, 1999 to the following:

Sam Jones
Manager – Compensation Planning
GTE Network Services
600 Hidden Ridge HQE03c59
Irving, TX 75038

Kimberly Caswell
GTE Service Corporation
One Tampa City Center
201 North Franklin Street (33602)
Tampa, FL 33601-0110

Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



James D Earl
Assistant General Counsel
Covad Communications Company
6849 Old Dominion Dr.
Suite 220
McLean, VA 22101

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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Petition of DIECA Communications)
Inc. d/b/a Covad Communications)
Company for Arbitration of) Docket No. 990182-TP
Interconnection Rates, Terms,)
Conditions and Related)
Arrangements with GTE)

PREFILED TESTIMONY OF JAMES D. EARL
ON BEHALF OF COVAD COMMUNICATIONS COMPANY

Q. PLEASE STATE YOUR NAME AND QUALIFICATIONS

A. My name is James D. Earl. I am an Assistant General Counsel for Covad Communications Company ("Covad"), a Silicon Valley-based competitive local exchange carrier established to provide digital subscriber line services nationally. I have held this position since April 27, 1998. Prior to joining Covad, I worked as a senior attorney in the Competition Division of the General Counsel, Federal Communications Commission. I also worked as a consultant on telecommunications issues both within the United States and internationally for several years. Between 1991 and 1994, I was an assistant general counsel and policy advisor to Inmarsat, the London-based international mobile satellite consortium.

Between 1984 and 1991 I was the Department of State telecommunications attorney. Prior to picking up the telecommunications portfolio at the Department of State, I was the on-site attorney for an international peace keeping organization in the Sinai Desert charged with oversight and implementation of the Camp David Accords

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

1 between Egypt and Israel. I came to the Department of State as a Foreign Service
2 Officer in 1979. For the previous seven years, I served as an active duty army
3 officer, both as an infantry rifle platoon leader and as a JAG officer, in a number of
4 domestic and international assignments.

5
6 I obtained my law degree from Harvard in 1972 and my undergraduate degree from
7 Pomona College in 1969.

8
9 **Q. PLEASE REVIEW YOUR INITIAL NEGOTIATING CONTACTS WITH**
10 **GTE.**

11 **A.** I was assigned responsibility for the GTE negotiations as an additional duty on or
12 about January 11, 1999 following the departure of another attorney from Covad. I
13 had participated in at least one conference call with GTE negotiators prior to that
14 time, and was aware that the principal GTE negotiator with respect to Covad was
15 Mr. Sam Jones. I informed Mr. Jones by email on January 13, 1999 that I was now
16 responsible for Covad negotiations with GTE. I also posed a number of substantive
17 questions in that email. Mr. Jones responded to my email within several hours. He
18 suggested we talk telephonically two days later to review the negotiating situation
19 even if the attorney GTE assigned to the Covad negotiations were not available. As
20 suggested, Mr. Jones and I spoke telephonically on or about January 15. Our
21 conversation was in excess of an hour.

22
23 Mr. Jones was helpful in ensuring that I was aware of the negotiating history. We
24 talked about a number of issues. He confirmed that Covad and GTE had agreed to
25 attempt to come to closure on the terms of the Oregon Interconnection Agreement

1 and would then use that as a model for other states. I stated that I had become aware
2 that North Carolina would not allow parties to extend the arbitration window by
3 mutual agreement. In either this or a subsequent discussion, Mr. Jones
4 acknowledged that Covad might be placed in the position of having to file an
5 arbitration petition in North Carolina. At the end of this rather far-ranging call, I
6 concluded (and still believe) that Mr. Jones and I would have a professional
7 negotiating relationship, limited only by the interests and policy positions of our
8 respective companies.

9
10 On January 18, I received a fax from Mr. Jones responding to a number of questions
11 and proposals Covad had put forward over the holiday period. In it, Mr. Jones
12 suggested a number of dates and times ranging from January 22, 1999 through
13 February 5, 1999 when we discuss telephonically the substantive issues in the fax.

14
15 Shortly thereafter, I learned that GTE and AT&T had concluded an interconnection
16 agreement in Oregon after a lengthy arbitration. Within several days, I was able
17 secure the latest publicly available draft using personnel in the legal section of
18 Covad's corporate headquarters. Obviously, AT&T's bargaining power is
19 considerably greater than Covad's, and I was interested in the AT&T/GTE arbitrated
20 agreement to learn how it dealt with issues of interest to Covad. On January 26, I
21 requested Mr. Jones by email if he could send me a electronic version. (Mr. Jones
22 and I subsequently discussed this request briefly in our phone conversation of
23 February 8.)

1 During December and January that engineers from Covad and GTE were discussing
2 spectrum management issues. By January 22, I understood Covad engineers believed
3 they had reached an accommodation with GTE on spectrum management issues and
4 loop requirements. On January 25, I faxed what I believed was a one page informal
5 memorandum of understanding to Mr. Jones indicating that I had asked Covad
6 engineers for the names and contact information of their GTE counterparts so that I
7 might pass them to Mr. Jones, thereby enabling him to confirm the outcome of
8 discussions. Later that day, I sent Mr. Jones a list of GTE participants in the
9 loop/spectrum discussions as Covad participants were able to generate. On the basis
10 of our initial discussions, I believed that information sharing of this nature was a
11 predicate to continued good faith negotiations I believe we both wanted to engender.

12
13 The days following the Supreme Court decision in the *Iowa* decision of January 26
14 were quite busy. The legal and practical issues arising from that decision were
15 further complicated for Covad, when several days later, and as a consequence of
16 *Iowa*, the FCC delayed its rule-making decision in the Deployment of Wireline
17 Services Offering Advanced Telecommunications Capability proceeding. Covad
18 was, and remains, heavily involved in that docket (FCC CC Docket No. 98-147)
19 because of its reliance on ILECs to obtain inputs essential to Covad's final DSL
20 service offering, namely, local loops, collocation and transport. By the first week in
21 February, I was getting second and third hand reports from trade associations and
22 informal regulatory contacts that large ILECs had suspended interconnection
23 agreement negotiations and/or were threatening not to observe the terms of existing
24 agreements. The reported rationale for any such conduct was that the vacation of

25

1 FCC rule 51.319 left it unclear what if any Unbundled Network Elements they had to
2 provide CLECs.

3
4 By February 8, I had made time to examine the AT&T/GTE Oregon interconnection
5 agreement, as well as certain portions of the very recent AT&T/GTE North Carolina
6 interconnection agreement I had obtained from local North Carolina counsel via
7 fedex. I prepared a fax to Mr. Jones addressing several substantive issue. Before
8 sending it, however, I wondered whether I would be sending it into a black hole
9 considering the reports I had received regarding ILEC post-*Iowa* conduct. I spoke
10 with Mr. Jones telephonically.

11
12 He confirmed that GTE negotiators had been instructed to suspend substantive
13 discussions on interconnection agreements in the wake of *Iowa*. He expressed regret
14 and, in response to my question, thought that they might receive policy guidance as
15 early as mid-week. I requested that he get back to me substantively as soon as he
16 could. I added a final paragraph to my fax expressing hope that GTE Policy would
17 soon provide guidance in light of the Supreme Court decision, and reiterating my
18 request that he call as soon as he could. I sent this fax on February 9. As of my
19 drafting of arbitration petitions for Florida, North Carolina and Virginia on Monday,
20 February 15, I had not been contacted by Mr. Jones nor anyone else from GTE
21 regarding on-going interconnection agreement negotiations.

22
23 When I returned home from work on Wednesday, February 17, I found a message on
24 my answering machine from Mr. Jones. He was aware of Covad's filing of
25 arbitration petitions in Florida, North Carolina and Florida. In the message, he

1 characterized relations between GTE and Covad as a "misunderstanding"; there was
2 "no total freeze" on negotiations, only with regard to discussion of UNEs. He stated
3 that he would be on vacation the following week [I understood February 22 through
4 February 26], but would like to recommence discussions upon his return.

5
6 Mr. Jones called me at work the following day, Thursday, February 18. He told me
7 that, as regards the negotiation of interconnection agreements, GTE would operate in
8 business as usual as it had stated to the FCC. He added that even though GTE did
9 not believe it had the obligation to provide UNEs, it would do business with Covad
10 as usual if Covad did not push the combinations issue. Since Covad's current
11 business plan does not contemplate UNE combinations provided to it by ILECs (as
12 that terminology is generally used today), I told Mr. Jones that I did not see this
13 condition as one which affected Covad.

14
15 When I had not heard from Mr. Jones as of March 4, I sent a fax requesting contact
16 at his earliest convenience so we might move forward to resolve outstanding issues.
17 Mr. Jones called me several days thereafter. We arranged our first substantive
18 discussions since the Supreme Court decision on March 10 based on tailored texts
19 Mr. Jones provided by e-mail on March 8. Negotiations are on-going as of today,
20 March 13.

21
22 **Q. AS TO UNRESOLVED ISSUES, PLEASE DESCRIBE COVAD'S POSITION**
23 **ON DISPUTE SETTLEMENT.**

24 **A.** In a draft sent electronically to GTE on or about January 6, 1999, Covad
25 demonstrated its unwillingness to accept an alternative dispute settlement

1 arrangement that would eliminate its ability to litigate disputes arising from the
2 Interconnection Agreement. Mr. Jones and I discussed this very briefly, and
3 inconclusively, prior to January 26. The text Covad has proposed is at Attachment 1.
4 It remains in dispute. Not only does Covad want to preserve the option to petition
5 the FCC and the Florida Public Utilities Commission, it wants to preserve the option
6 of litigation in appropriate cases. This option appears to be contemplated by GTE in
7 other provisions of the interconnection agreement draft text. (see Attachment 2).

8
9 **Q. WHAT IS COVAD'S POSITION AS TO GOVERNING LAW?**

10 **A.** In a draft sent electronically to GTE on or about January 6, 1999, Covad, by striking
11 the word "exclusive" in the following sentence, seeks to ensure that it is not waiving
12 the right to consolidate claims and bring suit in any court of competent jurisdiction:

13 Governing Law. This Agreement shall be governed by and construed in
14 accordance with the Telecommunications Act of 1996, applicable federal and
15 (to the extent not inconsistent therewith) domestic laws of the state where the
16 services are provided or the facilities reside and shall be subject to the
17 ~~exclusive~~ jurisdiction of the courts therein.

18
19 Covad has an interest in consolidating litigation in appropriate instances, rather than
20 proceeding against GTE in each state where Covad may have similar claims. I
21 understand that GTE is re-evaluating its position on this issue.

22
23 **Q. WHAT IS COVAD'S POSITION AS TO THE LIMITATION OF LIABILITY?**

24 **A.** As described in the Arbitration Petition, Covad firmly believes that (1) neither Covad
25 nor GTE should be able to limit its liability in cases of willful misconduct or gross

1 negligence, and (2) absent willful misconduct or gross negligence, liability should be
2 limited to direct damages without any further limitation relating to monthly charges
3 or other costs or expenses either party might recover in the course of normal
4 operations. Covad's position was clear in the electronic draft sent to GTE on or
5 about January 6, 1999. The text under consideration is at Attachment 3. This issue
6 is under consideration by the parties. Part of Covad's concern relates to the fact that
7 it must rely on GTE, a DSL competitor, to provide inputs essential to Covad's own
8 DSL offerings.

9
10 **Q. WHAT IS COVAD'S POSITION AS TO PRICES OF UNBUNDLED LOOPS**
11 **AND NIDS?**

12 **A.** I believe Covad's compelling legal position is presented in the Arbitration Petition.
13 The applicability of proxy prices does not turn on whether GTE has previously
14 submitted cost studies it believes conform to UNE pricing standards set forth in
15 Section 252(d) of the Telecommunications Act of 1996, nor on whether its studies
16 conformed to the methodology established in Florida at the time of submission in
17 1996. Rather, the issue of proxy prices turns, among other things, on whether the
18 Florida procedures and the resulting rates, terms, and conditions on offer to Covad
19 conform to the federal requirements contained in the Code of Federal Regulations,
20 specifically at 47 C.F.R. §51.501 and following. They do not, and I believe there is
21 no factual dispute on that point.

22
23 As contemplated in the last negotiation session, Covad will forward to GTE the
24 proposed text in Attachment 4 on March 15, 1999.

25

1 In its response to Covad's arbitration petition, GTE described the concept of UNE
2 tariffs as inapposite in Florida. However, as illustrated in Attachment 4, the most
3 recent interconnection draft provided by GTE, tailored to Florida, contains a tariff
4 reference in the initial "Prices" paragraph. The text proposed by Covad at paragraph
5 2.2.4 of Attachment 4 is therefore appropriate. The change of law provisions
6 relating to the interconnection agreement obligate the parties to modify affected
7 terms of the interconnection agreement to conform to regulatory change, among
8 other things. The change in law provisions in the interconnection agreement do not
9 require GTE to make conforming modifications in its tariffs, documents that are not
10 part of the interconnection agreement, but merely incorporated by reference.

11
12 If, as GTE represents in a different context, text analogous to that of paragraph 2.2.4
13 of Attachment 4 is only "redundant and unnecessary" then there should be no
14 substantive objection to its inclusion in the interconnection agreement.

15
16 **Q. WHAT IS COVAD'S POSITION AS TO NOMENCLATURE OF LOOP AND**
17 **NID?**

18 **A.** While Covad's position is adequately stated in the arbitration petition, discussions
19 between Covad and GTE on March 10 led to agreement on the text contained in
20 Attachment 5.

21
22 **Q. WHAT IS COVAD'S POSITION AS TO COLLOCATION ISSUES?**

23 **A.** I believe Covad's compelling legal position is fully and accurately presented in the
24 Arbitration Petition. Covad will forward to GTE its proposed text on March 15 as
25

1 contemplated by an e-mail I sent to Mr. Jones following our last negotiating session.
2 That proposed text is at Attachment 6.

3
4 GTE proposed, and Covad has now acceded to, the following sentence: "GTE will
5 provide such collocation for purposes of interconnection or access to UNEs pursuant
6 to the terms and conditions in the applicable federal and state EIS tariffs." (See the
7 last sentence of the first paragraph of Attachment 6.)

8
9 This sentence incorporates the terms and conditions of all federal and state EIS
10 tariffs by reference into the interconnection agreement. It does not, however, make
11 the referenced tariffs part of the interconnection agreement. Accordingly, the change
12 of law provisions of the interconnection agreement, whether general or specific (See
13 the last paragraph of Attachment 4.), do not compel GTE to modify its tariffs to
14 comply with regulatory changes.

15
16 If GTE insists on incorporating the terms and conditions of its applicable federal and
17 state EIS tariffs into the interconnection agreement (as it has), it should be compelled
18 to commit to bring those tariffs into regulatory compliance by appropriate provisions
19 in the same interconnection agreement.

20
21 Inclusion of the Covad proposed text (the second paragraph of Attachment 4) makes
22 it unambiguous that Covad has recourse to the Dispute Settlement provisions of the
23 interconnection agreement should Covad determine that relevant (perhaps critical)
24 state or federal regulations are not incorporated into GTE tariffs in an accurate and
25 timely manner. This provision is entirely appropriate in light of the disparity of

1 bargaining power between Covad and GTE, and the fact that Covad is dependant on
2 GTE, a DSL competitor, for inputs essential to the offering of Covad DSL service, in
3 particular, collocation.
4

5 **Q. WHAT IS COVAD'S POSITION AS TO SPACE PLANNING?**

6 **A.** While Covad's position is adequately stated in the arbitration petition, discussions
7 between Covad and GTE on March 10 let to agreement on the text contained in
8 Attachment 7.
9

10 **Q. HAS PROGRESS BEEN MADE ON THE ISSUES IDENTIFIED AS**
11 **"MISCELLANEOUS RESOLVED BUT OUTSTANDING ISSUES"?**

12 **A.** In its Arbitration Petition, Covad reserved the right to address additional issues in
13 more detail should the parties be unable to agree on final contract language.
14

15 I believe Covad and GTE engineers continue to consult on spectrum management
16 issues. Should those discussions lead to results that can reasonably be included in
17 the interconnection agreement, I understand both GTE and Covad to be amenable to
18 doing so.
19

20 GTE has proposed additional text relating to the reimbursement of expenses that is
21 under consideration by Covad.
22

23 The definition of dedicated transport has not yet been addressed since the re-
24 commencement of negotiations.
25

1 The issue of service standards remains problematic. I understand GTE is reluctant to
2 agree to firm intervals. It may be possible for a dominant incumbent to avoid such
3 commitments to its retail customers. However, one of the ways new entrants seek to
4 differentiate themselves from incumbents is in the area of service responsiveness.
5 Since Covad must obtain essential inputs (loops, transport, OSS, and collocation)
6 from GTE, GTE can unilaterally affect Covad's customer relationships by delivery
7 delays. Since GTE provides a competing DSL service, there is some incentive to
8 avoid firm provisioning intervals. This would result in Covad being unable to
9 commit to delivery of its service to its customers. Unpredictability in provisioning
10 would compromise Covad's customer service.

11
12 Should Covad and GTE be unable to reach agreement, I will notify the Prehearing
13 Officer as soon as possible and request the issue be identified as one for arbitration.
14

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

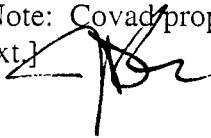
16 **A.** Yes.
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Covad proposed text on Dispute Resolution

Dispute Resolution.

Alternative to Litigation. Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, without waiving the right to seek relief from a court of competent jurisdiction, the Commission or the FCC, ~~and except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process,~~ the Parties agree to use the following alternative dispute resolution procedures as the primary remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

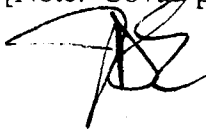
[Note: Covad proposes to add the double underlined text and to delete the strike out text.]

A handwritten signature in black ink, appearing to be "Covad", is written over the note text.

Covad proposed text of Governing Law

Governing Law. This Agreement shall be governed by and construed in accordance with the Telecommunications Act of 1996, applicable federal and (to the extent not inconsistent therewith) domestic laws of the state where the services are provided or the facilities reside and shall be subject to the ~~exclusive~~ jurisdiction of the courts therein.

[Note: Covad proposes to delete the strike out text.]

A handwritten signature in black ink, appearing to be "AS" or similar initials, written over a horizontal line.

Covad proposed text of Limitation of Liability

Limitation of Liability. Each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, ~~which shall not exceed the monthly charges, plus any related costs/expenses GTE may recover, including those under Section above, for the services, UNEs or facilities for the month during which the claim of liability arose.~~ Under no circumstance shall either Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or any accessories attached thereto, delay, error, or loss of data. Should either Party provide advice, make recommendations, or supply other analysis related to the Services, UNEs or facilities described in this Agreement, this limitation of liability shall apply to provision of such advice, recommendations, and analysis. This provision doesn't apply in case of willful misconduct or gross negligence.

[Note: Covad proposes to add the double underlined text and to delete the strike out text.]



Covad proposed text on Prices (excluding Appendix D)

Prices. Individual UNEs and prices are identified on Appendix D attached to this Agreement and made a part hereof, or under the appropriate GTE tariff as referenced in this Article.

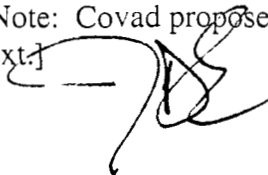
2.2.1 Appendix D reflects a price of \$13.68 for all loops regardless of how they are described in this agreement (i.e. the 6 general categories of loops listed at §4.2) including NID. There is no nonrecurring charge associated with loops.

2.2.2 Such ~~n~~Nonrecurring charges as may relate relating to unbundled elements are also listed on Appendix D.

2.2.3 After the Commission sets prices of network elements in accordance with federal law (47 C.F.R. § 51.501 et. seq.), the parties will incorporate them into the agreement within 30 days of the effective date of the order. There will be no true-up. If the parties cannot agree on whether the Commission action was in accordance with FCC pricing rules, either party may invoke the Dispute Resolution provision of this agreement in Article III, section 15.

2.2.4 In the event any state or federal regulations alter the rates, terms and conditions associated with UNEs, GTE will accordingly modify its federal and state tariffs to incorporate all such alterations within 30 days of the effective date of such regulations, or within such time period as the regulations themselves may require.

[Note: Covad proposes to add the double underlined text and to delete the strike out text.]

A handwritten signature in black ink, appearing to be "Covad", is written over the note text.

Covad proposed text on Nomenclature of Loop and NID

Network Interface Device.

3.1

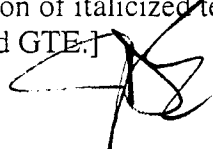
Direct Connection. Covad shall be permitted to connect its own Loop directly to GTE's NID in cases in which Covad uses its own facilities to provide local or *special access* service to an end user formerly served by GTE, as long as such direct connection does not adversely affect GTE's network. In order to minimize any such adverse effects, the following procedures shall apply:

Loop Elements.

4.1

Service Description. A "Loop" is an unbundled component of Exchange Service or *special access service*. In general, it is the transmission facility (or channel or group of channels on such facility) which extends from a Main Distribution Frame (MDF), or it's equivalent, in a GTE end office or Wire Center to and including a demarcation or connector block in/at a subscriber's premises. Traditionally, Loops were provisioned as 2-wire or 4-wire copper pairs running from the end office MDF to the customer premises. However, a loop may be provided via other media, including radio frequencies, as a channel on a high capacity feeder/distribution facility which may, in turn, be distributed from a node location to the subscriber premises via a copper or coaxial drop facility, etc.

[Note: The inclusion of italicized text relating to "special access service" has been agreed between Covad and GTE.]



Covad proposed text on Collocation

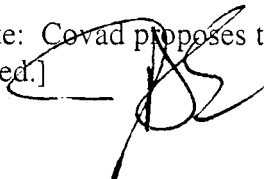
Physical Collocation. GTE shall provide to Covad physical collocation of equipment pursuant to 47 CFR § 51.323 necessary for interconnection or for access to UNEs GTE may provide virtual collocation in place of physical collocation if GTE demonstrates to the Commission that physical collocation is not practical because of technical reasons or space limitations, as provided in Section 251(c)(6) of the Act. GTE may also deny virtual collocation if GTE demonstrates to the Commission that virtual collocation is not practical because of technical reasons or space limitations. If the Commission determines that either physical or virtual collocation cannot be provided due to space limitations or technical reasons, Covad may submit a BFR to GTE and the Parties shall work together to determine whether alternative collocation arrangements are feasible. In the event GTE denies collocation space due to technical reasons or space limitations, GTE shall provide to the Commission information supporting GTE's decision within 30 days of denying Covad's request. GTE will provide such collocation for purposes of interconnection or access to UNEs pursuant to the terms and conditions in the applicable federal and state EIS tariffs.

In the event state or federal regulations alter the rates, terms and conditions for the provision of collocation, GTE will accordingly modify its federal and state tariffs to incorporate all such alterations within 30 days of the effective date of such regulations, or within such time period as the regulations themselves may require.

Absent extenuating circumstances, GTE will work with Covad to install collocation arrangements within 90 days of receipt of an ASR and payment of 50% of the non-recurring charge. Covad is responsible for delivery of correct cables and equipment in a timely manner.

The Parties acknowledge that certain issues regarding collocation, including but not limited to, alternative arrangements for physical collocation (such as cageless collocation), types of collocated equipment, and collocation intervals, are being addressed by the FCC in pending rulemaking proceedings. The Parties agree they will negotiate terms and conditions as a result of such FCC rules once final and binding decisions are issued, subject to either Party's right to seek injunctive relief regarding such decisions, and amend the Agreement to reflect any such terms and conditions.

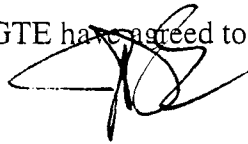
[Note: Covad proposes to include the double underlined text. All other text has been agreed.]



Covad proposed text on Space Planning

Covad may submit to GTE a forecast for space planning for collocated facilities in a central office. GTE will, in good faith, consider such forecast when planning renovations of existing facilities or constructing or leasing new facilities for such central office; provided, however that any final space planning or utilization decision shall be made by GTE in its sole discretion.

[Note: Covad and GTE have agreed to this text.]

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. S.", written over the word "have" in the note above.