ORIGINAL

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

June 13, 2003

VIA OVERNIGHT DELIVERY

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 020960-TP
Petition for arbitration of open issues resulting from interconnection negotiations with Verizon Florida Inc. by DIECA Communications, Inc. d/b/a Covad Communications Company

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of the Post-Hearing Brief of Verizon Florida Inc. in the above matter. Also enclosed is a diskette with a copy of the brief in Word format. Service has been made as indicated on the Certificate of Service.

Also enclosed is one extra copy of the brief. Please date-stamp and return the copy in the enclosed, self-addressed stamped envelope.

Thank you for your assistance. If you have any questions, please call me at 202-326-7959.

AUS ___
CAF ___
CMP ___
COM 3
CTR ___
ECR ___
GCL ___
OPC ___
MMS ___
SEC 1
OTH ___

Sincerely,

Scott H. Angstreich

Enclosures

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon Florida Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. 020960-TP

POST-HEARING BRIEF OF VERIZON FLORIDA INC.

Richard Chapkis
Verizon Florida Inc.
201 North Franklin Street
Tampa, FL 33602
(813) 273-3000

Aaron M. Panner
Scott H. Angstreich
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Counsel for Verizon Florida Inc.

June 16, 2003

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

ADMINISTRATIVE DECISIONS

STATUTES AND REGULATIONS

OTHER MATERIALS

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon Florida Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. 020960-TP

POST-HEARING BRIEF OF VERIZON FLORIDA INC.

Verizon Florida Inc. ("Verizon"), by counsel and pursuant to the schedule established in this Commission's Prehearing Order, submits this Brief addressing Issues 1-2, 4-5, 7-10, 12-13, 19, 22-23, 27, 30, 32-38, 41-43, 46, and 51-52 in the Petition for Arbitration ("Petition") filed by DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") on September 6, 2002.[1]

I. INTRODUCTION AND SUMMARY

When Covad filed its petition for arbitration, it presented this Commission with 55 open issues for resolution. Through continued negotiations between the parties, as well as technical conferences before Administrative Law Judges in New York and Pennsylvania (where Covad filed substantially similar petitions for arbitration), approximately half of those issues have been resolved and the parties have substantially narrowed the scope of their disputes with respect to most of the remaining issues. The open issues left for the Commission to resolve in this proceeding generally pertain to two areas. First, there are issues related to the parties' business

[1] The parties have resolved the other issues raised in Covad's petition for arbitration.

relationship — ordering, billing, and other logistics. Second, there are issues related to the scope of Covad's right to access to Verizon's network.

With respect to both sets of issues, Covad's positions are without merit. First, the accommodations that Covad seeks are unauthorized by the federal Telecommunications Act of 1996 ("1996 Act" or "Act") and inconsistent with this Commission's policies. Indeed, in many cases, the issues raised are clearly resolved by federal and state law in a manner contrary to Covad's proposed language. For these issues, absent an agreement between the parties, this Commission lacks authority to adopt Covad's proposals. *See, e.g.*, 47 U.S.C. § 252(a)(1), (c). Second, Covad seeks to relitigate in this bilateral proceeding matters that have already been resolved — or are being resolved — through this Commission's *multilateral* processes. With respect to these issues, Covad has shown no unique circumstances that distinguish it from other alternative local exchange carriers ("ALECs") and that could justify the creation of Covad-specific rules that differ from those generally applicable rules that apply to all other ALECs in Florida.

Indeed, throughout this proceeding, Covad has identified virtually no facts or circumstances specific to Florida at all. Instead, Covad's claims relate to other states — primarily, former Bell Atlantic jurisdictions (which Florida is not) — where the Verizon incumbent local exchange carrier ("ILEC") utilizes different systems and processes from those Verizon uses in Florida. For example, although Covad included five issues related to billing in its petition for arbitration — three of which are still open — Covad has not provided evidence with respect to a single bill issued for services in Florida. Similarly, Covad's complaints about Verizon's provision of loop qualification information pertain exclusively to the LiveWire database, which Verizon has repeatedly explained is used only in the former Bell Atlantic

jurisdictions and is not used in Florida. Covad has never addressed — let alone raised issues with — the loop qualification database Verizon actually uses in Florida for retail and wholesale xDSL orders. And, with respect to Covad's claims regarding Verizon's provisioning of dark fiber and high-capacity loops, Covad has admitted on the record that, despite its complaints, Covad has *never* submitted an order for dark fiber in Florida and Verizon has *never* rejected any of its high-capacity loop orders in Florida as a result of a lack of facilities. In short, the record contains no facts that support the Covad-specific rules that it seeks to have apply in Florida.

II. ISSUE-BY-ISSUE ARGUMENT

A. Change of Law

1. If a change of law, subject to appeal, eliminates one or more of Verizon's obligations to provide unbundled network elements or other services required under the Act and the Agreement resulting from this proceeding, when should that change of law provision be triggered?

*** Consistent with the nondiscrimination principles of the 1996 Act, change-of-law provisions should enable a rapid and smooth transition when a legal obligation imposed on Verizon has been eliminated; in no circumstance should the change-of-law language permit the eliminated obligation to remain in effect indefinitely. ***

This issue involves the extent to which the parties' agreement can obligate Verizon to continue providing Covad with access to any UNE or other service, payment, or benefit once applicable law no longer requires Verizon to provide such access. Under federal law, this Commission is required to resolve open issues in an interconnection agreement arbitration in accordance with federal law as it currently exists. *See* 47 U.S.C. § 252(c). Because the requirements of federal law have changed over time with the issuance of Federal Communications Commission ("FCC") orders and judicial decisions, interconnection agreements arbitrated at different times may have different provisions, imposing inconsistent obligations, with respect to the same UNE or other service. Consistent with the

nondiscrimination provisions of the 1996 Act, such inconsistencies should be eliminated as soon as possible, so that all ALECs stand on an equal footing.

Verizon has proposed language that, once there is an effective order eliminating a prior obligation, Verizon "may discontinue immediately the provision of any arrangement" pursuant to that obligation, except that Verizon will maintain existing arrangements for 45 days, or for the period specified in the order or another source of applicable law (including, among other things, the agreement, a Verizon tariff, or state law). Revised Proposed Language Matrix at 1, 5-6 (Agreement § 4.7; UNE Attach. § 1.5).[2] This language strikes a reasonable balance between Verizon's right to have its obligations under the agreement remain consistent with the terms of applicable law and the interest, shared by Verizon and Covad, in ensuring a smooth transition to the new legal regime.

In contrast, under the language Covad currently proposes,[3] Verizon could be required to continue providing Covad with access to a UNE or other service *indefinitely*, even though the legal obligation to provide that access had long since disappeared. Yet, as the New York Public

---

[2] This matrix, which updates the disputed language matrices submitted as Attachment C to Covad's petition for arbitration and to Verizon's response, was jointly prepared by the parties. A copy is attached to this brief.

[3] Numerous state commissions have previously rejected language, such as that Covad originally proposed with respect to this issue (*see* Covad Petition Attach. A at 3 (Agreement § 4.7)), that would require Verizon to wait until the entry of a final and nonappealable order before taking advantage of a change in law. *See, e.g.*, Order Resolving Arbitration Issues, *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York Inc.*, Case 02-C-0006, at 21 (N.Y. PSC May 24, 2002) ("*GNAPs New York Order*"); Order, *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration To Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, D.T.E. 02-45, at 72 (Mass. DTE Dec. 12, 2002); Arbitration Award, *Petition by Global Naps, Inc., for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware Inc.*, PSC Docket No. 02-235, at 41 (Del. PSC Dec. 18, 2002), *adopted as modified on other grounds*, Order No. 6124, PSC Docket No. 02-235 (Del. PSC Mar. 18, 2003).

Service Commission ("New York PSC") has recognized, "[w]hether to maintain the status quo following a judicial, legislative, or regulatory decision is the prerogative of those decisionmakers" and should not be changed through an interconnection agreement, without the consent of both parties. *GNAPs New York Order* at 21. This Commission's Staff has likewise advised that it would be "inconsistent with logic, as well as any known practice within our legal system," for a change in law not to be "implemented when it[] takes effect."[4]

Nonetheless, under Covad's proposal, before Verizon could obtain the benefit of an effective order eliminating, for example, the requirement to provide a particular UNE, Verizon would first have to negotiate with Covad for a 30-day period following the effective date of the order. *See* Verizon Response Attach. A at 3 (Agreement § 4.6); Revised Proposed Language Matrix at 1 (Agreement § 4.7). If, after 30 days, the parties had not arrived at mutually acceptable revisions to the agreement to implement that effective order, Verizon would be required to seek a ruling from this Commission, the FCC, or a court of competent jurisdiction confirming that Verizon was, indeed, entitled to the benefit of that effective order. *See* Verizon Response Attach. A at 3 (Agreement § 4.6). During all this time, Verizon would be required to continue providing access to that UNE, even though it no longer had any obligation under applicable law to do so. *See* Revised Proposed Language Matrix at 1 (Agreement § 4.7). Only after Verizon prevailed in the administrative or legal proceeding, and this Commission, the FCC, or a court "determine[d] that modifications to this Agreement are required to bring it into compliance with the Act," would Verizon *finally* be permitted to cease providing access to the UNE. *Id.*

---

[4] Staff Memorandum, *Petition by Global NAPs, Inc., for Arbitration Pursuant to 47 U.S.C. 252(b) of Interconnection Rates, Terms and Conditions with Verizon Florida Inc.*, Docket No. 011666-TP, at 71 (Fla. PSC filed June 5, 2003). This Commission is scheduled to vote on Staff's recommendation at its June 17, 2003 Agenda Conference.

Covad's proposed language contains no limit on the length of time this process could last, and Covad would have every incentive to drag out the proceedings in order to continue obtaining access to the UNE at issue. The protracted, and potentially indefinite, delay possible under Covad's proposed language goes well beyond what is conceivably necessary to protect any interest Covad has in preventing "disrupt[ions to its] business operations and the service it provides to end users in Florida." Covad Petition Attach. B at 1. At the same time, Covad's proposed language provides no protection for Verizon's right to have its obligations under the agreement remain consistent with the terms of applicable law.

This dispute takes on increased importance in light of the impending release of the FCC's *Triennial Review Order*[5] and the numerous appeals that are sure to follow. This agreement will almost certainly take effect after that order becomes effective, but before any court has the opportunity to pass on the lawfulness of the FCC's order. Thus, as a result of this fortuity of timing, the agreement will implement the requirements of federal law as set forth in the *Triennial Review Order*, except to the extent the parties have reached agreements notwithstanding the requirements of federal law. If any judicial decisions subsequently eliminate obligations imposed in the *Triennial Review Order*, Verizon will be required to continue to provide Covad with access to UNEs or other services consistent with that now-eliminated obligation — for as long as it takes to complete the multiple proceedings contemplated by Covad's language — even though Verizon would have no such obligation with respect to interconnection agreements with other ALECs that take effect after such a judicial decision is issued.[6]

---

[5] *See* News Release, *FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers*, CC Docket No. 01-338 (rel. Feb. 20, 2003) ("*Triennial Review* News Release")

[6] Verizon recognizes that the FCC's Wireline Competition Bureau, in arbitrating interconnection agreements for Virginia, rejected change-of-law language similar to that which

B. Billing Issues

The three remaining billing issues in this proceeding involve Covad's proposals (1) to limit Verizon's right to bill Covad to a period shorter than that set forth in the generally applicable statute of limitations; (2) to hold Verizon to unreasonable performance standards in resolving Covad's billing disputes that would be established outside this Commission's process for developing industry-wide measurements; and (3) to prevent Verizon from collecting late payment charges from Covad. With each of these issues, Covad seeks a rule that differs from the rule that applies to all other ALECs. Covad's requests for special treatment should be rejected.

2. What time limit should apply to the Parties' rights to assess previously unbilled charges for services rendered?

9. Should the anti-waiver provisions of the Agreement be altered in light of the resolution of Issue 2?

*** The five-year statute of limitations in Florida Statutes § 95.11(2)(b) governs the parties' right to assess previously unbilled charges for services rendered; no modification to the anti-waiver provisions of the agreement is necessary. ***

The only result consistent with federal and state law is that the five-year Florida statute of limitations, which applies to billing under contractual relationships between businesses generally, applies to any claim for charges properly assessed under an interconnection

---

Verizon proposes here. That decision, however, was "[b]ased upon the record in [that] proceeding" and provides no useful guidance here, especially as the decision was by a subdivision of the FCC, and not the FCC itself. Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039, ¶ 717 (Chief, Wireline Comp. Bur. 2002) ("*Virginia Arbitration Order*"). In any event, the Bureau expressly recognized that FCC orders "terminat[ing] existing obligations" "routinely specify effective dates." *Id.* Nothing in the Bureau's decision to reject Verizon's language suggests that it contemplated that ALECs would be able to gain access to a UNE or other service after the effective date specified in an order terminating an obligation. Yet, as Verizon has explained, Covad's proposed language would require Verizon to continue providing access to a UNE or other service long after the effective date of the order terminating the obligation.

agreement, unless the parties to a specific interconnection agreement *voluntarily* agree to a different arrangement. *See* Fla. Stat. § 95.11(2)(b). The 1996 Act does not authorize this Commission to devise a novel limitations period to apply solely to interconnection agreements. *See* 1996 Act § 601(c)(1) (1996 Act "shall not be construed to modify, impair, or supersede . . . State . . . law unless expressly so provided in [the] Act"), *reprinted at* 47 U.S.C. § 152 note.

Moreover, the record contains no facts that would support the creation of such a period. Covad has identified *no* instances in Florida — and only *one* instance in states other than Florida, which occurred nearly two years ago — when Verizon sent Covad a bill for services rendered more than one year prior to the billing date. *See* Evans/Clancy Direct at 4-6 (Hrg. Tr.[7] at 11-15). Even then, no charge on the bill was more than 14 months old; indeed, the bill was primarily for services rendered within one year of the bill date. *See* Covad NY Opening Br. Exh. 2 (Hrg. Tr. Exh. 10). Covad has raised this same, one example of backbilling in regulatory proceedings before the FCC and the New York PSC. The FCC, in approving Verizon's § 271 application in Virginia, rejected Covad's claim that this one instance of backbilling "denie[d] it a meaningful opportunity to compete." *Virginia 271 Order*[8] ¶ 50. The FCC also found that "Verizon and Covad agreed . . . that . . . billing for this product would be delayed until prices were set and the billing system could be programmed." *Id.*; *see also* Hansen Direct at 4-5 (Hrg. Tr. at 87). The New York PSC, reviewing the same evidence, recently stated that it "is not, at this time, convinced that backbilling is a substantial problem" and declined to "formulate a generic limit for backbilling." Secretarial Letter, Case 00-C-1945 (N.Y. PSC Feb. 5, 2003).

---

[7] Transcript of Hearing Before Commrs. Deason, Baez and Bradley, Docket No. 020960-TP (May 14, 2003) ("Hrg. Tr.").

[8] Memorandum Opinion and Order, *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, 17 FCC Rcd 21880 (2002) ("*Virginia 271 Order*").

Covad's inability to identify any other incident of backbilling of charges more than one year old — let alone any incident in Florida — demonstrates that there is no need for Covad's proposed language. Indeed, Verizon has every incentive to send bills as promptly as possible in order to collect the amounts owed to it. Thus, the only question here is when Verizon's right to collect lawful rates for services actually rendered will be extinguished — *i.e.*, at what point Covad gets a windfall.[9]

In briefs filed with the New York PSC and Pennsylvania Public Utility Commission ("Pennsylvania PUC"), Covad offered a number of reasons why a period shorter than that in the generally applicable statute of limitations should apply to its interconnection agreement. None has merit. For example, Covad relies on the decision of the FCC's Common Carrier Bureau ("Bureau") in *AmNet*,[10] where the Bureau interpreted 47 U.S.C. § 415(a),[11] not Florida Statutes § 95.11(2)(b). The Bureau concluded that § 415(a) did not establish the period in which a carrier could submit a backbill to another carrier. *See AmNet* ¶ 19. In contrast, backbilling clearly fits within the text of § 95.11(2)(b), which applies to any "legal or equitable action on a contract": Covad does not — and cannot — deny that, having purchased services from Verizon, it is contractually obligated to pay for those services.[12]

---

[9] In Issue 9, Covad has proposed to modify the anti-waiver provision to conform to its proposed addition of a one-year limitation on the parties' right to backbill. Because Issue 2 should be resolved in Verizon's favor, there is no need to modify the anti-waiver provision.

[10] Memorandum Opinion and Order, *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, 4 FCC Rcd 550 (Chief, Comm. Carr. Bur.) ("*AmNet*"), *recon. denied*, 4 FCC Rcd 8797 (Chief, Comm. Carr. Bur. 1989).

[11] Section 415(a) states that "[a]ll actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun within two years from the time the cause of action accrues." 47 U.S.C. § 415(a).

[12] Covad's reliance on the Bureau's decisions in Memorandum Opinion and Order, *The People's Network Inc. v. AT&T Co.*, 12 FCC Rcd 21081 (Chief, Comm. Carr. Bur. 1997), and Memorandum Opinion and Order, *Brooten v. AT&T Corp.*, 12 FCC Rcd 13343 (Deputy Chief,

Covad also has accused Verizon of taking inconsistent positions in this proceeding and in a proceeding before the New York PSC (Case 99-C-0949), where Verizon argued for a six-month limitation on ALECs' ability to challenge the monthly reports of Performance Assurance Plan ("PAP") data and bill credits that Verizon provides. *See* Covad NY Opening Br. at 23-24 (Hrg. Tr. Exh. 10). But the PAP is not a contract — rather, it is a voluntary, regulatory undertaking by Verizon — and it therefore is not subject to a statute of limitations that applies to contracts. Although the limitation period for challenges with respect to the PAP is thus irrelevant to the limitation period under a written contract such as an interconnection agreement, the New York PSC recently adopted a two-year limitation period for such challenges. *See* Order Amending Performance Assurance Plan, *Petition Filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan, filed in C 97-C-0271*, Case 99-C-0949, at 4 (N.Y. PSC Jan. 24, 2003). This Order thus provides no support for Covad's proposed one-year limitation.

Finally, the record does not substantiate the purported harms — with respect to setting charges for its end-user customers and filing reports with the Securities and Exchange Commission ("SEC") — that Covad has claimed result from backbilling. *See* Covad NY Opening Br. at 14-15 (Hrg. Tr. Exh. 10). First, even though Covad acknowledges that backbilling does not prevent it from billing its end-user customers, Covad suggests that backbilling impairs its ability to set its rates. *See* New York Transcript at 192:8-14 (Hrg. Tr.

Comm. Carr. Bur. 1997), is also misplaced. As Covad recognizes, those cases involved AT&T's billing of end-user customers, not other carriers. *See* Covad NY Opening Br. at 22-23 (Hrg. Tr. Exh. 10). Although, under this Commission's regulations, a one-year period applies to backbilling of retail customers of local exchange carriers, *see* Fla. Admin. Code. Ann. r. 25-4.110(10), that regulation does not apply to bills rendered to other local exchange carriers. Instead, the same statute of limitations that applies to nearly all other contractual dealings between businesses should apply.

Exh. 2). Yet, with respect to the single instance of backbilling Covad identifies — where Covad was receiving payment from its customers for as many as 14 months before paying Verizon anything — Covad never claims that the backbilling affected the rates that it set. Second, Covad also never claims that the single instance of backbilling caused material errors in its SEC filings requiring the restatement of those filings. In fact, in the Form 10-K it filed shortly before receiving that bill, Covad expressly noted that, even though it had "begun provisioning new orders for consumer-grade services over line-shared telephone wires," "in many instances the permanent rates, terms and conditions of line sharing access have not yet been [set by] . . . state commissions."[13] The record in this proceeding, therefore, provides no basis for this Commission to create a limitation period that differs from the generally applicable five-year statute of limitations that governs all other commercial contracts.

4. When the Billing Party disputes a claim filed by the Billed Party, how much time should the Billing Party have to provide a position and explanation thereof to the Billed Party?

*** Any performance standards governing when Verizon must respond to a billing dispute should be set on an industry-wide basis, not in an interconnection agreement. Furthermore, the standards that Covad proposes are unreasonable. ***

This Commission is in the process of adopting measurements of Verizon's performance in providing products and services to all ALECs in Florida. *See* Raynor Direct at 3-4 (Hrg. Tr. at 110-11); Notice of Proposed Agency Action Order Approving FCC Plan for Performance Metrics and Order Setting for Hearing Other Proposed Measures, *Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies*, Docket No. 000121C-TP, at 1-2 (Fla. PSC Feb. 28, 2003). Although Covad is an active participant in this proceeding, it has not sought the

[13] Covad Communications Group, Inc., Form 10-K, at 40, 44 (SEC filed May 23, 2001).

adoption of measurements of Verizon's performance in responding to ALEC billing disputes. Nor are such measurements included in the recently filed joint Stipulation on Verizon Florida Inc. Performance Measurement Plan ("Joint Stipulation"), to which Covad is a party, which Staff recently recommended that this Commission approve. *See* Staff Memorandum, *Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies*, Docket No. 000121C-TP, at 4 & Attach. A (Fla. PSC filed June 5, 2003) ("Staff Recommendation"). The Joint Stipulation is scheduled to be voted on at this Commission's June 17, 2003 Agenda Conference.

Covad has offered no reason why this Commission should approve a billing dispute resolution performance measurement outside the context of the industry-wide proceeding. If such performance measurements were adopted on an interconnection-agreement-by-interconnection-agreement basis, the process for responding to such disputes would soon become unworkable, as different standards may be established for different ALECs. *See* Raynor Direct at 4-5 (Hrg. Tr. at 111-12). If Covad believes such performance measurements are necessary, Covad should have proposed them during the course of Docket No. 000121C-TP, or should propose them through the industry-wide procedures for modifying the performance measurements set forth in the Joint Stipulation. *See* Staff Recommendation Attach. A at 4-5.

In any event, Covad has not demonstrated any need for such additional measurements in Florida. This Commission has explained that, when an ALEC seeks to add a new measurement, it "must justify, from a policy perspective, why a measure should be modified, or further measures added, and the benefits to competition from such modification or addition." Notice of Staff Workshop, *Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies*, Docket

No. 000121C-TP, at 1-2 (Fla. PSC filed Mar. 27, 2003).[14] Covad has not met this burden. Indeed, Covad has not provided any evidence in the record with respect to Verizon's performance in responding to Covad's billing disputes in Florida. Instead, Covad's witnesses have made unsubstantiated assertions about billing disputes "with Verizon East" — that is, with the Verizon ILECs that operate in the 14 former Bell Atlantic jurisdictions. Evans/Clancy Direct at 11 (Hrg. Tr. at 18); *see* Evans/Clancy Rebuttal at 9 (Hrg. Tr. at 60). Covad also makes a vague assertion about supposedly improper actions "in the Verizon West region" — that is, somewhere in the approximately 20 states where the ILEC formerly known as GTE operates. Evans/Clancy Direct at 12 (Hrg. Tr. at 19). Covad does not identify in which of those jurisdictions these actions supposedly took place or at what time; notably, Covad does not claim that Verizon *Florida* took these actions. The FCC has consistently refused to credit such anecdotal and unsupported claims with respect to an ILEC's billing performance. *See Maryland/DC/West Virginia 271 Order*[15] ¶ 34 (ALEC "fail[ed] to provide adequate supporting evidence to substantiate its complaints" with respect to Verizon's billing dispute resolution process); *New Jersey 271 Order*[16] ¶ 126. This Commission should do the same.

---

[14] Covad has also failed to document the measurement "in detail so that it is clear what is being measured, how it is being measured and what is excluded from the measurement." Staff Memorandum, *Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies*, Docket No. 000121C-TP, at 2 (Fla. PSC filed Nov. 15, 2002). Instead, Covad has simply proposed an interval in which Verizon must respond to a dispute.

[15] Memorandum Opinion and Order, *Application by Verizon Maryland Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC RCd 5212 (2003) ("*Maryland/DC/West Virginia 271 Order*").

[16] Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, 17 FCC Rcd 12275 (2002) ("*New Jersey 271 Order*").

Finally, Covad's proposed standard is unreasonable. In Rhode Island and other states where Verizon reports its performance under final versions of billing dispute resolution measurements, the business rules for those measurements have a standard of 95% of claims acknowledged within 2 business days and 95% of claims resolved within 28 calendar days after acknowledgement; in contrast, Covad's proposed language appears to require 100% performance. *See* Raynor Direct at 5-6 (Hrg. Tr. at 112-13). Those measurements also exclude billing disputes that are submitted more than 60 calendar days after the date of the bill containing the disputed charge. *See id.* Unless a billing dispute pertains to a recent bill, Verizon may not have easy access to the data necessary to investigate the ALEC's claim and may be unable to resolve it within 30 calendar days after receiving the ALEC's dispute. *See* Hansen Direct at 92-93. In approving Verizon's § 271 applications, the FCC has relied on the Rhode Island measurements — which differ substantially from Covad's proposal here — in finding that Verizon's billing dispute resolution performance satisfied the requirements of the Act. *See Maine 271 Order*[17] ¶ 41; *Virginia 271 Order* ¶ 49; *New Hampshire/Delaware 271 Order*[18] ¶ 103.

[17] Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Maine*, 17 FCC Rcd 11659 (2002) ("*Maine 271 Order*").

[18] Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, 17 FCC Rcd 18660 (2002) ("*New Hampshire/Delaware 271 Order*").

5. When Verizon calculates the late payment charges due on disputed bills (where it ultimately prevails on the dispute), should it be permitted to assess the late payment charges for the amount of time exceeding thirty days that it took to provide Covad a substantive response to the dispute?

*** Consistent with this Commission's prior determinations, when a Covad billing dispute is resolved in Verizon's favor, Covad should be required to pay late fees on its entire unpaid balance, for the duration that the balance is unpaid. ***

Under Verizon's proposal, in the event that a billing dispute is resolved in Verizon's favor, Covad would be required to pay compounded late-payment charges on the amount it is found to owe for the entire period in which the amount was unpaid. *See* Hansen Direct at 11-12 (Hrg. Tr. at 94-95).[19] This is the same rule that this Commission adopted in a prior arbitration, where it rejected Covad's proposal. In that arbitration, the Commission held that, "[w]here the dispute is resolved in favor of BellSouth, Covad shall be required to pay the amount it owes

---

[19] Covad does not owe late-payment charges on disputed amounts if the dispute is resolved in its favor. *See* Hansen Direct at 10 (Hrg. Tr. at 93). Although late-payment charges with respect to disputed amounts will continue to appear on subsequent bills, the disputed charges and associated late payments "are separate on the bill, where it shows [the] total amount disputed, [and] late payment charges assessed," and Covad need not file separate disputes regarding those charges during the pendency of the dispute. New York Transcript at 246:13-18 (Hrg. Tr. Exh. 2); *see* Hansen Direct at 10 (Hrg. Tr. at 93).

Covad's claim that late-payment charges with respect to amounts that are subject to dispute should not continue to appear on a bill, *see* Evans/Clancy Direct at 13 (Hrg. Tr. at 20), is not properly part of this arbitration. Under the 1996 Act, this Commission must "limit its consideration of any [arbitration] petition . . . to the issues set forth in the petition and in the response." 47 U.S.C. § 252(b)(4)(A). Covad's petition for arbitration contains no mention of this question, nor does Verizon's response. *See* Covad Petition Attach. B at 2; *id.* Attach. C at 2 (Agreement § 9.4). Therefore, as this Commission has previously held, it is "not . . . appropriate to address . . . issues in this proceeding" that were "not identified in either [the ALEC's] petition for arbitration or [the ILEC's] response." Order Granting Extension of Time To File Final Arbitrated Agreement, Declining To Resolve Dispute Regarding Language Not Addressed in Arbitration Order, Rejecting Incomplete Agreement, and Requiring Parties To Refile Final Arbitrated Agreement, *Petition by Global NAPS, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Relief of Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. 991220-TP, Order No. PSC-01-1423-FOF-TP, at 4 (Fla. PSC July 2, 2001) ("*BellSouth-GNAPs Arbitration Order*").

BellSouth plus applicable late payment charges." *Covad-BellSouth Order*[20] at 118. The Commission explained that:

> BellSouth's proposal, which allows Covad not to pay disputed portions of a bill during the pendency of the dispute but includes assessment of late payment charges on the disputed amounts if BellSouth prevails, is reasonable. It affords Covad the opportunity to challenge portions of its bills without paying the disputed amounts; if a dispute is resolved in BellSouth's favor, BellSouth is reimbursed for the carrying costs associated with the disputed amount.

Id. Indeed, if Covad wants to avoid paying late-payment charges, it can pay the bill and then file its claim, with a right to recoup any overpayment. But, if Covad withholds payment while disputing a valid bill, it should be required to pay late-payment charges for the entire period that it was receiving service while withholding payment. Verizon is not a bank and should not have to finance its competitors' ongoing business operations by providing interest-free, forced loans merely because a competitor filed a billing dispute. Accordingly, Verizon's language should be adopted here.[21]

---

[20] Final Order on Arbitration, *Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Unresolved Issues in Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. PSC-01-2017-FOF-TP, Docket No. 001797-TP (Fla. PSC Oct. 9, 2001) ("*Covad-BellSouth Order*").

[21] At the technical conference in New York, Covad repeatedly discussed what its own witness described as a "unique" example where, after nine months of negotiations, a dispute was partially resolved in Covad's favor, but Covad was found to owe Verizon a substantial sum. New York Transcript at 236:19 (Hrg. Tr. Exh. 2); *see id.* at 230:16-231:13. In that case, Verizon did not require Covad to pay the late-payment charges that would normally have been due, demonstrating that Verizon makes reasonable allowances for unique circumstances. *See id.* at 231:19-22, 232:3-5. Although Covad's witnesses suggested that its proposal is designed to account for such circumstances, its proposed language is not limited in this respect. Instead, Covad would prevent Verizon from recovering late-payment charges on *every* dispute where Verizon does not provide a response within 30 calendar days. Covad's position is based on the mistaken premise that any delays in providing such a response necessarily are Verizon's fault. But, as Verizon has explained, such delays can be the result of Covad providing insufficient information on its billing claim or disputing charges many months (or years) after they were billed. *See* Hansen Direct at 9-10 (Hrg. Tr. at 92-93).

C. Dispute Resolution

With respect to each of these issues, Covad's proposals exceed its rights under federal and state law. First, Covad seeks language that would compel Verizon to participate in binding arbitration, even though a necessary predicate to the validity of binding arbitration is the consent of the parties. Second, Covad seeks to prevent Verizon from terminating its obligations under the agreement in the event that it sells an exchange in Florida, even though Verizon's obligation under federal law to enter into an interconnection agreement is limited to areas in which it is the ILEC. Third, Covad seeks language reserving its right to assert causes of action against Verizon for purported violations of 47 U.S.C. § 251, when federal courts have uniformly held that Covad has no such right and the language has no place in this agreement in any event.

7. For service-affecting disputes, should the Parties employ arbitration under the rules of the American Arbitration Association, and if so, should the normal period of negotiations that must occur before invoking dispute resolution be shortened?

*** Under federal and state law, Verizon cannot be required to submit a dispute to be resolved through binding arbitration. ***

Although federal law protects parties' right to *choose* to resolve their disputes through binding arbitration, *see* 9 U.S.C. §§ 1 *et seq.*, no provision of federal law or state law authorizes this Commission to *require* Verizon to give up its right to seek resolution of any dispute before an appropriate forum. As both the United States Supreme Court and the Florida state courts have made clear, arbitration is "a matter of consent, not coercion." *Volt Info. Sciences, Inc. v. Board of Trustees*, 489 U.S. 468, 479 (1989); *see, e.g., Nestler-Poletto Realty, Inc. v. Kassin*, 730 So. 2d 324, 326 (Fla. DCA4 1999) ("The general rule favoring arbitration does not support forcing a party into arbitration when that party did not agree to arbitrate."). Indeed, "arbitrators derive their authority to resolve disputes *only because the parties have agreed* in advance to submit such grievances to arbitration." *AT&T Techs., Inc. v. Communications Workers*, 475 U.S. 643,

648-49 (1986) (emphasis added). For these reasons, this Commission cannot impose upon Verizon the language that Covad has proposed — but to which Verizon has not agreed — that would require the parties to conduct binding arbitration of certain disputes. *See* Revised Proposed Language Matrix at 3 (Agreement § 14.3).[22]

8. Should Verizon be permitted to terminate this Agreement as to any exchanges or territory that it sells to another party?

*** Under federal law, Verizon cannot be required to condition any sale of its operations on the purchaser agreeing to an assignment of the parties' agreement. ***

Although the agreement permits Verizon (or Covad), with the prior written consent of the other party, to assign the agreement to a third party, *see, e.g.*, Verizon Response Attach. A at 4 (Agreement § 5), no provision of federal law *requires* Verizon to condition any sale of its operations on the purchaser agreeing to an assignment of this agreement. Indeed, once Verizon sells an exchange or territory, it is no longer the ILEC for that service area and has no obligations under the interconnection provisions of the 1996 Act. *See* 47 U.S.C. § 252(a) (obligating ILECs to enter into interconnection agreements); *id.* §§ 251(h), 252(j) (defining ILEC for purposes of § 252). Moreover, no provision of the 1996 Act obligates the new purchaser — that is, the new ILEC — to assume the agreement Verizon entered into with Covad. Instead, that new ILEC would have the right to enter into its own agreement with Covad, assuming that carrier is not a rural carrier that is exempt from that obligation. *See* 47 U.S.C. § 251(f). Requiring a new ILEC to assume Verizon's agreements would likely reduce the price that Verizon could receive for a

[22] Because no provision in the 1996 Act expressly modifies either the Federal Arbitration Act or Florida state arbitration law, the Act cannot be construed to have done so implicitly. The 1996 Act contains a savings provision providing that nothing in the Act shall be "construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided." 1996 Act § 601(c)(1), *reprinted at* 47 U.S.C. § 152 note.

sale, and Covad has not offered to compensate Verizon for any potential loss in the value of Verizon's assets that results from this condition.

In any event, adopting the language that Covad has proposed would not prevent Verizon from terminating its obligations under the agreement if it sells an exchange but does not assign the agreement to a purchaser. Covad's proposed language states only that Verizon "may assign" the agreement. Revised Proposed Language Matrix at 3 (Agreement § 43.2). Despite the fact that Covad's language thus places no limitation on Verizon's right to terminate the agreement following the sale of an exchange, this Commission should reject that language because it is mere surplusage — as explained above, another section of the agreement already authorizes Verizon to assign the agreement.

Finally, if Verizon were to sell an exchange or territory in Florida, Covad could protect any rights and interests it has by participating in a proceeding before this Commission regarding the sale. *See* Fla. Stat. § 364.335(2); *see also* Order Resolving Arbitration Issues, *Joint Petition of AT&T Communications of New York, Inc., et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case 01-C-0095, at 23-25 (N.Y. PSC July 30, 2001) (any interests an ALEC has "in the continuing performance of the terms in the agreement in the event of a transfer . . . are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets").

10. Should the Agreement include language addressing whether Covad can bring future action against Verizon for violation of Section 251 of the Act?

*** Whether Covad can bring a future action against Verizon for violation of § 251 of the Act is not within this Commission's jurisdiction and the agreement should not contain language addressing this issue. ***

Covad seeks to insert provisions into the agreement that it claims (Petition Attach. B at 4) are necessary "to deal with" *Law Offices of Curtis V. Trinko, LLP v. Bell Atlantic Corp.*, 305 F.3d 89 (2d Cir. 2002), *cert. granted on other grounds sub nom. Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 123 S. Ct. 1480 (2003) (No. 02-682), where the Second Circuit concluded that, "[a]fter the state commission approves . . . an [interconnection] agreement, the Telecommunications Act intends that the ILEC be governed directly by the specific agreement rather than the general duties described in subsections (b) and (c) of section 251." *Id.* at 102.

This Commission should not include in the agreement language that purports to "deal with" — that is, overrule — a decision of a court of appeals. Whether this Commission's approval of an interconnection agreement affects any right that an ALEC might have to bring a suit under § 206 or § 207 based on claimed violations of § 251 in the absence of such an agreement[23] is a question that is not within this Commission's jurisdiction. *See* 47 U.S.C. § 206 (referring to authority of "the court"); *id.* § 207 (referring to filing of complaints with "the [FCC]" or "in any district court of the United States"). Instead, that question should be addressed by a court of competent jurisdiction if and when it arises.

[23] *See Trinko*, 305 F.3d at 105 n.10 (declining to decide "whether a plaintiff can bring suit for a violation of the duties under section 251 when there is no [interconnection] agreement").

In any event, language inserted into a particular interconnection agreement could not overrule the Second Circuit's decision, which was based on its interpretation of the 1996 Act.[24] However, the suggestion contained in Covad's proposed language that neither party "waives [its] rights . . . under . . . §§ 206 & 207"[25] by entering into the interconnection agreement — rights that uniform federal court authority holds that neither party has[26] — could potentially serve to impede Verizon's ability to defend against such a cause of action should Covad ever assert one.

D. Operations Support Systems

These issues pertain to three aspects of Verizon's obligations with respect to its operations support systems ("OSS"): loop qualification information, order confirmation notices, and manual processes for obtaining loop qualification information. As to the first, Verizon's proposed language tracks the requirements of federal law precisely, while Covad's proposed language has no basis in the 1996 Act or the FCC's regulations or orders. As to the second, Covad's proposed language would materially alter the uniform performance standards that Verizon, Covad, and other ALECs agreed should apply. As to the third, Covad's proposal is based upon a thorough misunderstanding of the processes Verizon employs in Florida, and is contrary to federal law because it would provide Covad with better performance than Verizon provides to itself.

---

[24] Contrary to Covad's implication, the Second Circuit did not hold in *Trinko* — a case in which an end-user, not an ALEC, brought suit against Verizon — that an ALEC waives its right to bring suit under § 206 and § 207 to obtain remedies for violations of § 251 by entering into an interconnection agreement. Indeed, the words "waive" and "waiver" are nowhere to be found in the court's opinion. Instead, the court held that an ALEC with an interconnection agreement has no right to waive. *See Trinko*, 305 F.3d at 102.

[25] Revised Disputed Language Matrix at 4 (Agreement § 48).

[26] *See, e.g., Trinko*, 305 F.3d at 102; *Building Communications, Inc. v. Ameritech Servs., Inc.*, No. 97-CV-76336 (E.D. Mich. June 21, 2001); *Intermedia Communications, Inc. v. BellSouth Telecomms., Inc.*, 173 F. Supp. 2d 1282 (M.D. Fla. 2000).

12. What language should be included in the Agreement to describe Verizon's obligation to provide Covad with nondiscriminatory access to the same information about Verizon's loops that Verizon makes available to itself, its affiliates and third parties?

*** The Commission should adopt Verizon's proposed language, which tracks verbatim the FCC's rules governing an ILEC's provision of loop qualification information. ***

The dispute here is not over whether Verizon must provide Covad with nondiscriminatory access to loop qualification information. Both parties agree that, pursuant to federal law, Verizon must provide Covad "with access to all of the same detailed information about the loop that is available to [Verizon]," "within the same time intervals it is provided to [Verizon's] retail operations." *Maryland/DC/West Virginia 271 Order* App. F ¶ 35. The agreement already contains provisions that implement this obligation, including one that states explicitly that "Verizon shall provide access to loop qualification information in accordance with, but only to the extent required by, Applicable Law." Verizon Response Attach. A at 65 (UNE Attach. § 3.13.3).[27] And Verizon has proposed additional language that would make Verizon's obligation to comply with applicable law even more explicit. *See* Revised Proposed Language Matrix at 5 (Additional Services Attach. § 8.2.3) ("Verizon . . . will provide Covad with nondiscriminatory access to the same detailed information about the loop within the same time interval as is available to Verizon and/or its affiliate.").

By contrast, Covad's proposed language is inconsistent with the requirements of federal law. That language purports to regulate the *manner* in which Verizon provides loop qualification information, instead of simply regulating the type of information and the time interval within

[27] *See also* Verizon Response Attach. A at 48 (Additional Services Attach. § 8.1.1) ("The pre-ordering function includes providing Covad nondiscriminatory access to the same detailed information about the loop that is available to Verizon and its affiliates."); *id.* at 49 (Additional Services Attach. § 8.2.1) ("Verizon shall provide to Covad, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), Verizon OSS Services").

which it must be provided. *See, e.g.*, Revised Proposed Language Matrix at 5 (Additional Services Attach. § 8.1.4) ("Verizon will provide such information about the loop to Covad in the *same manner* that it provides the information to any third party and in *a functionally equivalent manner* to the way that it provides such information to itself.") (emphases added). The language that Covad has proposed has no basis in the 1996 Act or in any FCC rule or order implementing that Act with respect to the provision of loop qualification information.[28] Although the FCC, in the context of loop qualification information, has regulated the amount of information an ILEC provides and the time frames in which that information is provided, it has not adopted rules regarding the manner in which it is provided.

Finally, Covad has consistently discussed in this proceeding supposed problems it has experienced using the LiveWire database and the other methods of obtaining loop qualification information that Verizon offers in the former Bell Atlantic jurisdictions only. *See* Evans/Clancy Depo. at 16-21 (Hrg. Tr. Exh. 5); Covad Response to Staff Interrog. Nos. 24 & 36 (Hrg. Tr. Exh. 3). Covad has never discussed, let alone asserted that it has experienced any issues with, the loop qualification information available in Florida, which is contained in Verizon's Assignment Activation Inventory System ("AAIS") database.[29] Thus, Covad's claims are irrelevant to this proceeding and, in any event, are wrong. The FCC has repeatedly rejected Covad's claims and

---

[28] In its statement of position on this issue, which is reproduced in the Prehearing Order, Covad cites statements by the FCC with respect to an ILEC's provision of access to its operations support systems generally. *See* Prehearing Order at 19-20. None of those statements is specific to the provision of loop qualification information. Instead, as Verizon has explained, when the FCC has discussed the provision of such information, it has used the precise words that Verizon proposes to include in the parties' agreement.

[29] AAIS, which contains the same information used by Verizon's retail representatives in Florida, is different from — and contains more information than — the comparable database used in the former Bell Atlantic jurisdictions, which is known as LiveWire. *See* White Direct at 9-10 (Hrg. Tr. at 125-26); Verizon Response to Staff Interrog. Nos. 9-10 (Hrg. Tr. Exh. 4); Kelly Depo. at 17-18 (Hrg. Tr. Exh. 9).

found that Verizon's provision of loop qualification information in the former Bell Atlantic jurisdictions satisfies the requirements of federal law. *See, e.g., Virginia 271 Order* ¶¶ 29-37; *Pennsylvania 271 Order*[30] ¶ 47; *Massachusetts 271 Order*[31] ¶¶ 60-67.[32]

13. In what interval should Verizon be required to return Local Service Confirmations to Covad for pre-qualified Local Service Requests submitted mechanically and for Local Service Requests submitted manually?

37. What should the interval be for Covad's line sharing Local Service Requests?

*** Covad's proposals should be rejected because they are inconsistent with the measurements that Covad has agreed should apply to Verizon's return of order confirmation notices in Florida. Any changes to those measurements should be adopted on an industry-wide basis, not in an interconnection agreement. ***

As noted above, in Docket No. 000121C-TP, this Commission is in the process of establishing performance measurements and, on June 17, 2003, is scheduled to vote on the Joint Stipulation that Verizon, Covad, and other ALECs submitted, containing measurements to apply to Verizon in Florida. Among these measurements is one establishing the intervals in which Verizon must return Local Service Confirmations ("LSCs"). *See* Staff Recommendation Attach.

---

[30] Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001), *appeal pending, Z-Tel Communications, Inc. v. FCC*, No. 01-1461 (D.C. Cir.).

[31] Memorandum Opinion and Order, *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (2001), *aff'd in part, dismissed in part, and remanded in part, WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002).

[32] At his deposition, Covad's witness referred to an incident that purportedly occurred in New York (not Florida) involving high-capacity loops (not loop qualification information) that Covad's witness claimed demonstrates that Verizon provides different information to itself than to ALECs. *See* Evans/Clancy Depo. at 14-16 (Hrg. Tr. Exh. 5). Aside from the fact that this incident, even if true, has nothing to do with this Issue or this arbitration, Covad's witness's claim is wrong. Verizon provides ALECs with access to the customer service records of Verizon's retail customers; the information contained on that record is identical to the information that Verizon's retail representatives can access, and would have permitted the ALEC to make the same offer to the customer that Covad's witness described.

A, Exh. A at 15-19. This measurement is four-pages long and contains more than simply the interval (*e.g.*, 24 clock hours, excluding non-business days) in which Verizon must return an LSC for a particular Covad order and the performance standard (generally, 95% on time). It also includes, among other things, exclusions (*e.g.*, orders submitted on a project basis) and definitions (*e.g.*, how to calculate the start time for orders under various scenarios). Once approved by this Commission, Verizon cannot change this measurement unilaterally; instead, any changes — even consensus changes agreed to by the entire industry — must be adopted by this Commission in order to be effective. *See id.* Attach. A at 4-5 (describing process for modifying performance measurements); *see also* New York Transcript at 170:17-171:3 (Hrg. Tr. Exh. 2).

Although Covad claims that it is not "asking for separate intervals," Evans/Clancy Depo. at 21 (Hrg. Tr. Exh. 5), its proposed language would, in fact, change those intervals. Indeed, Covad has not accurately copied the intervals in the Joint Stipulation. For example, the two-hour interval in the measurement in the Joint Stipulation applies only to pre-qualified UNE orders that "flow through";[33] if a pre-qualified UNE order does not flow through, the applicable interval is 24 or 48 clock hours. *See* Staff Recommendation Attach. A., Exh. A at 22. Covad, however, has proposed that a two-hour interval apply to all pre-qualified UNE orders, whether or not they flow through. *See* Revised Proposed Language Matrix at 5 (Additional Services Attach. § 8.2.4). Moreover, the two-hour interval in the Joint Stipulation includes only "system hours" — hours when Verizon's service order processor is off-line are not counted. The 24- and 48-hour

[33] An order flows through when Verizon's "operations support systems generate a mechanized order confirmation or rejection notice automatically (*i.e.*, without human intervention)." Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶ 160 (1999), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

intervals exclude non-business days. *See* Staff Recommendation Attach. A., Exh. A at 22-23. Covad's proposed language contains none of this specificity. *See* Revised Proposed Language Matrix at 5 (Additional Services Attach. § 8.2.4).

Even if Covad were to correct these issues, Covad has not proposed to incorporate the remainder of the LSC timeliness measurements in the parties' interconnection agreement. The failure to include the exclusions and definitions contained in the measurement materially changes the level of performance required. For example, if Covad's language were adopted, then the intervals set forth in the agreement would apply to orders submitted on a project basis, even though the measurement in the Joint Stipulation (which reflects the consensus of Verizon, Covad, and other ALECs) excludes such orders from the LSC timeliness measurements. *See* Staff Recommendation Attach. A, Exh. A at 23.

Because Covad has shown no reason why the Commission should establish unique LSC intervals for Covad's orders — and Covad itself disclaims any entitlement to performance standards other than those contained in Guidelines — Covad's proposed language should be rejected. Nor would there be any reason to copy the text of the relevant performance measurement into the parties' interconnection agreement — something that, although discussed at the technical conference in New York, Covad has not proposed. As explained above, Covad has no legitimate concerns about unilateral changes to the performance measurements, which can be changed only by an order of this Commission. Verizon, however, has legitimate concerns about the inclusion of the text of the existing measurements in the agreement. If those measurements are included as provisions in the agreement, Verizon would continue to be held to those performance standards even after this Commission modifies the measurements, pending amendment of the agreement itself. The inclusion of a provision requiring instantaneous

updating of the agreement to track changes to the measurements would alleviate this concern, but not the concern that Covad seeks to include these measurements in the agreement to provide a basis for a future breach of contract claim based on Verizon's performance in returning LSCs. There is no evidence in the record here that warrants creating such potential remedies for this measurement; furthermore, this Commission has not yet ruled in Docket No. 000121C-TP on ALECs' claims that the Commission should adopt a general performance remedy plan for Verizon in Florida.

32. Should the agreement establish terms, conditions and intervals to apply to a manual loop qualification process?

*** Verizon's proposed language, which provides Covad with access to loop qualification on a manual basis in the same time intervals that Verizon provides such information to itself and at the same rates that apply to all ALECs, complies with federal law and should be adopted. ***

As explained above, the loop qualification information that Verizon provides to ALECs in Florida is stored in AAIS, which is different from — and contains more information than — the LiveWire database used for similar purposes in the former Bell Atlantic jurisdictions. *See* White Direct at 8-9 (Hrg. Tr. at 124-25); Verizon Response to Staff Interrog. No. 9 (Hrg. Tr. Exh. 4); Kelly Depo. at 17-21 (Hrg. Tr. Exh. 9). Although Covad's initial proposal for this issue was inapplicable to the processes that Verizon actually uses in Florida,[34] Covad has recently modified its proposed language for this issue to remove references to processes Verizon utilizes only in the former Bell Atlantic jurisdictions. *Compare* Covad Petition Attach. C at 13-14 (UNE Attach. § 3.13.5) *with* Revised Proposed Language Matrix at 10-11 (UNE Attach. § 3.13.5).

[34] For example, although Covad twice acknowledged that Verizon offers no Extended Query transaction in Florida (it is offered in the former Bell Atlantic jurisdictions only), *see* Evans/Clancy Rebuttal at 12 (Hrg. Tr. at 63); Evans/Clancy Depo. at 34-35 (Hrg. Tr. Exh. 5), Covad's witnesses continued to insist, as recently as a week before the hearing in this matter, on language with respect to the Extended Query for its interconnection agreement for Florida, *see* Evans/Clancy Depo. at 30-31 (Hrg. Tr. Exh. 5).

Nonetheless, Covad's proposed language differs from Verizon's in two material respects, and, in each case, this Commission should adopt Verizon's language instead of Covad's. First, Covad has proposed to include language that expressly states that Covad may utilize the manual process that Verizon provides to ALECs and to itself for obtaining loop qualification information[35] at no charge. *See* Revised Proposed Language Matrix at 11 (UNE Attach. § 3.13.5). Although Verizon does not currently charge ALECs in Florida for providing loop qualification information through this manual process, Covad has no right to use this process (or any other Verizon OSS function) for free. *See* 47 U.S.C. § 252(d). Therefore, if Verizon were to establish a generally applicable rate for this process, whether through the filing of a tariff or other means, Covad, like all other ALECs in Florida, should be required to pay this rate.[36]

Second, Covad has proposed that Verizon should be required to provide a response to Covad's requests for loop qualification through this manual process in one business day. *See* Revised Proposed Language Matrix at 10-11 (UNE Attach. § 3.13.5). Because Verizon provides this same process to itself, however, the appropriate standard under the 1996 Act is parity. *Maryland/DC/West Virginia 271 Order* App. F ¶ 35 (Verizon must provide ALECs with loop qualification information "within the *same time intervals* it is provided to [Verizon's] retail

---

[35] *See* Kelly Depo. at 20 (Hrg. Tr. Exh. 9) (describing process); Verizon Revised Response to Staff Interrog. No. 11 (Fla. PSC filed June 12, 2003) (same).

[36] There is no merit to Covad's suggestion that no charge should not when the listing in the AAIS database is "defective." Revised Proposed Language Matrix at 11 (UNE Attach. § 3.13.5). Because Verizon utilizes the same information in AAIS to prequalify its xDSL orders, any purportedly "defective" listings "would affect both Verizon and competitive carriers alike"; for this reason, the FCC "has never required incumbent LECs to ensure the accuracy of their loop qualification databases," instead requiring only that the same information be made available to both Verizon and the ALECs. *Virginia 271 Order* ¶ 34. Thus, Covad has no right to use Verizon's manual process for free whenever the AAIS database is not 100% accurate. In any event, Covad has introduced no evidence with respect to the accuracy of AAIS; as noted above, all of the evidence it has introduced regarding loop qualification has pertained to LiveWire, a database that Verizon does not use in Florida.

operations") (emphasis added). Consistent with federal law, Verizon's proposed language states that "Verizon will complete such a request within the same intervals that Verizon completes such requests for itself," which, "[i]n general," is "within five (5) business days." Revised Proposed Language Matrix at 10-11 (UNE Attach. § 3.13.5). Covad is not entitled to obtain this information in a shorter time period.[37]

E. Unbundled Network Elements

Each of the nine issues addressed here pertains to Verizon's provision of unbundled network elements. In each case, Covad has sought access to Verizon's network that exceeds its rights under applicable law. Indeed, in many instances, the same arguments that Covad raises here have been considered and rejected by this Commission and the FCC in other proceedings.

19. Do Verizon's obligations under Applicable Law to provide Covad with nondiscriminatory access to UNEs and UNE combinations require Verizon to build facilities in order to provision Covad's UNE and UNE combination orders?[38]

*** Under federal law, Verizon is not required to build facilities in order to provision Covad's UNE orders, and Verizon's bona fide request process satisfies its obligations to permit ALECs to order new UNE combinations. ***

This issue is not about nondiscriminatory access to UNEs. Instead, it raises a question about the scope of Verizon's obligation to provide unbundled access to its network: whether Verizon is required to build facilities in order to provision Covad's UNE orders when the necessary facilities are not available. Under federal law, as interpreted by the FCC and the

---

[37] Even aside from the fact that Covad has no right to a one-business-day interval, the only evidence that Covad has submitted with respect to this issue pertains exclusively to the different manual processes that Verizon offers in the former Bell Atlantic jurisdictions. *See* Evans/Clancy Depo. at 24-30 (Hrg. Tr. Exh. 5). Covad has introduced no evidence to support any belief that it might now claim to have that Verizon *Florida* can provide loop qualification information through the manual processes that it offers in one business day.

[38] The issues originally designated as 24 and 25 were subsumed into this issue. *See* Prehearing Order at 27.

federal courts prior to the FCC's adoption of the as-yet-unreleased *Triennial Review Order*, the answer to that question is "No." An ILEC is not required to construct facilities to provide an ALEC with unbundled access to its network, even if it would perform such construction for its retail customers. *See, e.g., Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 593 (6th Cir. 2002) ("[t]he Act does not forbid [an ILEC] from discriminating between [an ALEC] requesting unbundled network elements and [the ILEC's] own retail customers"). As the Eighth Circuit has held, under the UNE provisions of the 1996 Act, ALECs are granted "access only to an incumbent LEC's *existing* network — not to a yet unbuilt superior one." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). Consistent with that holding, the FCC expressly affirmed that it "did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed [such] facilities for its own use." *UNE Remand Order*[39] ¶ 324; *see also Triennial Review NPRM*[40] ¶ 65 (under FCC's current rules, "incumbent LECs are not required to build new facilities in order to fulfill competitors' requests for network elements"); 47 C.F.R. § 51.319(a)(1) (defining the loop UNE to include any already "attached electronics"). Reviewing this clear body of law, the FCC's Wireline Competition Bureau stated, in the context of an interconnection agreement arbitration, that "Verizon is . . . correct that the Act does not require it to construct network elements . . . for the sole purpose of unbundling those elements for . . . other carriers." *Virginia Arbitration Order* ¶ 468.

---

[39] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

[40] Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781 (2001) ("*Triennial Review NPRM*").

Nonetheless, as Verizon's witnesses have explained, Verizon "will provision or connect any existing inventory parts of a loop to provide a UNE to a location, and that would include cross connects, line cards, [and] any existing inventory piece." New York Transcript at 79:2-5 (Hrg. Tr. Exh. 2); *see* Kelly/White Direct at 3-4 (Hrg. Tr. at 98-99); Verizon Response to Staff Interrog. No. 20 (Hrg. Tr. Exh. 4). Thus, Verizon goes beyond its unbundling obligations to provide loops even in situations where all of the necessary facilities are not yet available. And, if, despite these efforts, facilities are still unavailable, ALECs can purchase facilities pursuant to Verizon's special access tariff, on the same terms and conditions as Verizon makes available to retail customers. *See* Kelly/White Direct at 4 (Hrg. Tr. at 99); *see also Pennsylvania 271 Order* ¶ 91. In approving Verizon's § 271 application in Pennsylvania, the FCC "disagree[d] with commenters" — including Covad — "that Verizon's policies and practices . . . expressly violate the [FCC's] unbundling rules." *Pennsylvania 271 Order* ¶ 92; *see also* Kelly/White Direct at 3-4 (Hrg. Tr. at 98-99). And the FCC has since reiterated that conclusion in approving Verizon's § 271 applications in New Jersey, New Hampshire, Delaware, and Virginia. *See Virginia 271 Order* ¶¶ 141, 144 (rejecting arguments raised by Covad, among other ALECs); *New Hampshire/Delaware 271 Order* ¶¶ 112-114; *New Jersey 271 Order* ¶ 151.

Accordingly, Covad's proposed language, which would require Verizon to construct new facilities, must be rejected. As an initial matter, Covad has conceded that, despite having testified that "Verizon has rejected a number of Covad orders for high capacity UNEs claiming that no facilities are available," Evans/Clancy Rebuttal at 15 (Hrg. Tr. at 66), "[t]o date, Verizon *has not rejected an order on this basis in Florida*," Covad Response to Staff Interrog. No. 53(c) (Hrg. Tr. Exh.3) (emphasis added). In other words, despite Covad's claimed need to include this language in the parties' agreement, Verizon has *never* refused to provision a Covad order for an

unbundled high-capacity loop in Florida because Verizon would be required to build new facilities in order to do so.

Even aside from the fact that there is absolutely no factual support for its proposed language, Covad's proposals are based on a misunderstanding of the requirements of federal law: as the Sixth Circuit held, the fact that Verizon would build facilities in order to provision service to a retail customer does not mean that Verizon must do the same work in order to make the facilities available to a competitor on an unbundled basis. *See Michigan Bell*, 305 F.3d at 593. Instead, as described above, Verizon satisfies its obligation to provide nondiscriminatory service by offering to build facilities for ALECs pursuant to its special access tariff — that is, on the same terms and conditions that it offers to all of its access service customers. *See* Kelly/White Direct at 4 (Hrg. Tr. at 99). All access service requests — whether from ALECs, long-distance carriers, or end- users — are handled in the same manner, precluding any claim of discriminatory conduct. *See id.* Nor is Covad correct that Verizon's obligation to "condition" UNE loops includes an obligation to add new facilities in order to provision such a loop. *See* Covad Response to Staff Interrog. No. 51 (Hrg. Tr. Exh. 3). The FCC's rules expressly define conditioning as "the *removal* from the loop" of certain devices. 47 C.F.R. § 51.319(a)(3)(i) (emphasis added). Nothing in this definition, or in any of the FCC decisions Covad cites, suggests that an ILEC, in conditioning loops, must *add or attach* new facilities to that loop.

In the FCC's recently adopted, but as yet unreleased, *Triennial Review Order*, the FCC adopted further rules regarding this issue. *See Triennial Review* News Release, Attach. at 3-4. Although the content of those rules is currently unknown, assuming these rules are in effect when the parties' interconnection agreement is approved by this Commission, those rules will form the basis for any language contained in that agreement with respect to this issue.

22. What appointment window should apply to Verizon's installation of loops? What penalty, if any, should apply if Verizon misses the appointment window, and under what circumstances?

*** Covad's proposed language, which could require Verizon to perform dispatches for Covad for free and could require Verizon to pay penalties to Covad even when Verizon provides Covad with superior service, should be rejected, because it is vague and contrary to federal law. ***

At the technical conference in New York, it became clear that "Verizon's current practice [with respect to appointment windows] is satisfactory to Covad." New York Transcript at 113:14-15 (Hrg. Tr. Exh. 2); *see id.* at 94:15-95:6, 96:10-98:19 (describing process). Pursuant to that practice, Verizon offers ALECs and its retail customers the opportunity to request an appointment window: a.m., p.m., or first or last appointment. *See* Kelly/White Direct at 5-6 (Hrg. Tr. at 100-01); Verizon Response to Staff Interrog. No. 7 (Hrg. Tr. Exh. 4). Verizon makes good-faith efforts to meet those windows, but does not guarantee the appointment window for either retail customers or ALECs. Through this process, Verizon provides ALECs with parity service, as required by the 1996 Act. Verizon and Covad have each proposed a paragraph containing identical language describing this process, which the Commission should adopt. *See* Revised Proposed Language Matrix at 6 (UNE Attach. § 1.9).

Covad, however, has proposed an additional paragraph, which addresses three separate issues, and which the Commission should reject because it is ambiguous and contrary to federal law. First, Covad proposes that, where it is Verizon's fault that an initial appointment date was missed, Covad should have the right to "request a new appointment window outside of the normal provisioning interval by contacting Verizon's provisioning center directly." *Id.* It is Verizon's understanding that Covad, through this language, actually seeks the ability in these circumstances to request a guaranteed appointment window (during normal provisioning hours), in exchange for accepting a provisioning interval longer than the standard interval for the

product. Because Verizon does not offer guaranteed appointment windows to its retail customers in these (or any) circumstances, Covad has no right to such a guarantee. *See* Verizon Response to Staff Interrog. No. 7 (Hrg. Tr. Exh. 4); New York Transcript at 94:15-24, 96:17-97:18 (Hrg. Tr. Exh. 2). In any event, even assuming Verizon correctly understands Covad's intent, the language Covad has proposed is vague and subject to numerous interpretations.[41]

Second, Covad proposes that, if it makes the request described above, "Covad shall not be required to pay the non-recurring dispatch charge for such appointment." Revised Proposed Language Matrix at 6-7 (UNE Attach. § 1.9).[42] The non-recurring dispatch charge is set forth in the parties' agreement in Appendix A to the Pricing Attachment. *See* Verizon Response Attach. A at 103 & n.1.[43] Verizon's proposed language provides that Covad must pay this charge — to which Covad has raised no objection here — when a Verizon technician is dispatched and provisions the order, even if Verizon missed the initial appointment date. *See* Revised Proposed Language Matrix at 6 (UNE Attach. § 1.9). Covad's proposed language, however, would require Verizon, in certain circumstances, to perform a dispatch for Covad for free when Verizon would charge other ALECs in identical circumstances. Consistent with the nondiscrimination principles in the 1996 Act, the same rules should apply to all ALECs.

---

[41] For example, it is not clear what it means for an appointment window (that is, a specific time of day) to be "outside" the provisioning interval (that is, a specific day). Further, it is not clear whether Covad's reference to "contacting Verizon's provisioning center directly" means to relieve it of the obligation to submit a supplemental local service request in such a situation.

[42] It is Verizon's understanding that, notwithstanding the text of Covad's current proposed language, Covad's position is still that Verizon should not be permitted to assess the non-recurring dispatch charge whenever it is Verizon's fault that an initial appointment date was missed, not only when Covad makes the request described above. *See* Prehearing Order at 26.

[43] As explained below, the rates listed in Appendix A are the standard rates that Verizon offers to all ALECs, which reflect Verizon's attempt to conform the rates to the requirements of applicable law. Covad did not seek to negotiate different rates. *See infra* Issue 51.

Finally, Covad has proposed that, if Verizon misses two appointments for a particular customer, then in "each additional instance in which the Verizon technician fails to meet [that] customer during future scheduled windows, Verizon will pay to Covad [a] missed appointment fee," equal to the non-recurring dispatch charge. *Id.* at 7. This provision is flawed in numerous respects. First, the penalty would apply when Verizon fails to meet an appointment *window* (not an appointment *date*), even though, as the record clearly establishes, Verizon does not offer guaranteed appointment windows to retail or wholesale customers. Second, the penalty would apply whenever Verizon fails to meet an appointment window, even if that failure is the fault of Covad or its end-user customer. Third, Covad has introduced no evidence suggesting that Verizon misses a higher percentage of appointments for Covad's or other ALECs' customers than for Verizon's retail customers. Because the applicable legal standard with respect to missed appointments is parity — which requires Verizon to meet substantially the same percentage of provisioning appointments for comparable retail and wholesale orders, *see, e.g.*, *Massachusetts 271 Order* ¶ 137 — a penalty provision that could apply even when Verizon's overall performance for Covad is better than Verizon's performance for its own customers is contrary to federal law.

23. What technical references should be included in the Agreement for the definition of the ISDN and HDSL loops?

*** The agreement should reference both industry standards and Verizon's technical documents, as Verizon's technical documents define the characteristics of the loops in Verizon's network, which are the loops available to both ALEC and retail end-user customers. ***

Verizon and Covad agree that the sections of the agreement at issue here should make reference to industry standards. The parties disagree, however, about whether those sections should also make reference to the Verizon technical documents that define loop characteristics specific to Verizon's network. Although Verizon revises its technical documents from time to

time to remain current with industry standards, it is ultimately Verizon's documents — and not the industry standards — that define the loops that Verizon provides both to ALECs and to Verizon's retail customers. *See* Clayton Direct at 2-3 (Hrg. Tr. at 104-05). As Verizon's witness explained, the "Verizon Technical References are really the only document[s] that provide complete information about Verizon's UNE loop products." Clayton Depo. at 5 (Hrg. Tr. Exh. 6). Those references "take[] a compilation of a lot of the industry's standard information and . . . build it into one document"; in contrast, "[t]here is no one single ANSI or national standard that would describe Verizon's UNE loop product offerings." *Id.* at 6; *see also* Pennsylvania Transcript at 164:17-165:6, 167:12-168:22, 171:24-172:6 (Hrg. Tr. Exh. 1).[44] Because Covad is entitled to obtain unbundled access only to Verizon's existing network, the agreement should reference the Verizon technical documents as well as industry standards.

27. What are Covad's obligations under Applicable Law, if any, to notify Verizon of services it is deploying on UNE loops?

*** Because Covad benefits in multiple ways from the creation of a new loop type when it deploys a new loop technology, the Commission should reject Covad's proposed language, which would require Verizon to process the orders to convert Covad's loops from one loop type to another without any compensation. ***

As a result of the parties' discussions at the New York technical conference, the parties' disputes with respect to this issue have been almost entirely resolved. *See* Verizon Response to Staff Interrog. No. 22 (Hrg. Tr. Exh. 4).[45] Indeed, each party has proposed virtually identical

---

[44] Although Covad asserts that referencing Verizon's technical documents "creates the potential for conflicts" between those documents and industry standards, Covad does not identify a single instance in which it claims any such conflict has occurred. Evans/Clancy Direct at 24 (Hrg. Tr. at 31).

[45] Verizon, however, disputes Covad's characterization of the parties' agreement, insofar as Covad's claim that "Verizon acknowledges that it cannot refuse a request made by Covad to deploy a certain technology over a loop if it complies with industry standards," Prehearing Order at 29, can be read to suggest that Verizon agrees that Covad is permitted, for example, to run an

language. *See* Revised Proposed Language Matrix at 9 (UNE Attach. § 3.11). Pursuant to this language, the parties agree to "follow Applicable Law governing spectrum management and provisioning of xDSL services." *Id.* The parties further agree that, if Covad seeks to deploy a new loop technology, "Covad shall submit to Verizon a written request . . . setting forth the basis for its claim that the new technology complies with the industry standards for one or more of th[e] loop types" listed in the agreement or Verizon's tariff, and Verizon shall respond in 45 days. *Id.* In its response, Verizon will "either (a) identify for Covad the loop type that Covad should order when it seeks to deploy that loop technology, or (b) indicate that it does not agree with Covad's claim." *Id.* Although Verizon thus enables Covad to deploy new loop technologies using existing loop types, Verizon may subsequently develop a new loop type specifically for the new loop technology for maintenance, spectrum management, provisioning, or billing purposes. If Verizon does so, Covad has agreed "to convert previously-ordered loops to the new loop type and to use the new loop type on a going-forward basis." *Id.* at 9-10.

Thus, the sole dispute between the parties is whether Covad must pay the generally applicable, TELRIC-based rate that applies when it submits a local service request to convert a

---

SDSL technology over a loop that it ordered using the ADSL loop type. Under federal law, Covad is obligated to inform Verizon of the advanced services that it deploys over the loops that it orders from Verizon; the loop type is the means by which Verizon tracks those services. *See* Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912, ¶ 204 (1999) ("*Line Sharing Order*") ("[ALECs] must provide to incumbent LECs information on the type of technology that they seek to deploy" and must "notify[] the incumbent LEC of any proposed change in advanced services technology that the carrier uses on the loop"), *vacated and remanded on other grounds*, *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003); New York Transcript at 17:3-5, 43:4-7 (Hrg. Tr. Exh. 2). The parties have agreed to language that requires each to follow applicable law in this regard.

loop from one loop type to another,[46] or whether Verizon must perform those conversions at no cost to Covad. *See id.* A "loop type" is the code that is used to order the physical facility over which Covad will deploy a technology. *See* New York Transcript at 43:8-14, 53:9-20 (Hrg. Tr. Exh. 2). Verizon does not develop new loop types unilaterally; instead, the necessary codes are developed collaboratively by national, industry-wide bodies. *See id.* at 46:12-47:3. Each loop type has "testing procedures associated with [it]" and imposes "obligations on [Verizon's] part to maintain that loop" according to standards specific to the technology or technologies for which it was designed. *Id.* at 43:8-14. In addition, Verizon uses the loop types as a spectrum management tool. Therefore, the creation of a new loop type ensures that Covad's new loop technology will not be identified and treated as though it had the interference properties of an older loop technology, which "would be doing it a disservice." *Id.* at 36:15-17; *see also id.* at 51:9-22 (explaining that, from a spectrum management perspective, loop technologies should not be grouped in a single loop type "just . . . because they are industry standards").[47] Furthermore, the loop type informs Covad of the particular advanced service that a customer seeking to switch to Covad currently receives, which helps ensure a smooth transition when a customer migrates from one DSL provider to another.

Therefore, Covad benefits in multiple ways from the creation of a new loop type. Furthermore, processing the orders to convert Covad's loops from one loop type to another

---

[46] That rate is the "service order" charge, which is set forth in Appendix A to the pricing attachment. *See* Verizon Response Attach. A at 103. Because Covad has not objected to this charge, it is binding on the parties. *See infra* Issue 51.

[47] In other proceedings, Covad has raised the baseless claim that Verizon is seeking to impose a penalty on Covad for being first to market by requiring it to pay for orders to convert from an existing loop type to a new loop type specially designed for Covad's new loop technology. In fact, because loop types are developed by industry-wide bodies (not unilaterally by Verizon), whether or not there exists a loop type that is specifically designed for a new loop technology Covad seeks to deploy is independent of whether Verizon is also offering that technology.

imposes costs on Verizon, for which Covad is the cost-causer — particularly if the new loop type was created at its request. For these reasons, Covad should pay the Commission-established, TELRIC-based rates for the conversion orders.[48]

30. Should Verizon be obligated by this Agreement to provide cooperative testing of loops it provides to Covad, or should such testing be established on an industry-wide basis only? If Verizon is to be required by this Agreement to provide such testing, what terms and conditions should apply?

*** Covad's proposals should be rejected because they are inapplicable to Verizon's operations in Florida and, in any event, are overly detailed and would require the parties to continue using an inefficient manual process where an automated process is available. ***

Covad proposes to add language to the agreement that specifies, in great detail, a manual cooperative testing process that Covad would require Verizon's technicians to follow when they provision an xDSL-capable loop ordered by Covad. *See* Revised Proposed Language Matrix at 12-13 (UNE Attach. § 3.13.13). The process described in Covad's proposed language was developed in the former Bell Atlantic jurisdictions, through a DSL collaborative proceeding that commenced in New York in August 1999. *See* White Direct at 3 (Hrg. Tr. at 119). This procedure, however, is not employed in Verizon's former GTE jurisdictions, such as Florida; Bell Atlantic and GTE were separate companies at the time this process was developed. *See id.*[49] For this reason, Covad's proposed language should be rejected. Covad has provided no evidence

---

[48] The creation of new product offerings, such as new loop types, to meet a specific ALEC's request to deploy a new technology similarly imposes costs on Verizon. Because Covad is the ultimate cost-causer in this instance as well, it should pay for the OSS development involved in creating the new product offering.

[49] Verizon's proposed language addressing cooperative testing begins, "In the former Bell Atlantic Service Areas only." Revised Proposed Language Matrix at 12 (UNE Attach. § 3.13.13). Although the language in this paragraph therefore does not apply in Florida, Verizon has proposed including it in the parties' agreement because of the condition in the *Bell Atlantic/GTE Merger Order* that Verizon make interconnection agreements in one Verizon jurisdiction available for adoption in other Verizon jurisdictions. *See* Memorandum Opinion and Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, 15 FCC Rcd 14032, ¶¶ 300-305 (2000).

supporting the need for such a process to be instituted in Florida. Indeed, as with the other issues in this arbitration, Covad's testimony on this issue pertains exclusively to the former Bell Atlantic jurisdictions. *See* Evans/Clancy Direct at 29-32 (Hrg. Tr. at 36-39); Evans/Clancy Rebuttal at 22-24 (Hrg. Tr. at 73-75).[50] Even if there were reason to implement a cooperative testing process in Florida, detailed processes such as Covad proposes should not be set forth in interconnection agreements, because the cooperative testing of loops is an operational matter that is subject to change over time. Those changes would be operationally difficult if parties had to amend their interconnection agreements each time they sought to modify the process. *See* White Direct at 3 (Hrg. Tr. at 119).[51]

Finally, even aside from the fact that Verizon does not employ in Florida the cooperative testing process described in Covad's proposed language, this Commission should reject that language because it would require Verizon to conduct inefficient and burdensome manual testing, even when mechanized testing of the loop is available. As the record in this proceeding demonstrates, Covad has developed automated testing equipment, known as the Interactive Voice Response ("IVR") unit, although it has not yet deployed the IVR for Verizon's use in

---

[50] Although Covad asserts that Verizon's performance in delivering stand-alone loops to Covad has been "woeful," Covad offers no support for that assertion, nor any information specific to Florida. Covad Response to Staff Interrog. No. 55 (Hrg. Tr. Exh. 3). In fact, according to the performance reports that Verizon files with the FCC, from February through April 2003, nearly 95% of the UNE loops that Verizon provisioned for ALECs had no troubles reported within the measured period (7 or 30 days) after installation of the loops, demonstrating that Verizon is providing ALECs in Florida with grade "A" service.

[51] Thus, the language that Verizon has proposed for the former Bell Atlantic jurisdictions describes cooperative testing generally and provides that the parties may, by mutual agreement, augment, replace, or eliminate the existing testing requirement without having to amend the agreement. *See* Revised Proposed Language Matrix at 12-13 (UNE Attach. § 3.13.13). In contrast, Covad has proposed extremely detailed language and states only that the parties may "negotiate terms and conditions" for "additional testing . . . not covered by this Agreement," implying that those detailed procedures will apply throughout the life of the agreement. *Id.* at 13.

Florida. *See* White Direct at 4-5 (Hrg. Tr. at 120-21); Evans/Clancy Direct at 29-30 (Hrg. Tr. 36-37); Verizon Response to Staff Interrog. No. 23 (Hrg. Tr. Exh. 4). The IVR provides for "same kind of work and functionality" as the manual testing process that was developed for use in the former Bell Atlantic jurisdictions during the "early stages of deploying DSL" when automated testing equipment was not available. New York Transcript at 119:17-24, 121:12-18 (Hrg. Tr. Exh. 2); *see* Verizon Response to Staff Interrog. No. 23 (Hrg. Tr. Exh. 4); White Direct at 4 (Hrg. Tr. at 120) ("an automated testing process . . . mak[es] the labor intensive cooperative testing process unnecessary"). The automated test, however, is more efficient than the manual process. While the automated test takes "a couple of minutes," New York Transcript at 131:19-20 (Hrg. Tr. Exh. 2), a manual test could last as long as 30 minutes — up to 15 minutes for Covad's technician to answer the phone and begin the test and up to 15 minutes to complete the testing, *see* Covad Petition Attach. C at 15 (UNE Attach. § 3.13.13).

Covad, however, seeks language that would obligate the parties, for the next three years, to perform cooperative testing manually rather than through the IVR. *See* Revised Proposed Language Matrix at 12-13 (UNE Attach. § 3.13.13).[52] Instead, Covad proposes that use of the IVR be limited to "sectionaliz[ing] troubles on loops connected to Covad's network." *Id.* That is, Verizon's technician would use the IVR to isolate the location of a trouble on a loop, but not to conduct the final test of the loop. The record in this proceeding, however, demonstrates that

---

[52] Covad's revised language also would require Verizon to perform cooperative testing on "any loop on which Covad has opened a maintenance ticket to close out any loop troubles." Revised Proposed Language Matrix at 12 (UNE Attach. § 3.13.13). Covad did not raise this issue in its petition for arbitration or in the negotiations between the parties preceding the filing of the petition. Indeed, both the title of Issue 30 and the language Covad initially proposed are expressly limited to the cooperative testing of loops at the time Verizon provisions them. *See* Covad Petition Attach. C at 15 (UNE Attach. § 3.13.13); *id.* Attach. B at 12. Accordingly, this issue is not properly before this Commission. *See* 47 U.S.C. § 252(b)(4)(A) ("[t]he State commission shall limit its consideration of any [arbitration] petition . . . to the issues set forth in the petition and in the response"); *BellSouth-GNAPs Arbitration Order* at 4.

the IVR conducts the exact same test as a manual cooperative test, but does so in a far more efficient manner. Thus, there is no reason, related to any need to test the quality of the loops that Verizon has provisioned, for performing a manual cooperative test when the IVR is available. As Verizon's witness explained, "the IVR becomes a useless piece of information" if Verizon may use it only for "pretesting." New York Transcript at 132:15-17 (Hrg. Tr. Exh. 2).

Instead, Covad claims that Verizon should be required to use the less efficient, manual cooperative testing process so that it can "assure[] [that] the technician is at the end user's premise." Covad Response to Staff Interrog. No. 55.[53] Verizon's performance in provisioning loops that are subject to cooperative testing in the former Bell Atlantic jurisdictions is measured in multiple respects, *see* New York Transcript at 122:12-19 (Hrg. Tr. Exh. 2), and similar measurements are contained in the Joint Stipulation that Staff has recommended this Commission adopt in Docket No. 000121C-TP. Through these measurements, any problems that might arise with the xDSL loops that Verizon provisions for Covad will be easily documented by Covad and this Commission. For this reason, and because repairing defective loops is expensive for Verizon, Verizon has every bit as strong a motivation as Covad to ensure that any cooperative testing procedures are effective. In sum, Covad has provided no justification for requiring Verizon to continue to use the older, less efficient, manual process for cooperative testing.

Finally, in a response to Staff's discovery requests, Covad claims that, through use of the cooperative testing process, "work . . . [is] being skirted by Verizon technicians," who do "not need to perform a manual test with [Verizon's] Central Office technicians," and that "Verizon

[53] Although Covad asserted in the arbitration in New York that there are "many instances" where Verizon's technician is not at the correct location, there is no evidence in the record here (or there) supporting this assertion.

did not install test equipment to remotely perform these tests." Covad Response to Staff Interrog. No. 55 (Hrg. Tr. Exh. 3). These claims are baseless. In fact, Verizon proposed to implement a system that would enable Verizon to conduct tests of xDSL loops without the participation of an ALEC; Covad, however, claimed that it intended to deploy its own testing system and objected to paying for the use of the system Verizon planned to deploy. *See New York Line Sharing Rate Order*[54] at 21-22. As a result, regardless of whether the test of an xDSL loop is performed manually or through the IVR, it is *Covad*, not Verizon, that conducts the testing and, by having its technician run the tests or by programming its IVR, determines what will be tested. *See* New York Transcript at 121:12-16, 125:13-14, 126:20-21, 127:5-8 (Hrg. Tr. Exh. 2).

33. Should the Agreement allow Covad to contest the prequalification requirement for an order or set of orders?

*** Although Covad may dispute Verizon's determination that particular loops do not have the necessary technical specifications to handle one or more xDSL services, Covad should not be permitted to eliminate the agreed-upon requirement that it prequalify its orders for xDSL-capable loop types. ***

In order for an ALEC to provide advanced services, it is essential that the loops possess the appropriate technical capabilities. *See* White Direct at 10 (Hrg. Tr. at 126). As described above with respect to Issue 12, Verizon provides Covad with access to the same loop qualification information that Verizon uses to determine whether a loop possesses the technical capabilities necessary to handle a particular advanced service. The parties have agreed that Covad will use this loop qualification information to "prequalif[y]" its orders for xDSL loop

[54] Opinion and Order Concerning Line Sharing Rates, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-C-1357, Opinion No. 00-07 (N.Y. PSC May 26, 2000) ("*New York Line Sharing Rate Order*").

types. Revised Proposed Language Matrix at 11 (UNE Attach. § 3.13.7). That is, Covad has agreed to use the methods of accessing loop qualification information that Verizon provides in Florida before it submits an order for an xDSL loop.[55]

To address the rare circumstances where Verizon's databases contain inaccuracies, Verizon's proposed language provides that Covad may dispute Verizon's qualification *information* with respect to a particular loop or group of loops. *See id.*; *see also* Verizon Response to Staff Interrog. No. 12 (Hrg. Tr. Exh. 4) (describing process ALEC would use to raise such a dispute). Covad, however, seeks the broader right to challenge the prequalification *requirement* itself. *See* Revised Proposed Language Matrix at 11 (UNE Attach. § 3.13.7). Covad has claimed that it seeks only "to reserve its right to contest any requirement that such orders must pass prequalification," in the event that "Covad uncovers significant and pervasive problems with Verizon's prequalification tool for an order or sets of order[s]." Covad Petition Attach. B at 13.

Covad's proposed language should be rejected. First, Covad's assertion that it needs to reserve this right because "Verizon's prequalification tool has proven to be unreliable on certain orders types" (*id.*) is entirely unsubstantiated in the record. As explained above, Covad has introduced no evidence with respect to the loop qualification database that Verizon uses in Florida, instead exclusively repeating complaints — which the FCC has repeatedly rejected — about the database Verizon uses in its former Bell Atlantic jurisdictions. *See supra* p. 23. In any event, the FCC "has never required incumbent LECs to ensure the accuracy of their loop qualification databases," instead requiring only that the same information be made available to

[55] Because Covad has *agreed* to prequalify its xDSL loop orders, any claim Covad might make regarding whether Verizon could *require* Covad to prequalify those orders is irrelevant here.

both Verizon and the ALECs, so that any "inaccuracies . . . would affect both Verizon and competitive carriers alike." *Virginia 271 Order* ¶ 34.

Second, Covad's proposed language is not merely a reservation of rights. Instead, it affirmatively states that the "Parties *agree*" that Covad has such rights — and Verizon does not agree. *See* Revised Proposed Language Matrix at 11 (UNE Attach. § 3.13.7) (emphasis added). Nor has Covad ever explained why any reservation of rights language — if that were what Covad actually proposed — would be necessary. Indeed, if Covad were not required to prequalify its xDSL-capable loop orders, Verizon would routinely be required to attempt to provision those orders where no xDSL-capable loop is available and, in some cases, to perform work that would degrade voice service. *See* White Direct at 11-12 (Hrg. Tr. at 127-28).

34. Should the Agreement specify an interval for provisioning loops other than either the interval that Verizon provides to itself (for products with retail analogs) or the interval that this Commission establishes for all ALECs (for products with no retail analog)?

*** Covad's proposed language should be rejected because it is contrary to federal law, which requires Verizon to provision loops in the interval that it provides to itself or in the Commission-established interval. Covad is not entitled to a shorter interval. ***

In Florida, with one exception, Verizon provisions UNE loops using a labor force management system known as Due Date Manager, which assigns due dates to orders based on Verizon's available work force and the work load. *See* Kelly/White Direct at 6 (Hrg. Tr. at 101). This same system is used to assign due dates for retail orders, and due dates for both UNE and retail orders are assigned on a first-come, first-served basis, ensuring that ALECs receive the same intervals that Verizon provides to itself. *See id.* The one exception, with respect to UNEs, is for orders for line-shared loops that require neither conditioning nor a dispatch. For these loops, Verizon offers a three-business-day standard provisioning interval, irrespective of available work force and work load, for both ALECs' and retail orders, again ensuring that

ALECs receive the same interval that Verizon provides to itself. *See* Kelly/White Rebuttal at 1 (Hrg. Tr. at 161). This is reflected in the performance measurements included in the Joint Stipulation before this Commission in Docket No. 000121C-TP, where the only UNE product subject to the "Percent Completed Within Standard Interval" measurement is "Line Sharing Non-Conditioned Non-Dispatched." Staff Recommendation, Attach. A, Exh. A at 39-40.[56]

Verizon's proposed language would maintain the existing provisioning intervals. *See* Revised Proposed Language Matrix at 11, 13, 14-15 (UNE Attach. §§ 3.13.10, 3.14, 4.4.6). Because these intervals are the same for retail and ALEC orders, Verizon's proposed language complies with federal law, which requires ILECs to "provision competing carriers' orders . . . in substantially the same time and manner as it provisions orders for its own retail customers." *Virginia 271 Order* App. C ¶ 37.

In contrast, Covad's proposed language would dramatically change those intervals. Covad has proposed requiring Verizon to use standard provisioning intervals for all UNE loop orders, with intervals of no longer than five business days for stand-alone UNE loop orders that do not require conditioning and of no longer than 10 business days for all UNE loop orders that do require conditioning. Revised Proposed Language Matrix at 11, 13 (UNE Attach. §§ 3.13.10, 3.14). Not only would Covad's proposed language impose substantial costs on Verizon by changing the way that Verizon currently calculates due dates for these orders, but also it could provide Covad with provisioning intervals better than those Verizon provides to itself and to other ALECs. Covad has provided no justification or evidentiary support for any purported need to restructure Verizon's provisioning intervals in this manner. *See* Evans/Clancy Direct at 17-19

[56] Verizon also uses a 15-day standard provisioning interval for ALECs' orders to resell special services, which is the same interval that applies to retail orders. This is the only other product included in the "Percent Completed Within Standard Interval" measurement. *See* Staff Recommendation, Attach. A, Exh. A at 39-40.

(Hrg. Tr. 24-26) (no discussion of proposal to change intervals for UNE loops other than line-shared loops); Evans/Clancy Rebuttal at 12-13 (Hrg. Tr. at 63-64) (same); Covad Response to Staff Interrog. No. 38 (same) (Hrg. Tr. Exh. 3). Although one of Covad's witnesses asserted in passing during his deposition that Verizon's current practice does not provide Covad with enough "predictability," Evans/Clancy Depo. at 33 (Hrg. Tr. Exh. 5), Covad offered no support for that assertion, which is implausible given that the same practices are used for retail and other ALECs' orders.

Covad also has proposed reducing the standard interval for line-shared loops to two business days. *See* Revised Proposed Language Matrix at 14-15 (UNE Attach. § 4.4.6). As explained above, Covad has no legal entitlement to provisioning intervals shorter than those Verizon provides to itself for comparable products, and Verizon provisions retail orders using a three-business-day standard interval. The 1996 Act does not "mandate that requesting carriers receive superior quality access to network elements." *Iowa Utils. Bd.*, 120 F.3d at 812.

Moreover, the current, three-day interval applies to all ALECs in Florida. If Covad's proposed language were adopted, the two-day interval would apply to its orders alone. Consistent with the 1996 Act's strong policy in favor of equal treatment for all industry participants, any changes to the line-sharing provisioning interval should occur through a generic proceeding, where all interested parties could participate. Indeed, the existing three-business-day interval was established and reaffirmed through such industry-wide proceedings, under the auspices of the New York PSC. *See* Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case 00-C-0127, Opinion No. 00-12, at 6-7 (N.Y. PSC Oct. 31, 2000) ("*New York DSL Order*"); Order Modifying Existing and

Establishing Additional Inter-Carrier Service Quality Guidelines, *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139, at 17-18 (N.Y. PSC Oct. 29, 2001).[57]

Finally, while the record in this proceeding demonstrates that Verizon would face substantial burdens if forced to comply with a two-day provisioning interval, *see* Kelly/White Rebuttal at 1-2 (Hrg. Tr. at 161-62), there is no evidence in the record demonstrating that the existing three-business-day interval is not providing Covad with a meaningful opportunity to compete in Florida. Indeed, Covad has provided no evidence with respect to orders it has placed for line-shared loops from Verizon on Florida. *Cf.* Evans/Clancy Depo. at 28-29 (Hrg. Tr. Exh. 5) ("I don't know what the experience has been personally in Florida.").[58] Because line-shared loops are offered on a standard-interval basis, Verizon is not permitted to adjust the due dates for these orders based on its workload and available work force. *See* Kelly/White Rebuttal at 1 (Hrg. Tr. at 161); New York Transcript at 153:7-19 (Hrg. Tr. Exh. 2). The three-day interval provides Verizon with the time that is necessary for it to reallocate its work force to meet spikes

---

[57] Covad misrepresents the New York PSC's orders, suggesting that the PSC sought to reduce the interval to two days or even one day. *See* Evans/Clancy Depo. at 29 (Hrg. Tr. Exh. 5); *see also* Evans/Clancy Direct at 18 (Hrg. Tr. at 25). Although the participants in the New York proceeding may have discussed such reductions — because that was what Covad proposed — the New York PSC rejected Covad's proposal and, instead, established an initial interval of four days, to be reduced to three days by March 2001, with no further planned reductions. *See New York DSL Order* at 5-7. Nor is Covad correct in claiming that Verizon has never reduced intervals voluntarily. *See* Evans/Clancy Depo. at 29 (Hrg. Tr. Exh. 5). In fact, there are "a number of forums [in which Verizon has] participated . . . where [ALECs] asked for changes in intervals, and we've considered them and . . . voluntarily [adopted them], or even voluntarily offered up interval changes." Kelly Depo. at 27-28 (Hrg. Tr. Exh. 9).

[58] Although Covad has pointed to the fact that BellSouth has a two-day line-sharing provisioning interval — an interval that, Verizon notes, also applies to BellSouth retail orders — Verizon's witness explained that there are numerous potential differences between Verizon and BellSouth, including the volume of orders received, geography (*i.e.*, whether the territory is urban or rural and, thus, likely to have a lower or higher percentage of unmanned central offices), and the types of equipment in central offices, that could account for the different intervals. *See* New York Transcript at 155:3-23 (Hrg. Tr. Exh. 2).

in demand for both line-shared loops and all of the other wholesale and retail products and services that Verizon must provision in its central offices each day. *See* Kelly/White Rebuttal at 1-2 (Hrg. Tr. at 161-62); New York Transcript at 153:20-154:2, 156:19-23, 162:8-17, 162:24-163:3 (Hrg. Tr. Exh. 2). If the interval were reduced to two days, Verizon would "have no ability to react effectively" to the fluctuations in demand in this manner. *See id.* at 154:16-21.[59]

35. Under what terms and conditions should Verizon conduct line and station transfers ("LSTs") to provision Covad loops?

*** LSTs should be conducted pursuant to the process developed in New York and to which Covad agreed. Covad's proposed language is inconsistent with that agreed-upon process and should be rejected. ***

Through negotiations in the DSL collaborative, which operated under the auspices of the New York PSC, Verizon and interested ALECs — including Covad — "reached agreement" on a process for LST. *New York DSL Order* at 25 n.1. Where a customer is currently served by digital loop carrier, which cannot handle the copper-wire-based xDSL services that Covad orders, and there is a spare loop that meets the necessary technical specifications for that service, Verizon will perform an LST — that is, will rearrange the loops — in order to "provide[] a copper loop for DSL provisioning purposes." *Id.* The parties' agreement was adopted by, and codified in, an order of the New York PSC (*see id.*), which provided:

> A Pair Swap or Line and Station Transfer done in conjunction with a Line Share Arrangement request involves the reassignment and relocation of an existing Verizon end user voice service from a Digital Loop Carrier ("DLC") facility that is not qualified for line sharing to a spare or freed-up qualified non-loaded copper facility. Such a swap or transfer would be done in order to support the requested service transmission parameters. This new process *will be applied to all cases*

[59] Covad has testified that its belief that Verizon can provision line-shared loops in a two-business-day interval is based on its understanding of the manner in which Verizon provisions hot cuts, which it claims require more wiring than line-shared loops. *See* Evans/Clancy Direct at 18-19 (Hrg. Tr. at 25-26). However, as Verizon's witnesses testified, "there are more wires run for line sharing than there are for hot cuts," because line sharing requires "at least two cross-connections" and hot cuts require only one. Kelly/White Rebuttal at 2-3 (Hrg. Tr. at 162-63).

> where Verizon encounters the customer on DLC and where Verizon can automatically reassign the customer to a spare copper facility. This effort *involves additional installation work* including a dispatch and *will require an additional charge.*

Id. Attach. 2 (emphases added; footnote omitted). Verizon's proposed language makes clear that it currently "performs Line and Station Transfers in accordance with the procedures developed in the DSL Collaborative in the State of New York, NY PSC Case 00-C-0127." Revised Proposed Language Matrix at 12 (UNE Attach. § 3.13.12).[60]

Covad, however, has proposed changes to each of the three italicized portions of the agreed-upon process set forth above. Each of Covad's proposed changes is contrary to the terms of that process and should be rejected; Verizon's proposed language should be adopted instead.

First, Covad has proposed that Verizon should not perform LSTs in all circumstances where there is a spare copper facility, but only "upon request of Covad" or "after obtaining Covad's approval." *Id.* at 10, 12 (UNE Attach. §§ 3.13.4, 3.13.12). Even though the settlement agreement, to which Covad was a party and which the New York PSC approved, provided that Verizon would perform LSTs in "all cases," Verizon is in the process of developing, in collaboration with Covad and other ALECs, a uniform process by which ALECs would indicate, on an order-by-order basis, whether they wish to have an LST performed. Until that new process has been implemented, however, Covad should remain bound to the terms of the agreement reached through the DSL collaborative, which does not permit Covad to request LSTs for particular orders.

Second, Covad proposes to add language with respect to the intervals in which Verizon must provision xDSL loops that require an LST. Specifically, Covad proposes to permit Verizon

---

[60] As Verizon has explained, contrary to Covad's claim (Prehearing Order at 35), the LST process applies only to xDSL loop orders and not to T1s. *See* Verizon Response to Staff Interrog. No. 24 (Hrg. Tr. Exh. 4).

additional time, beyond the standard interval, where an LST is required to provision a line-shared loop, but no additional time beyond the standard interval for any other xDSL-capable loop. *See* Revised Proposed Language Matrix at 12 (UNE Attach. § 3.13.12). Yet, as part of the agreement reached through the DSL collaborative, Covad and other ALECs acknowledged that performing an LST "involves additional installation work." *New York DSL Order* Attach. 2.[61] The agreement does not distinguish in any way between the "additional . . . work" required for line-shared loops and other xDSL-capable loops. Here, as well, Covad should not be permitted to renege on its prior agreement.

Third, even though Covad agreed that LSTs "will require an additional charge," *id.*, Covad now seeks to require Verizon to perform LSTs for free. *See* Revised Proposed Language Matrix at 10, 12 (UNE Attach. §§ 3.13.4, 3.13.12). This Commission should reject Covad's attempt to renege on its agreement. Moreover, Covad's claim that Verizon should not be permitted to charge for LSTs is based on its mistaken belief that Verizon does not charge its own customers for LSTs. *See* Prehearing Order at 35. When Verizon performs an LST to provision an xDSL order placed on behalf of Verizon Online (Verizon's affiliated Internet service provider) by its retail broadband group, Verizon will assess the same charge for that LST that would apply if the xDSL order were submitted by Covad or any other ALEC. *See* Verizon Response to Staff Interrog. No. 24 (Hrg. Tr. Exh. 4). The fact that Verizon Online does not pass those LST charges on to individual retail customers is irrelevant; Covad is equally able to charge

[61] In many instances, the work required for an LST involves the rearrangement of facilities currently used to provide service to other Verizon customers, so that a copper facility can be freed up for use by Covad. This process therefore involves working with existing services, swapping them from copper to fiber facilities, and providing the copper facilities to Covad. These activities require more time than a simple installation or even an LST to a spare (*i.e.*, vacant) copper facility.

all of its customers the same rate, regardless of whether some customers' orders required an LST. *See id.*

36. Should Verizon be obligated to provide Line Partitioning (*i.e.*, line sharing where the customer receives voice services from a reseller of Verizon's services)?

> *** Under federal law, Verizon has no obligation to provide Covad with so-called "line partitioning" — *i.e.*, unbundled access to the high-frequency portion of the loop when a reseller provides voice service on that loop. ***

In approving Verizon's § 271 application in Virginia, the FCC explicitly rejected Covad's claim that Verizon was obligated to provide so-called "line partitioning":

> We disagree with Covad that Verizon is obligated to provide access to the high frequency portion of the loop when the customer's voice service is being provided by a reseller, and not by Verizon. Our rules do not require incumbent LECs to provide access to the high frequency portion of the loop when the incumbent LEC is not providing voice service over that loop. We disagree with Covad that Verizon is still considered the voice provider when a reseller is providing resold voice service to an end user customer. We agree, therefore, with Verizon that it is not required to provide access to the high frequency portion of the loop under these circumstances.

Virginia 271 Order ¶ 151 (footnote omitted). The FCC's conclusion in the *Virginia 271 Order* is part of a consistent line of precedent limiting an incumbent LEC's obligation to provide line sharing to cases where it is the voice provider on the loop. *See, e.g.*, *Line Sharing Order* ¶ 72; *Texas 271 Order*[62] ¶ 330.[63] Covad's position is contrary to federal law and has already been rejected by the FCC; there is no basis to permit Covad to relitigate it here, especially in light of

---

[62] Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd 18354 (2000) ("*Texas 271 Order*").

[63] Indeed, it was the FCC, not Verizon, that defined the high-frequency portion of the loop UNE to exist only where Verizon is the voice provider or an ALEC has obtained access to the entire loop as a UNE. *See Virginia 271 Order* ¶ 151 & n.531.

the FCC's recent conclusion that "[t]he high frequency portion of the loop (HFPL) is not an unbundled network element" in any circumstance. *Triennial Review* News Release Attach. at 2.

In an attempt to avoid this clear line of precedent rejecting its claimed right to engage in line partitioning, Covad has recast its argument and now claims that Verizon discriminates against resellers, because Verizon supposedly "refus[es] to provision voice services on a resale basis when another carrier is providing DSL on the high frequency portion of the loop via line sharing." Covad Response to Staff Interrog. No. 47 (Hrg. Tr. Exh. 3). Even aside from the fact that Covad, which is not a reseller, has no standing to complain on their behalf,[64] the FCC has previously rejected Covad's claim that "Verizon discriminates against . . . resale voice providers," noting that "Verizon does permit the resale of its DSL service over resold voice lines so that customers purchasing resold voice are able to obtain DSL services from a provider other than Verizon." *Virginia 271 Order* ¶ 151. This service is offered pursuant to Verizon's FCC Tariff No. 20, Part III, § 5.2 (Verizon DSL Over Resold Lines). *See* Verizon Response to Staff Interrog. No. 21(a) (Hrg. Tr. Exh. 4).[65]

Furthermore, the fact that Covad is providing DSL service on a line, either through line sharing or a line splitting arrangement, is no impediment to a customer switching voice service from Verizon or a UNE-P ALEC to a reseller. Indeed, Covad points to no instances — because there are none — where Verizon has refused to accept an order from a reseller because an ALEC is providing DSL service.[66] However, once the reseller provides the voice service, Verizon is no

---

[64] *See, e.g., Harris v. Evans*, 20 F.3d 1118, 1124 (11th Cir. 1994) ("central consideration" in determining whether party may assert rights of third parties is whether there is an "impediment to the ability of the [third parties] to assert their own . . . rights if they wish to do so").

[65] A copy of the tariff is available through https://retailgateway.bdi.gte.com:1490/.

[66] Nothing in the record supports Covad's claim that the fact that federal law does not entitle it to engage in line partitioning has caused it to "los[e] tremendous volumes of orders."

longer the voice provider on the line, and Covad is no longer entitled, under federal law, to have access to the high-frequency portion of the loop as a UNE. *See Virginia 271 Order* ¶ 151. Thus, no matter how Covad packages its claim, it is seeking the exact same right — access to the high-frequency portion of the loop as a UNE when a reseller is providing voice service over that loop — that the FCC has repeatedly held that Covad does not have.[67]

F. Collocation

38. What interval should apply to collocation augmentations where a new splitter is to be installed?

> *** The collocation augment interval is established through Verizon's tariff, and Covad should not be permitted, in its interconnection agreement, to modify that generally applicable interval or to insulate itself from future changes to that tariff that would apply to all other ALECs. ***

Covad proposes that an interval of no greater than 45 calendar days apply to its collocation augment requests where a new splitter is to be installed. *See* Revised Proposed Language Matrix at 15 (UNE Attach. § 4.7.2). Pursuant to its effective tariff, which implements a decision of this Commission,[68] Verizon already performs augmentation of physical and

---

Covad Response to Staff Interrog. No. 47 (Hrg. Tr. Exh. 3). By contrast, in its pre-filed testimony, Covad claimed only that "many of the requests" it receives are affected. Evans/Clancy Direct at 33 (Hrg. Tr. at 40). In any event, Covad makes no effort to substantiate either vague claim. And, even if Covad's implausible claims were true, they would be irrelevant given that Verizon has no legal obligation to engage in line partitioning, and this Commission must resolve open issues in accordance with federal law.

[67] As Verizon has noted, because line partitioning involves a third party — the reseller — an ALEC could not be permitted to obtain unbundled access to the high-frequency portion of a loop served by a voice reseller without that carrier's consent. *See* Verizon Response to Staff Interrog. No. 21(c) (Hrg. Tr. Exh. 4). Not only would the two ALECs need to have a contractual relationship before line partitioning could occur, but detailed rules would need to be developed setting forth Verizon's responsibilities toward each of the ALECs, as their interests may conflict. *See id.* For this reason, even if federal law permitted this Commission to require line partitioning (and it does not), an industry-wide proceeding would need to be instituted prior to the establishment of such a requirement.

[68] *See* Final Order on Collocation Guidelines, *Petition of Competitive Carriers for Commission Action To Support Local Competition in BellSouth Telecommunications, Inc.'s*

cageless collocation within 45 calendar days of receiving a completed collocation application. *See* Verizon Facilities for Intrastate Access Tariff § 19. Under Verizon's proposed language — which states that the interval in Verizon's tariff shall apply, unless the tariff contains no interval, in which case a 76-business-day interval will apply — Covad will receive the 45-calendar-day interval that it seeks. *See* Revised Proposed Language Matrix at 15 (UNE Attach. § 4.7.2) ("Unless a different interval is stated in Verizon's applicable Tariff, an interval of seventy-six (76) business days shall apply.").[69]

If this Commission were to approve an amendment to Verizon's tariff, under Verizon's proposed language, that new interval — whether it is longer or shorter than the existing interval — will apply to Covad's augment requests, just as it will apply to all other ALECs' requests. Verizon's proposal is thus consistent with this Commission's decision in an arbitration earlier this year, where this Commission held that the parties' agreement should "includ[e] specific reference to the Verizon collocation tariffs" so that "changes made to Verizon's Commission-approved collocation tariffs . . . [will] supersede the terms set forth at the filing of the th[e] agreement." *Sprint-Verizon Arbitration Order*[70] at 37.

Service Territory; Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for Generic Investigation To Ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated Comply with Obligation To Provide Alternative Local Exchange Carriers with Flexible, Timely, and Cost-Efficient Physical Collocation, Docket Nos. 981834-TP & 990321-TP, Order No. PSC-00-0941-FOF-TP, at 35 (Fla. PSC May 11, 2000).

[69] This differs slightly from Verizon's original proposal, which stated that the 76-day interval would apply unless a "longer" interval appeared in the tariff. *See* Verizon Response Attach. C at 19 (UNE Attach. § 4.7.2).

[70] Final Order on Petition for Arbitration, *Petition by Sprint Communications Limited Partnership for Arbitration with Verizon Florida Inc. Pursuant to Section 251/252 of the Telecommunications Act of 1996*, Docket No. 010795-TP, Order No. PSC-03-0048-FOF-TP (Fla. PSC Jan. 7, 2003) ("*Sprint-Verizon Arbitration Order*").

In contrast, Covad's proposal would apparently allow it to take advantage of any tariff amendment that shortens the applicable interval,[71] while ensuring that it is not subject to any longer interval that this Commission might approve in the future. Consistent with this Commission's conclusion in the *Sprint-Verizon Arbitration Order*, Covad's proposed language should be rejected. Covad should not be permitted to play this heads-I-win, tails-you-lose game; the tariffed interval that this Commission approves should apply to all ALECs, including Covad.[72]

G. Dark Fiber

Since the filing of the Petition, Verizon and Covad have been able to resolve six of the 10 original dark fiber issues in Covad's Petition. With respect to the four remaining open issues, the Commission should reject Covad's contract proposals because they go beyond the requirements of federal law. Moreover, Covad's proposals reflect its unfamiliarity with Verizon's current dark fiber practices in Florida, where Covad concedes it has never ordered dark fiber UNEs from Verizon.

In addition to the four open issues, Covad seeks to insert a new issue into this proceeding concerning "acceptance testing" of dark fiber. In particular, in the Revised Proposed Language

---

[71] Covad's proposed language does not state where the collocation interval is to be found, just that it shall be no longer than a specified number of days.

[72] In a late-filed exhibit, Covad stated that it planned to seek in this arbitration a 30-calendar-day interval for its collocation augment requests where a new splitter is to be installed. *See* Covad Response to Staff Interrog. No. 57 (Hrg. Tr. Exh. 3). Subsequently, Covad informed Verizon that it was not changing its proposal. However, in that late-filed exhibit, Covad makes reference to settlement discussions between Verizon, Covad, and other ALECs. Covad Response to Staff Interrog. No. 57 (Hrg. Tr. Exh. 3). Those discussions were (and are) confidential. Although Verizon disputes Covad's characterization of those discussions, it is not proper for Verizon to comment further on the content of those discussions. Verizon notes, however, that Covad is mistaken in claiming that these settlement discussions "w[ere] referenced in [its] arbitration petition in Florida." *Id.* Covad's description of this issue contains no such reference. *See* Covad Petition Attach. B at 15.

Matrix, Covad has proposed changes to § 8.2.19 of the UNE Attachment concerning the terms under which Verizon will test dark fiber after provisioning of the dark fiber circuit is completed.[73] Verizon's proposed language with respect to § 8.2.19 has not changed, and Covad did not raise any dispute with respect to that language in its Petition, representing instead that it agreed with those terms. As a result, it is too late in the proceeding for Covad to shoehorn a new issue into the arbitration because, as this Commission has held, under the 1996 Act, this Commission must "limit its consideration of any [arbitration] petition . . . to the issues set forth in the petition and in the response." 47 U.S.C. § 252(b)(4)(A); *see BellSouth-GNAPs Arbitration Order* at 4 (holding that belatedly raised issues "were not identified in either [the ALEC's] petition for arbitration or [the ILEC's] response" and therefore "we do not find it appropriate [under § 252(b)(4)(A)] to address [them] in this proceeding").[74]

In any event, Covad's proposed changes to § 8.2.19 are improper. In particular, Covad is seeking the right to "cancel" a dark fiber order after it has been provisioned (rather than submitting an order to "disconnect" the circuit), without incurring any of the applicable charges that compensate Verizon for provisioning the circuit for Covad. In essence, Covad is seeking a guarantee from Verizon that the dark fiber will meet certain transmission characteristics.[75] Verizon, however, provides dark fiber on an "as is" basis and does not guarantee the transmission quality of the fiber, nor does it have any legal obligation to do so. As the FCC's

---

[73] Such testing is not the same as the "field survey" that was part of Issue 47 and that has been resolved by the parties.

[74] Covad asserts that this dispute is part of Issue 43, which addresses splicing, cross-connects, and intermediate office routing, not acceptance testing. Even if Covad were correct that accepting testing fits within the description of Issue 43 — and it is not — its failure to raise any objections it has to the language in § 8.2.19 in its Petition precludes this Commission from considering those objections now.

[75] Section 8.2.19 would not apply to a dark fiber circuit that does not pass light at all; Verizon tests the circuit itself to ensure that it passes light before completing provisioning.

Wireline Competition Bureau held, ALECs "may not hold Verizon's dark fiber to a given standard of transmission capacity. The inclusion of dark fiber within the definition of the loop and transport UNEs gives [ALECs] access to the best spare fiber that Verizon has readily available, but it does not permit [them] to specify a standard of transmission capacity that exceeds the current capacity of the available fiber." *Virginia Arbitration Order* ¶ 468 (footnotes omitted). For this reason, Covad's proposed contract language should be rejected.

41. Should Verizon provide Covad access to unterminated, unlit fiber as a UNE? Should the dark fiber UNE include unlit fiber optic cable that has not yet been terminated on a fiber patch panel at a pre-existing Verizon Accessible Terminal?

*** Under federal law, Verizon's obligation to provide dark fiber is limited to fiber that is fully constructed, is physically connected to its facilities, and is easily called into service. Verizon is not required to construct new network elements for ALECs. ***

Verizon's proposed language is consistent with the FCC's regulations and orders defining dark fiber and should be adopted. Specifically, the *UNE Remand Order* defines dark fiber as "unused loop capacity that *is physically connected to facilities* that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by [ALECs] *without installation by the incumbent.*" *UNE Remand Order* ¶ 174 n.323 (emphases added). "Unterminated" fiber[76] — *i.e.*, fiber that has not been installed between two accessible terminals in Verizon's network (for example, between two end offices or between an end office and a customer premises) — does not meet this definition because it is *not* physically connected to facilities used to provide service and cannot be used *by anyone* without installation by Verizon. Indeed, the FCC expressly held that dark fiber must "connect[] two points within the incumbent

[76] "Unterminated" is Covad's term, not Verizon's. Verizon does not endorse the use of this term as it implies that Verizon has intentionally left fiber in an "almost complete" state in an effort to "hide" it from ALECs, which is not true. Albert/Shocket Direct at 5-6 (Hrg. Tr. at 133-34).

LEC's network" to be fully installed and available as a UNE. *UNE Remand Order* ¶ 325. Fiber that does not extend from one accessible terminal to another does not *connect* any point in the network to any other point in the network. Such fiber, therefore, does not fall within the FCC's definition of a network element: it is neither "physically connected to the incumbent's network [nor] *easily called into service.*" *Id.* ¶ 328 (emphasis added). Consistent with the FCC's definition, Verizon's proposed language states:

> Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF [interoffice facilities] are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad.

Revised Proposed Language Matrix at 17-18 (UNE Attachment § 8.2.2).

Covad, however, has proposed to strike this language, even though "unterminated" fiber is not a UNE, based on its claim that terminating fiber at an accessible terminal is "an inherently simple and speedy task," and that Verizon supposedly would "protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility." Covad Petition Attach. B at 16. Covad has no basis for making this statement. There is no evidence whatsoever in the record that Verizon has ever deliberately left fiber "unterminated" for the purpose of "protecting" it from lease as a UNE anywhere in its footprint — let alone in Florida, where Covad has conceded that it never attempted to order dark fiber.[77]

In fact, the record demonstrates that the opposite is true. Verizon does not construct new fiber optic facilities to the point where the *only* remaining work item required to make them

[77] Albert/Shocket Rebuttal at 1-2 (Hrg. Tr. 166-67); Albert/Shocket Depo. at 6 (Hrg. Tr. Exh. 7); Pennsylvania Transcript at 102-03 (Hrg. Tr. Exh. 1); Covad Response to Staff Interrog. Nos. 44 & 45 (Hrg. Tr. Exh. 3).

available and attached end-to-end to Verizon's network is to terminate the fibers onto fiber distributing frame connections at a Verizon central office or at the customer premises. *See* Albert/Shocket Direct at 11-12 (Hrg. Tr. at 140-41). Rather, if fiber strands have not been terminated on both ends, they are not yet fully constructed in the network and thus do not "go anywhere." *Id.*[78] Additional construction work, including pulling new lengths of fiber cable and splicing fiber end-to-end, would be required to complete the fiber route and terminate the fibers at both ends at accessible terminals. It is *not* simply a matter of terminating fibers at the accessible terminal, as Covad would have this Commission believe. *See* Albert/Shocket Rebuttal at 3-5 (Hrg. Tr. at 168-70) (describing the steps and procedures required for splicing fiber optic cable).

The law is clear that Verizon is not required to construct transmission facilities so that ALECs may access them at UNE rates, and thus it has no obligation under the 1996 Act to perform the splicing and other construction work to terminate fibers for Covad. The FCC's Wireline Competition Bureau held, in the *Virginia Arbitration Order*, that "the Act does not require [Verizon] to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for . . . other carriers." *Virginia Arbitration Order* ¶ 468. In doing

---

[78] Indeed, Covad's proposed contract language contradicts the testimony of its own witness. On the one hand, Covad continues to insist that Verizon terminate fibers for Covad in response to a UNE request, and has proposed specific language requiring Verizon to splice fibers end-to-end to terminate them at an accessible terminal. On the other hand, Covad's technical witness, Mr. Clancy, claimed that Covad does *not* want access to this "unterminated" fiber in Verizon's network:

> The fiber that [Verizon witness John White] described . . . that is laying in this building or laying in the manhole and I can't use it because it doesn't go anywhere? I don't want that fiber.

Pennsylvania Transcript at 132 (Hrg. Tr. Exh. 1).

so, the Bureau noted that Verizon is not required "to splice new routes in the field" for an ALEC, rejecting the same arguments presented by Covad here. *Id.* ¶ 457.

Nevertheless, Covad has attempted to add new language to § 8.2.1 of the UNE Attachment to compel Verizon to accelerate its construction of fiber facilities at Covad's request. That language reads:

> It is Verizon's standard practice that when a fiber optic cable is run into a building or remote terminal that all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. Should a situation occur in which a fiber optic cable that is run into a building or a remote terminal is found to not have all of its fibers terminated, then Verizon agrees to complete the termination of all fibers in conformance with its standard practices, and to do so as soon as reasonably practicable at the request of Covad.

Revised Proposed Language Matrix at 17 (UNE Attachment § 8.2.1). Covad has lifted this language from a proposal made two years ago in an arbitration proceeding between Verizon Pennsylvania Inc. ("Verizon PA"), formerly Bell Atlantic-Pennsylvania Inc., and Yipes Transmission, Inc. ("Yipes") before the Pennsylvania PUC. In doing so, however, Covad changed the language of the Yipes proposal in significant respects and omits substantial portions of the language that the Pennsylvania PUC *ordered* the parties to adopt, which expressly relieves Verizon PA of any duty to perform construction at Yipes' request.

As a threshold matter, Verizon PA's network construction practices (in a former Bell Atlantic jurisdiction) are not the same in all respects as Verizon's practices in Florida, which is a former GTE jurisdiction. Thus, Covad's attempt to import a statement about the former Bell Atlantic-Pennsylvania's standard practices from an interconnection agreement in Pennsylvania that never was executed to an interconnection agreement in Florida should be rejected on that basis alone.

Moreover, the language in the Pennsylvania PUC's order was the result of a larger compromise between Verizon PA and Yipes. As part of the compromise, Yipes made no

demand that Verizon PA splice new cable routes or otherwise perform construction on demand for Yipes, or that Verizon PA accelerate its own construction schedule for new fiber facilities. In fact, Yipes accepted contract language that limited dark fiber UNEs to "continuous" dark fiber strands, and agreed that Verizon would not be obligated to splice fiber end-to-end to complete a fiber route for Yipes. Most importantly, the language that the Pennsylvania PUC ultimately adopted to implement the parties' compromise "expressly relieves Verizon of a duty to accelerate construction at Yipes[']request"[79] — the polar *opposite* of what Covad is demanding in this arbitration.[80] Covad has no right to demand, for its contract with Verizon Florida, only *portions* of compromise language between Verizon PA and Yipes. Therefore, the Commission should reject Covad's proposed addition to § 8.2.1.

Finally, Covad has proposed to strike language in § 8.2.2 of the UNE Attachment that requires Covad to access dark fiber UNEs at hard termination points (*i.e.*, accessible terminals), and prevents Covad from obtaining access to dark fiber at splice points. Verizon's proposed language conforms to applicable law. A fiber that is accessed at a point other than an accessible terminal in a central office is a "subloop," not a "loop" or "IOF." The FCC's definition of the subloop network element prohibits access to dark fiber at splice points. *See* 47 C.F.R. §

---

[79] Opinion and Order, *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon Pennsylvania, Inc.*, Case No. A-310964, at 14 (Pa. PUC Oct. 12, 2001). The language ultimately adopted by the Pennsylvania PUC stated, *inter alia*, that "Verizon will not, at Yipes[']request, perform or accelerate the performance of any fiber construction." *Id.* at 13.

[80] As the Revised Proposed Language Matrix shows, Covad is insisting on several provisions that would require Verizon to perform splicing to create new fiber routes for Covad. *See* Revised Proposed Language Matrix at 15 (UNE Attachment § 8.1.4) (demanding that Verizon "splice strands of Dark Fiber IOF together wherever necessary, including in the outside plant network, to create a continuous Dark Fiber IOF strand between two Accessible Terminals"); *id.* at 18 (UNE Attachment § 8.2.3) ("Verizon will perform splicing or permit Covad to contract a Verizon approved vendor to perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.").

51.319(a)(2) ("The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable *without removing a splice case to reach the wire or fiber within.*") (emphasis added). The FCC's Wireline Competition Bureau recently confirmed that ALECs may only obtain access to dark fiber only at hard termination points, not splice points. *Virginia Arbitration Order* ¶¶ 451-453 (holding that access to dark fiber at splice points is not technically feasible and is not required under the FCC's rules).

For these reasons, Covad's proposed changes to § 8.2.1 and § 8.2.2 should be rejected and Verizon's proposed language should be adopted.

42. Under Applicable Law, is Covad permitted to access dark fiber in technically feasible configurations that do not fall within the definition of a Dark Fiber Loop, Dark Fiber Sub-Loop, or Dark Fiber IOF, as specified in the Agreement? Should the definition of Dark Fiber Loop include dark fiber that extends between a terminal located somewhere other than a central office and the customer premises?

*** Covad's proposed language should be rejected because it attempts to expand Covad's right to dark fiber network elements beyond those required under Applicable Law. ***

Covad has proposed language that purports to entitle it to obtain unbundled access to dark fiber in any "technically-feasible configuration[]," regardless of whether such a dark fiber "configuration" is one of the enumerated network elements that must be unbundled under the FCC's rules. Revised Proposed Language Matrix at 16 (UNE Attachment § 8.1.5). Covad's proposal is contrary to federal law and must be rejected by this Commission.

Under the FCC's rules, "dark fiber" is not a separate, stand-alone UNE. Rather, dark fiber is available to an ALEC *only* to the extent that it falls within the definition of one of the specifically designated UNEs set forth in 47 C.F.R. § 51.319(a) and (d) — in particular, the loop

network element, subloop network element, or interoffice facilities ("IOF").[81] Verizon's proposed contract language allows Covad to obtain access to dark fiber loops, dark fiber subloops, and dark fiber IOF, as the FCC defined those network elements. That is all that applicable law requires.

Nevertheless, Covad claims that even where dark fiber is not a loop, subloop, or IOF network element — though Covad offers no explanation as to what other unbundled network element it seeks to obtain — Verizon is compelled to provide access to that dark fiber whenever it is technically feasible to do so. To support its claim, Covad relies on language in § 251(c)(3) requiring "access to network elements on an unbundled basis at any technically feasible point." Covad Prehearing Statement at 16 (emphasis omitted). Covad puts the cart before the horse. Before an ILEC has an obligation to provide unbundled access to a particular network element under § 251(c)(3), the FCC must first determine *which* network elements must be unbundled, applying the "necessary" and "impair" standards under § 251(d)(2). Only then does the question of *where* an ALEC may access those network elements (*i.e.*, at a "technically feasible point") come into play. Indeed, the Supreme Court has rejected the same argument that Covad advances here, holding that ILECs are *not* required to provide unbundled access to a network element merely because it is "technically feasible" to do so. *See AT&T Corp.*, 525 U.S. at 391-92.

In an attempt to allay Covad's concerns, Verizon has agreed to include in § 8.1.5 of the UNE Attachment language stating that it will "provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law." Revised Proposed Language Matrix at 16 (UNE Attachment § 8.1.5). This language ensures that Covad's right to

[81] Section 51.319(a)(1) lists "dark fiber" as a "feature[], function[], and capabilit[y]" of the local loop network element. Section 51.319(d)(1)(ii) designates "dark fiber transport" as an "interoffice transmission facility" network element. There is no mention of any other dark fiber network elements in the FCC's rules.

access dark fiber under the Interconnection Agreement is coextensive with Applicable Law — which is all Covad is entitled to in an interconnection agreement arbitration under § 252 — but neither expands nor contracts either party's legal rights.

43. Should Verizon make available dark fiber that would require a cross connection between two strands of dark fiber in the same Verizon central office or splicing in order to provide a continuous dark fiber strand on a requested route? Should Covad be permitted to access dark fiber through intermediate central offices?

*** Under federal law, Verizon is not required to splice fiber strands at a CLEC's request; however, the parties have agreed to terms for cross-connecting two terminated dark fiber IOF strands at intermediate central offices, and Verizon has agreed to provide combinations of network elements in accordance with Applicable Law. ***

This issue, as initially presented, raised two distinct issues: (1) whether Verizon is required to splice new end-to-end fiber routes for Covad, and (2) whether Verizon will provide fiber optic cross-connects between two separate dark fiber network elements at an accessible terminal in a Verizon central office without requiring Covad to collocate in that central office. With respect to the first issue, the law is clear that Verizon is not required to splice new fiber routes for an ALEC, for the reasons set forth above in the discussion on Issue 41. If fiber optic strands must be spliced together end-to-end to create a continuous, uninterrupted transmission path, that fiber route is not yet fully constructed and does not meet the definition of dark fiber. *See Virginia Arbitration Order* ¶¶ 451-453 (noting that Verizon is not required to splice new fiber routes for ALECs).

With respect to the second issue, however, Verizon *will* cross-connect dark fiber IOF strands at intermediate central offices for Covad, and the parties have agreed to contract language to accommodate such a request. This aspect of Issue 43 is resolved. As Covad's witness stated at the Pennsylvania technical conference, "most of [Covad's] demand [for dark fiber] is going to be inter-office," Pennsylvania Transcript at 98 (Hrg. Tr. Exh. 1), and thus the

agreed-upon contract language should resolve the vast majority of Covad's need for fiber optic cross-connects in central offices.

However, during negotiations, Covad proposed language that would require Verizon to combine dark fiber IOF network elements with dark fiber loops by cross-connecting them at a Verizon central office (thus creating a dark fiber version of an enhanced extended loop, or "EEL"). Yet it is not clear that Verizon has an obligation to provide such combinations to ALECs under the FCC's rules, nor does Verizon currently have a standard product offering of dark fiber IOF transport combined with dark fiber loops.

Federal law does not compel Verizon to provide UNE combinations under all circumstances.[82] For example, the FCC has established local use restrictions that an ALEC must meet before it may order a UNE loop and transport combination and has held that these restrictions apply to combinations of dark fiber loops and dark fiber IOF.[83] In addition, as the Supreme Court explained, an ILEC must combine elements for an ALEC *only* when the ALEC is unable to do the combining itself, and must provide only the "functions necessary to combine" the elements, not necessarily the actual, completed combination. *Verizon Communications*, 535 U.S. at 535 (citing 47 C.F.R. § 51.315(c)-(d)). Covad's proposed language, however, would entitle Covad to obtain dark fiber combinations even when it does not satisfy the local use

---

[82] *See Verizon Communications Inc. v. FCC*, 535 U.S. 467, 535 (2002) ("The duties imposed under the [combining] rules are subject to restrictions limiting the burdens placed on the incumbents.").

[83] Memorandum Opinion and Order, *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, 17 FCC Rcd 26303, ¶ 369 (2002). The FCC's local use restriction prevents a carrier from substituting combinations of unbundled loop and transport network elements for special access services, unless such combinations are used to provide a significant amount of local exchange service. Supplemental Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760, ¶ 2 (1999).

restrictions and effectively eliminates *any* obligation on Covad's part to combine the network elements itself, even where Covad *already* has a collocation arrangement at which it easily could combine the loop and IOF. Covad's proposed language thus clearly conflicts with the requirements of federal law and should be rejected.

Verizon proposes a better approach. The parties have already agreed to language that permits Covad to request that Verizon combine two or more network elements, which includes the dark fiber network elements, "to the extent . . . required by Applicable Law." Covad Petition Attach. A at 89 (UNE Attachment § 16). Verizon's proposed language with respect to dark fiber expressly refers to § 16, as well as to § 8.1.5 and § 13,[84] thus making clear that Covad may request combinations of dark fiber network elements wherever it is entitled to do so under applicable law, which includes, among other things, the local use restrictions and the limitation on Verizon's obligation to combine elements for an ALEC, discussed above. Thus, Verizon's proposed contract language is coextensive with the requirements of applicable law, and neither expands nor contracts either party's legal rights.

46. To what extent must Verizon provide Covad with detailed dark fiber inventory information?

*** Under federal law, Verizon is required to, and does, provide Covad with only that dark fiber information it actually possesses; the language Covad has proposed requests information that Verizon does not (and, likely, cannot) possess. ***

As explained by Verizon's witnesses, Verizon provides fiber information to ALECs in three different ways — wire center fiber maps (which show street-level information on Verizon's

[84] Section 8.1.5 states that Verizon will "provide Covad with access to Dark Fiber in accordance with . . . Applicable Law," and § 13 includes agreed-upon provisions that apply when Covad seeks to order a UNE combination, like a dark fiber combination, for which Verizon does not have a standard product offering, but which Verizon is required to provide pursuant to applicable law. Revised Proposed Language Matrix at 16 (UNE Attachment § 8.1.5); Verizon Response Attach. A at 87-88 (UNE Attachment § 13).

loop fiber routes within a wire center), dark fiber inquiries (which show specific dark fiber availability between particular points, known as "A" and "Z" points, on the maps at a given point in time), and field surveys (which test the transmission characteristics of the fiber and physically verify the availability of specific fiber pairs). These three methods, in combination, are more than sufficient to permit Covad to determine dark fiber availability, and they mirror the process that Verizon uses to determine fiber availability for its own lit fiber services. Indeed, Verizon uses the same back office information to process dark fiber inquiries and field surveys that Verizon uses to assign fibers to Verizon's own lit fiber optic systems. *See* Albert/Shocket Rebuttal at 10 (Hrg. Tr. at 176). Moreover, the FCC has expressly held that the three types of dark fiber information described above satisfy Verizon's requirements under the 1996 Act.[85]

Although Covad initially sought arbitration on the language that Verizon has proposed relating to dark fiber inquiries and field surveys, the parties have subsequently reached agreement on those provisions. Therefore, the only disputed provision at issue here is § 8.2.20.1, which describes the type of fiber maps that Verizon will provide to Covad. In its original proposed contract language, Covad sought "maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction." As Verizon indicated in its pre-filed testimony and at the Pennsylvania technical conference, however, Verizon does not maintain such "maps" for its own use, and thus cannot provide such nonexistent "maps" for the cost of "reproduction." Albert/Shocket Direct at 17 (Hrg. Tr. at 145); Pennsylvania Transcript at 88 (Hrg. Tr. Exh. 1). Rather, Verizon agreed to provide fiber layout maps by wire center that would show the location

---

[85] *See Maryland/DC/West Virginia 271 Order* ¶ 125 (holding that "Verizon's provision of information allows competitors to construct dark fiber networks in a nondiscriminatory fashion" and that "the three types of information that Verizon makes available allow [ALECs] to do long range planning, check the availability of dark fiber and perform detailed engineering"); *Virginia 271 Order* ¶ 147.

of fiber facilities, which could be used in conjunction with dark fiber inquiries and field surveys to determine actual availability of dark fiber on a particular route. This language is reflected in Verizon's proposed § 8.2.20.1.

Covad, however, has now ratcheted up its demands for dark fiber information, importing bits and pieces of irrelevant language from proceedings in another state, and demanding information that Verizon does not have and that Covad does not need.

Indeed, likely reflecting the fact that Covad has never sought to obtain dark fiber in Florida, Covad's proposed language seeks access to "TIRKS data." Revised Proposed Language Matrix at 18 (UNE Attachment § 8.2.20.1). TIRKS, however, is an electronic inventory system used in the former Bell Atlantic jurisdictions only; Verizon Florida does not use TIRKS for its fiber facilities. *See* Raynor Depo. at 8 (Hrg. Tr. Exh. 8). Covad's proposed language in § 8.2.20.1 also seeks "field survey test data," Revised Proposed Language Matrix at 18 (UNE Attachment § 8.2.20.1), which Covad can already obtain pursuant to agreed-upon language that permits it to request field surveys for a time and materials charge.

In addition, Covad seeks access to "fiber transport maps . . . between any two points specified by the CLEC." *Id.* Verizon's proposed language, however, already provides Covad with access to fiber layout maps that show the street locations with fiber optic cable network. A "map" of IOF fiber would be nothing more than a "stick diagram" showing a line between two central offices. Pennsylvania Transcript at 101-02 (Hrg. Tr. Exh. 1). Verizon generally does not create such "stick diagrams" for its own use. Moreover, such "maps" are unnecessary under the parties' agreed-upon language with respect to routing dark fiber through intermediate central offices. Covad need only provide Verizon with its desired A-to-Z locations in a dark fiber inquiry; Verizon will then search its records and provide to Covad the most efficient dark fiber

route available between those two points, even if the route must go through intermediate central offices along the way. And, if no route is available on either a direct or indirect route, Verizon will identify for Covad the routes searched and the location of the first blocked segment along each route. Therefore, Verizon *already* provides Covad the information that it needs to obtain dark fiber between "any two points specified by" Covad. Creating superfluous "stick maps" of IOF fiber facilities on demand would serve no purpose.[86]

The bottom line is that Covad has never requested information about Verizon's dark fiber facilities in Florida, and it has not requested dark fiber *anywhere* in the Verizon footprint — including both former Bell Atlantic and former GTE jurisdictions — since 2001. Since the last time Covad placed a dark fiber order, however, Verizon has implemented substantial changes to its dark fiber inquiry and provisioning processes, which have been found by the FCC and other state commissions to comply with the requirements of the 1996 Act. There is no evidence in the record that the information that Verizon provides to ALECs in Florida — which is the same as in other states — is insufficient to permit Covad to determine the location and availability of dark

---

[86] In the same vein, Covad has added new contract language to the second sentence of its proposed § 8.2.20.1, which purportedly would require Verizon to provide, within 30 days of a request from Covad, maps and an additional litany of information about routes between any two points specified by Covad. Covad apparently lifted some of this language from conditions imposed by the Maine Public Utilities Commission ("Maine PUC") in Verizon's 271 proceeding in that state, but also added terms that were *not* imposed by the Maine PUC. In particular, Covad demands information about "the most direct and two alternative routes (where available)" for any two points specified by Covad within 30 days of a request, without any requirement that it first submit (and pay for) a dark fiber inquiry. Revised Proposed Language Matrix at 19 (UNE Attachment § 8.2.20.1). The Maine PUC, however, required Verizon to provide information about alternative routes if — and *only* if — a dark fiber inquiry revealed that no dark fiber was available between the two points requested by the ALEC.

Moreover, those conditions were imposed *before* Verizon had implemented its new dark fiber processes and procedures for intermediate office routing. As described above, Verizon and Covad have reached agreement on language providing for intermediate office routing that provides Covad with information about alternative routes.

fiber in Verizon's network. Therefore, the Commission should reject Covad's proposed language for § 8.2.20.1 of the UNE Attachment and adopt Verizon's proposal.

H. Pricing

51. If a UNE rate contained in the proposed Agreement is not found in a currently effective FCC or FPSC order or state or federal tariff, is Covad entitled to retroactive application of the effective FCC or FPSC rate either back to the date of this Agreement in the event that Covad discovers an inaccuracy in Appendix A to the Pricing Attachment (if such rates currently exist) or back to the date when such a rate becomes effective (if no such rate currently exists)? Will a subsequently filed tariff or tariff amendment, when effective, supersede the UNE rates in Appendix A to the Pricing Attachment?

*** Covad has not objected to any rates in Appendix A. Therefore, those rates are binding on the parties and Covad is not entitled to retroactive application of different rates. Furthermore, to ensure nondiscriminatory treatment of ALECs, tariff amendments should supersede both tariffed and non-tariffed rates in Appendix A. ***

This issue addresses the source of the rates for the unbundled network elements that Covad obtains from Verizon and the methods for modifying those rates. Verizon's proposed language establishes a hierarchy of sources for rates. First, rates shall be those stated in Verizon's tariffs. *See* Verizon Response Attach. A at 93 (Pricing Attach. § 1.3). Second, in the event that there is no tariffed rate, the rate shall be as stated in Appendix A. *See id.* (Pricing Attach. § 1.4). Third, in the event that a rate stated in Appendix A were to apply, that rate would be superseded by a rate in a later-filed tariff or in an order of this Commission or the FCC. *See id.* (Pricing Attach. § 1.5). Finally, additional provisions provide that, if a rate for a service is found in neither Verizon's tariff nor Appendix A, the rate shall be (in descending order of preference) the one expressly provided for elsewhere in the agreement, the FCC- or Commission-approved charge, or a charge mutually agreed to by the parties in writing. *See id.* (Pricing Attach. §§ 1.6-1.8).

In contrast, even though Covad has not objected to any of the specific rates in Appendix A to the Pricing Attachment (including rates that are set by reference to Verizon's tariffs), Covad seeks numerous revisions to Verizon's proposed language. For example, Covad has proposed to add language requiring Verizon to "warrant[] that the charges set forth in Appendix A . . . are . . . Commission or FCC approved charges." Revised Proposed Language Matrix at 19 (Pricing Attach. § 1.3). Covad further proposes language that would require Verizon, if the rates in Appendix A are not "Commission or FCC approved," to charge such rates on a retroactive basis (*i.e.*, "true up") from the effective date of the agreement.[87] Covad's proposed language should be rejected.

As noted above, Covad has not raised a dispute with respect to *any* of the rates contained in Appendix A. Although Verizon has attempted to conform the rates in Appendix A to the requirements of applicable law, Covad's failure to object to any of those rates means that they are binding upon the parties, even if they are not the Commission- or FCC-approved rates. *See* 47 U.S.C. § 252(a)(1) ("carrier[s] may negotiate and enter into a binding agreement . . . without regard to the standards set forth in [47 U.S.C. §§ 251(b)-(c)]"). Because the rates are "binding," Covad is not entitled to retroactive application of different rates, and Verizon has no obligation to issue any warranties with respect to those rates. Indeed, the 1996 Act makes it incumbent upon the ALEC to identify the specific issues for which it seeks arbitration. *See id.* § 252(b)(2)(A)(i) (ALEC petitioning for arbitration must "provide the State commission all relevant documentation concerning . . . the unresolved issues"). Covad cannot short-circuit the

[87] Despite the title of this issue, which suggests that Covad's proposed language would require Verizon to charge newly established Commission- or FCC-approved rates retroactive to the date the rate takes effect, not the effective date of the agreement, Covad has not modified its proposed language to conform to that description. *See* Revised Proposed Language Matrix at 19 (Pricing Attach. § 1.3).

1996 Act process by placing on Verizon the burden of warranting that provisions to which Covad raises no objections comply with the requirements of the Act.

This is particularly true with respect to those portions of Appendix A that cross-reference Verizon's tariffs. Verizon is legally obligated, under the filed rate doctrine, to charge the rates in its effective tariffs, regardless of whether the Commission or the FCC issued an order approving the rates or simply allowed the tariff to take effect. *See, e.g., In re Olympia Holding Corp.*, 88 F.3d 952, 956 (11th Cir. 1996) ("the filed rate must prevail as the only legal rate"); *see also Bella Boutique Corp. v. Venezolana Internacional de Aviacion, S.A.*, 459 So. 2d 440, 441 (Fla. DCA3 1984) ("A validly filed tariff . . . conclusively and exclusively governs the rights and liabilities between the parties."). Verizon therefore has no obligation to warrant that the rates in its effective tariffs were also approved by the Commission or the FCC; nor can it retroactively bill different rates in the absence of a Commission or FCC order issued under appropriate statutory authority.

Another change Covad has proposed is the deletion of the provision stating that subsequent tariff filings will supersede rates listed in Appendix A. *See* Revised Proposed Language Matrix at 19-20 (Pricing Attach. § 1.5). Covad's proposal is contrary to decisions in which this Commission has found that it is appropriate to include provisions in interconnection agreements that make specific reference to a tariff, so that subsequent tariff amendments also modify the interconnection agreement. *See Sprint-Verizon Arbitration Order* at 36-37. This Commission explained that an ALEC should not be able to place itself "in the unique position of not . . . being bound to Verizon's revised . . . tariff, while other ALEC competitors, who have not adopted the Sprint/Verizon agreement, would be bound by such revisions." *Id.* at 36. Moreover, this Commission "disagree[d]" with Sprint's claim that it would not have an adequate remedy if

its agreement were subject to modifications to Verizon's tariff, noting that Sprint "may petition this Commission to cancel any subsequent Verizon . . . tariff revisions" and that this Commission "can require a refund if the tariff is determined not to be in compliance." *Id.* at 37.

Verizon recognizes that, after the hearing in this proceeding, this Commission approved Staff's recommendation in the Verizon-US LEC arbitration that "subsequent tariff filings" should not "modify non-tariffed rates in the parties' final interconnection agreement." Staff US LEC Memorandum[88] at 50. Staff suggested that Verizon's proposed language — which is the same, with respect to this issue, as its proposed language here (although Covad's proposed changes differ from those US LEC proposed) — "would undermine the purpose of the parties signing a negotiated final agreement in which the parties have agreed to non-tariffed rates." *Id.* Covad, however, has not sought to negotiate rates unique to its agreement; instead, the rates contained in Appendix A are the standard rates that Verizon offers to all ALECs in Florida, which reflect Verizon's attempt to conform the rates to the requirements of applicable law. If Verizon later files a tariff modifying one of these non-tariffed rates, it will update Appendix A accordingly — for example, so that it cross-references the tariff. Therefore, unless those tariffed rates also apply to Covad's agreement, Covad could game the system by maintaining the rates in its older interconnection agreement, if they are more favorable than those available to all other ALECs in Florida under the current tariff.[89] This is contrary to the express nondiscrimination principle in the 1996 Act.[90]

---

[88] Staff Memorandum, *Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with Verizon Florida Inc. by US LEC of Florida Inc.*, Docket No. 020412-TP (Fla. PSC filed May 22, 2003) ("Staff US LEC Memorandum"), *approved*, Vote Sheet, Docket No. 020412-TP (Fla. PSC June 3, 2003).

[89] In the Staff US LEC Memorandum (at 50), Staff suggested that § 252(i) would ensure nondiscriminatory treatment of ALECs by permitting them to opt into the US LEC agreement, so that all ALECs could avoid the effect of a newly tariffed rate. Aside from the fact that Staff's

52. Should Verizon be required to provide Covad individualized notice of tariff revisions and rate changes?

*** Covad's proposal to require Verizon to provide individualized notice of non-tariffed rate changes after they take effect should be rejected. Covad has submitted no evidence demonstrating a need for such notice, which would be superfluous and unduly burdensome for Verizon to provide. ***

As the title of this issue suggests, Covad initially proposed language requiring Verizon to provide Covad with notice of tariff filings that change or establish new rates. *See* Covad Petition Attach. C at 26-27 (Pricing Attach. § 1.9). At the technical conference in New York, Verizon demonstrated (and Covad agreed) that it receives notice of such tariff filings. *See* New York Transcript at 253:4-6, 255:4-7 (Hrg. Tr. Exh. 2).

Covad has since revised its proposal and *now* seeks language that would require Verizon to provide Covad with "advance actual written notice . . . of any *non-tariffed* revisions that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A." Revised

---

proposed solution would exacerbate the gaming of the system described above, Staff's suggestion is incorrect for two reasons. First, once a new rate has been tariffed, an old rate contained in an existing interconnection agreement is no longer available for adoption under § 252(i). Under the FCC's rules, agreements are available under § 252(i) only for a "reasonable period of time," 47 C.F.R. § 51.809(c), which the FCC justified, in part, based on the fact that "pricing . . . [is] likely to change over time," First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 1319 (1996) ("*Local Competition Order*") (subsequent history omitted). Once a price has changed, it is no longer reasonable to let an ALEC opt into an agreement to obtain service at the old rate. Second, an ALEC cannot simply adopt a rate, but must also adopt all of the substantive terms and conditions reasonably related to that rate, making it unlikely that all ALECs would, even if permitted, opt into part of another ALEC's interconnection agreement to avoid paying the newly tariffed rate. *See Local Competition Order* ¶ 1315.

[90] Covad will likely rely on the *Virginia Arbitration Order*, but that decision actually supports Verizon's position here. In particular, the Bureau held that, under the parties' agreement, "if a commission establishes new rates, that would constitute a change in law, which the parties would be able to incorporate into the agreement pursuant to the change of law provisions of the contract." *Virginia Arbitration Order* ¶ 599. The Bureau declined to provide that all tariffed rates would *automatically* supersede rates arbitrated by the FCC, but only because the Virginia commission has stated that it refuses to apply federal law in its state proceedings. *See id.* ¶ 600.

Proposed Language Matrix at 20 (Pricing Attach. § 1.9) (emphasis added). This revised language, however, is superfluous — the other provisions of the agreement already obligate Verizon to provide such notice.

First, Appendix A, which both expressly sets forth prices and also cross-references Verizon's tariffs, could be changed by amending Appendix A. Covad would be a party to any such amendment; thus, there is no need for a provision requiring "advance actual written notice" of such a change. Indeed, to the extent that Appendix A cross-references Verizon's tariffs — which Verizon cannot change except through the filing of a tariff amendment — the only "non-tariffed revision[]" that Verizon could make would be to amend Appendix A itself.

Second, to the extent the agreement contains provisions that permit Verizon to establish new charges without filing a tariff, those provisions already independently offer Covad advance notification of such charges. For example, the agreement provides for the establishment of new charges if "required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC." Verizon Response Attach. A at 93 (Pricing Attach. § 1.5). Covad would clearly have independent notice of the Commission or FCC action approving such charges. The same is true of the provision that provides for rates to be established through "mutual[] agree[ment of] the Parties in writing." *Id.* (Pricing Attach. § 1.8).

Finally, Covad continues to propose language that would obligate Verizon to provide it with an updated Appendix A, for informational purposes only, within 30 days after a "non-tariffed revision[]" to the rates in the agreement becomes effective. Revised Proposed Language Matrix at 20 (Pricing Attach. § 1.9). Covad's proposed language should be rejected. Covad is as able as Verizon to make informational updates to Appendix A, and Verizon should not be

required to perform such administrative tasks on Covad's behalf.[91] Indeed, because Covad will receive notice of such rate changes *before* they take effect, there is no reason to require Verizon to notify Covad *after* they take effect as well. In any event, because Covad's language provides for notification of a change *after* it takes effect, Covad's suggestion that the additional notification it requests could enable it to determine whether it wants to challenge a Verizon tariff filing before it becomes effective is incorrect. *See* Evans/Clancy Direct at 39 (Hrg. Tr. at 46).

Covad, however, claims Verizon has a "track record of not notifying Covad regarding a new charge that will be assessed that is non-tariffed." Prehearing Order at 55. The only evidence Covad has presented to support this supposed "track record" consists of two instances in New York, the more recent of which is 16 months old. *See* Evans/Clancy Direct at 36-37 (Hrg. Tr. at 43-44). As with other issues in this arbitration, Covad identifies no instances in Florida in which Verizon supposedly failed to notify Covad of a new, non-tariffed charge. The two instances that Covad identifies — neither of which occurred in Florida or in the past year — are not evidence of any kind of systematic problem that would justify the adoption of Covad's language.[92]

---

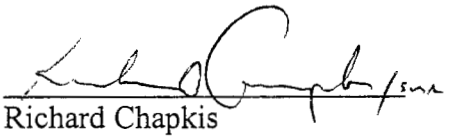
[91] Although Verizon does revise its Appendix A from time to time for interconnection agreement negotiation purposes, it does not do so "within 30 days" of a rate change becoming effective, which is the time frame Covad's proposed language specifies for the provision of an updated Appendix A. Revised Proposed Language Matrix at 20 (Pricing Attach. § 1.9). Sending out revised versions of Appendix A, even if only for informational purposes, imposes substantial administrative burdens and costs on Verizon, which must provide such documents not only to Covad, but also to every other ALEC in Florida that requests them. Because Covad has not provided any evidence suggesting — let alone proving — that updated versions of Appendix A are necessary to ensure that Covad has a meaningful opportunity to compete, its proposed language should be rejected.

[92] The FCC has repeatedly rejected ALECs' claims that such "isolated problems are sufficient to demonstrate that [an ILEC] fails to meet the statutory requirements." Memorandum Opinion and Order, *Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, ¶ 78 (1998); *see also, e.g., Maryland/DC/West Virginia 271 Order* ¶ 30 ("we find that such isolated incidents are not reflective of a systemic

III. CONCLUSION

For the foregoing reasons, Verizon's proposed language on the disputed issues in this arbitration should be adopted and Covad's proposed language should be rejected.

Respectfully submitted,



Richard Chapkis
Verizon Florida Inc.
201 North Franklin Street
Tampa, FL 33602
(813) 273-3000

Aaron M. Panner
Scott H. Angstreich
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Counsel for Verizon Florida Inc.

June 16, 2003

---

problem that would warrant a finding of checklist noncompliance"); *Virginia 271 Order* ¶ 57 ("we do not find that this isolated incident . . . rebuts Verizon's demonstration of checklist compliance"). Instead, the FCC "look[s] for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete." *New Jersey 271 Order* ¶ 137.

Attachment 1 — Unresolved Issues Chart

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
PHYSICAL ARCHITECTURE		
Issue I.A. Points of Interconnection (Section 1.51; Section 1 of Interconnection Attachment; Schedule 1)	1.51 POI (Point of Interconnection). The physical location where the Parties' respective facilities physically interconnect for the purpose of mutually exchanging their traffic. 1. General Each Party shall provide to the other Party, in accordance with this Agreement, but only to the extent required by Applicable Law, interconnection at (i) any technically feasible Point(s) of Interconnection on Verizon's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Telephone Exchange Service and Exchange Access. The Parties shall maintain their existing POIs at CLI's point of termination (POT) Bay at the Verizon Tandems in White Plains, Brentwood/Central Islip, Garden City, and Mineola for the exchange of traffic identified in Schedule 1, or the CLI POT Bay at the facilities where such other Verizon Tandems are located as CLI may designate. By way of example, a technically feasible Point of Interconnection on Verizon's network in a LATA would include a Verizon Tandem Wire Center or Verizon End Office Wire Center but, notwithstanding any other provision of this	1.51 POI (Point of Interconnection). The physical location where the Parties' respective facilities physically interconnect for the purpose of mutually exchanging their traffic. As set forth in the Interconnection Attachment, a Point of Interconnection shall be at (i) a technically feasible point on Verizon's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement. By way of example, a technically feasible Point of Interconnection on Verizon's network in a LATA would include an applicable Verizon Tandem Wire Center or Verizon End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a CLI Wire Center, CLI switch or any portion of a transport facility provided by Verizon to CLI or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of CLI or another party. 1. General Each Party shall provide to the other Party, in accordance with this Agreement, but only to the extent required by Applicable Law, interconnection at (i) any technically feasible Point(s) of Interconnection on Verizon's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Telephone Exchange Service and Exchange Access. By way of example, a technically feasible Point of Interconnection on Verizon's network in a LATA would include an applicable Verizon Tandem Wire Center or Verizon End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a CLI Wire Center, CLI switch or any portion of a transport facility provided by Verizon to CLI or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of CLI or another party. For avoidance of doubt, the foregoing sentence does not render a fiber

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	Agreement or otherwise, would not include a CLI Wire Center or a CLI switch or any portion of a transport facility provided by Verizon to CLI or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of CLI or another party. For avoidance of doubt, the foregoing sentence does not render a fiber meet point to which the Parties mutually agree under (ii) of the first sentence of this Section 1 an invalid Point of Interconnection. For brevity's sake, the foregoing examples of locations that, respectively, are and are not "on Verizon's network" shall apply (and are hereby incorporated by reference) each time the term "on Verizon's network" is used in this Attachment. *See also* Attachment 1C for Lightpath's Proposed Schedule 1.	meet point to which the Parties mutually agree under (ii) of the first sentence of this Section 1 an invalid Point of Interconnection. For further avoidance of doubt, Verizon Tandem and End Office Switches located at the Verizon Wire Centers housing CLI's collocation arrangements listed in Schedule 1 to this Interconnection Attachment constitute Points of Interconnection on Verizon's network for purposes of this Section 1. For brevity's sake, the foregoing examples of locations that, respectively, are and are not "on Verizon's network" shall apply (and are hereby incorporated by reference) each time the term "on Verizon's network" is used in this Attachment. *See also* Attachment 1D for Verizon's Proposed Schedule 1.
Issue I.B. Direct End Office Trunks (Section 2.2.5 of Interconnection Attachment)	2.2.5 In the event the One-Way Tandem-routed traffic volume between any two CLI and Verizon Central Office Switches at any time exceeds the CCS busy hour equivalent of three (3) DS-1s for any three (3) months, the originating Party will establish new one-way direct trunk groups to the applicable End Office(s) consistent with the grade of service parameters set forth in Section 5.5.	2.2.5 In the event the volume of traffic between a Verizon End Office and a technically feasible Point of Interconnection on Verizon's network in a LATA, which is carried by a Final Tandem Interconnection Trunk group, exceeds the Centium Call Second (Hundred Call Second) busy hour equivalent of one (1) DS-1 at any time and/or 200,000 minutes of use for a single month and, if One-Way Interconnection Trunks are used, the originating Party shall promptly submit an ASR to (strikethrough: Verizon) the terminating party to establish new or augment existing End Office One-Way Interconnection Trunk groups between the Verizon End Office and the technically feasible Point of Interconnection on Verizon's network.
Issue I.C. Limits on Lightpath Trunking at Verizon Tandems (Section 2.2.7 of Interconnection Attachment)	2.2.7 Verizon shall accord CLI the same interoffice trunking arrangement that Verizon utilizes in its own network, which would include the maintenance of diversity at the DS-3 and STS-1 level by both Parties to provide load balancing and network protection to eliminate single points of failure.	2.2.7 Intentionally Left Blank.

Attachment 1 — Unresolved Issues Chart

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
Issue I.D. Charges Beyond the POI (Section 7.1.2 of Interconnection Attachment)	7.1.2 These rates are to be applied at the technically feasible Point(s) of Interconnection on Verizon's network in a LATA at which the Parties interconnect, whether such traffic is delivered by Verizon for termination by CLI, or delivered by CLI for termination by Verizon. No additional charges, including port, transport or cross-connect charges, shall be assessed by the terminating Party for the transport and termination of such traffic from the technically feasible Point(s) of Interconnection on Verizon's network in a LATA to its Customer.	7.1.2 These rates are to be applied at the technically feasible Point(s) of Interconnection on Verizon's network in a LATA at which the Parties interconnect, whether such traffic is delivered by Verizon for termination by CLI, or delivered by CLI for termination by Verizon. No additional charges shall be assessed by the terminating Party for the transport and termination of such traffic from the technically feasible Point(s) of Interconnection on Verizon's network in a LATA to its Customer; provided, however, for the avoidance of any doubt, CLI shall also pay Verizon, at the rates set forth in the Pricing Attachment, for any Collocation related Services (including, for illustrative purposes, cross connects) that CLI obtains from Verizon.
Issue I.F. Forecasting (Section 14.2 of Interconnection Attachment)	14.2 Forecasting Requirements for Trunk Provisioning. Within ninety (90) days of executing this Agreement, each Party shall provide the other Party a two (2) year non-binding traffic forecast of outbound trunks. The forecast shall be updated and provided to each Party on an as-needed basis but no less frequently than semiannually. All forecasts shall comply with the Verizon CLEC Interconnection Trunking Forecast Guide. 14.2.1 Initial Forecasts/Trunking Requirements. For those LATAs where the Parties have not provisioned Traffic Exchange Trunks, CLI shall provide (in accordance with Section 14.2 of this Attachment), and Verizon will generally utilize, a non-binding trunk forecast (for both inbound and outbound traffic) to assist Verizon in determining the timing and sizing of the Verizon Traffic Exchange Trunks used to terminate traffic to Verizon, provided that CLI's forecast is based on reasonable engineering criteria.	14.2 Trunk Forecasting Requirements All forecasts shall comply with the Verizon CLEC Interconnection Trunking Forecast Guide and shall include, at a minimum: Access Carrier Terminal Location (ACTL), traffic type (Reciprocal Compensation Traffic/Toll Traffic, Operator Services, 911, etc.), code (identifies trunk group), A location/Z location (CLLI codes for applicable Verizon Tandem and End Office switches to which CLI wishes to exchange traffic and the technically feasible Points of Interconnection on Verizon's network in a LATA at which the Parties will interconnect), interface type (e.g., DS1), and trunks in service each year (cumulative). 14.2.1 Initial trunk forecast requirements. Verizon will be largely dependent on CLI to provide accurate trunk forecasts for both inbound (from Verizon) and outbound (to Verizon) traffic, because Verizon's trunking requirements will at least during an initial period, be dependent on the Customer segments and service segments within Customer segments to whom CLI decides to market its services. Unless otherwise agreed to by the Parties, within ninety (90) days of executing this Agreement CLI shall provide Verizon a two (2)-year traffic forecast. This initial forecast will provide the amount

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
		of traffic to be delivered to and from Verizon over each of the Interconnection Trunk groups over the next eight (8) quarters. The initial forecast shall be provided in instances such as: (i) CLI arrangements in a state or LATA(s) which CLI was not interconnected previously with Verizon; (ii) CLI plans on using a new switch; (iii) CLI has a new POI/architecture; (iv) any new major activity relating to CLI or any other situation of major significance relating to CLI(e.g., rearrangements).
	14.2.1.1 Monitoring and Adjusting Forecasts. Verizon will, for ninety (90) days, monitor traffic on each trunk group that it establishes at CLI's suggestion or request pursuant to the procedures identified in Section 14.2 of this Attachment. Unless the Parties agree otherwise, the Parties will adhere to the ordering and provisioning guidelines of the OBF for trunk ordering and servicing as implemented by Verizon in accordance with the Change Management Process, as amended, modified, clarified, or supplemented from time to time. For the avoidance of any doubt, Verizon shall not disconnect trunks and/or trunk groups until it receives a Firm Order Confirmation (FOC) from CLI, which CLI shall provide within ten (10) calendar days of receipt of Verizon's ASR. If the Parties are unable to agree on whether certain trunks or trunk groups should be disconnected, then either party may submit the issue to the Dispute Resolution process in accordance with Section 9 of this Agreement. 14.2.1.2 In subsequent periods, Verizon may also monitor traffic for ninety (90) days on additional trunk groups that CLI suggests or requests Verizon to establish. Unless the Parties agree otherwise, the Parties will adhere to the ordering and provisioning guidelines of the OBF for trunk ordering and servicing as implemented by Verizon in accordance with the Change Management Process, as amended, modified, clarified, or supplemented from time to time. For the avoidance of any doubt, Verizon shall not disconnect trunks and/or trunk groups until it receives a Firm Order Confirmation (FOC) from CLI, which CLI shall provide within ten (10) calendar days of receipt of Verizon's ASR. If the Parties are unable to agree on whether certain trunks	14.2.2 Ongoing trunk forecast requirements. For embedded interconnection arrangements or interconnection arrangements past the initial period, upon request, either party may request a joint planning meeting and the other party shall comply to meet periodically, as needed, to: (i) review data on End Office and Tandem Interconnection Trunks and (ii) to determine the need to make trunk forecast adjustments for new, augments, or disconnects of trunks or trunk groups, as required. 14.2.3 When CLI expressly identifies particular situations that are expected to produce traffic that is substantially skewed in either the inbound or outbound direction, Verizon will provide the number of trunks CLI suggests; provided, however, that in all cases Verizon's provision of the forecasted number of trunks to CLI is conditioned on the following: that such forecast is based on reasonable engineering criteria, there are no capacity constraints and CLI's previous forecasts have proven to be reliable and accurate.

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	or trunk groups should be disconnected, then either party may submit the issue to the Dispute Resolution process in accordance with Section 9 of this Agreement.	
RECIPROCAL COMPENSATION		
Issue II.A. Definition of Reciprocal Compensation and Section 251(b)(5) Traffic (Sections 1.59 and 1.60)	1.59 Reciprocal Compensation or Section 251(b)(5) Traffic. The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order, other applicable FCC orders and FCC Regulations, the New York Public Service Commission Opinion No. 99-10 in Case 99-C-0529, and related binding judicial decisions, the costs incurred for the transport and termination of telecommunications traffic, including Extended Area Service (EAS) traffic, originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment). 1.60 Intentionally Left Blank.	1.59 Reciprocal Compensation. The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order, other applicable FCC orders and FCC Regulations, and related binding judicial decisions, the costs incurred for the transport and termination of Reciprocal Compensation Traffic originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment). 1.60 Reciprocal Compensation Traffic. A call completed between two Telephone Exchange Service Customers of the Parties located in the same LATA, originated on one Party's network and terminated on the other Party's network where such call was not carried by a third party carrier during the course of the call or carried by a Party as either a presubscribed call (1+) or a casual dialed (10XXX or 1010XXXX) call originated by a Telephone Exchange Customer of another carrier. Reciprocal Compensation Traffic does not include the following traffic (it being understood that certain traffic types will fall into more than one (1) of the categories below that do not constitute Reciprocal Compensation Traffic): (1) any ISP-Bound Traffic; (2) Toll Traffic; (3) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (4) Tandem Transit Traffic; (5) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment); or, (6) Virtual Foreign Exchange Traffic (or V/FX Traffic)(as defined in the Interconnection Attachment).
Issue II.B.	1.29 Intentionally Left Blank.	1.29 Information Access.

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
ISP-Bound Traffic and Information Access (Sections 1.29, 1.30; Section 8.5 of Interconnection Attachment)		The provision of specialized exchange telecommunications services in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services, including a provider of Internet access or Internet transmission services.
	1.30 ISP-Bound Traffic. As defined in the FCC Internet Order.	1.30 ISP-Bound Traffic. Any traffic that is transmitted to or returned from the Internet at ay point during the duration of the transmission.
	8.5 Intentionally Left Blank.	8.5 The Parties may also exchange ISP-Bound Traffic at the technically feasible Point(s) of Interconnection on Verizon's network in a LATA established hereunder for the exchange of Reciprocal Compensation Traffic. Any intercarrier compensation that may be due in connection with the Parties' exchange of ISP-Bound Traffic shall be applied at such technically feasible Point of Interconnection on Verizon's network in a LATA in accordance with the FCC Internet Order.
Issue II.C. Types of Traffic Subject to Compensation (Sections 1.59, 1.60; Sections 7.1.3, 7.1.4, 7.2.1, 7.2.2, 7.2.3, 7.2.6, and 8.3 of Interconnection Attachment)	1.59 Reciprocal Compensation or Section 251(b)(5) Traffic. The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order, other applicable FCC orders and FCC Regulations, the New York Public Service Commission Opinion No. 99-10 in Case 99-C-0529, and related binding judicial decisions, the costs incurred for the transport and termination of telecommunications traffic, including Extended Area Service (EAS) traffic, originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment).	1.59 Reciprocal Compensation. The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order, other applicable FCC orders and FCC Regulations, and related binding judicial decisions, the costs incurred for the transport and termination of Reciprocal Compensation Traffic originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment).
	1.60 Intentionally Left Blank.	1.60 Reciprocal Compensation Traffic. A call completed between two Telephone Exchange Service Customers of the Parties located in the same LATA, originated on one Party's network and terminated on the other Party's network

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
		where such call was not carried by a third party carrier during the course of the call or carried by a Party as either a presubscribed call (1+) or a casual dialed (10XXX or 1010XXXX) call originated by a Telephone Exchange Customer of another carrier. Reciprocal Compensation Traffic does not include the following traffic (it being understood that certain traffic types will fall into more than one (1) of the categories below that do not constitute Reciprocal Compensation Traffic): (1) any ISP-Bound Traffic; (2) Toll Traffic; (3) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (4) Tandem Transit Traffic; (5) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment); or, (6) Virtual Foreign Exchange Traffic (or V/FX Traffic)(as defined in the Interconnection Attachment).
	7.1.3 When such Section 251(b)(5) Traffic is delivered over the same Interconnection Trunks as IXC Toll Traffic, any port, transport or other applicable access charges related to the delivery of Toll Traffic from the technically feasible Point of Interconnection on Verizon's network in a LATA to the terminating Party's Customer shall be prorated so as to apply only to the IXC Toll Traffic.	7.1.3 When such Reciprocal Compensation Traffic is delivered over the same Interconnection Trunks as Toll Traffic, any port, transport or other applicable access charges related to the delivery of Toll Traffic from the technically feasible Point of Interconnection on Verizon's network in a LATA to the terminating Party's Customer shall be prorated so as to apply only to the Toll Traffic. The designation of traffic as Reciprocal Compensation Traffic for purposes of Reciprocal Compensation shall be based on the actual originating and terminating points of the complete end-to-end communication.
	7.1.4 Notwithstanding any other provision of this Agreement, the TCG Terms or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of ISP-Bound Traffic shall be consistent with the FCC Internet Order, other applicable FCC orders and FCC Regulations, the New York Public Service Commission Opinion No. 99-10 in Case 99-C-0529, and related binding judicial decisions; and, (b) a Party shall not be obligated to pay any intercarrier compensation for ISP-Bound Traffic that is in excess of the intercarrier compensation for ISP-Bound Traffic that such Party is required to pay under the FCC Internet Order,	7.1.4 Notwithstanding any other provision of this Agreement, the TCG Terms or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of ISP-Bound Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations binding; and, (b) a Party shall not be obligated to pay any intercarrier compensation for ISP-Bound Traffic that is in excess of the intercarrier compensation for ISP-Bound Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations binding.

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	other applicable FCC orders and FCC Regulations, New York Public Service Commission Opinion No. 99-10 in Case 99-C-0529, and related binding judicial decisions, unless the Party has met the rebuttable presumption established by the New York Public Service Commission in Opinion 99-10 in Case 99-C-0529.	
	7.2.1 Reciprocal Compensation shall not apply to exchange access, information access, and exchange services for exchange access or information access as defined by Section 251(g) of the Act.	7.2.1 Reciprocal Compensation shall not apply to Exchange Access (including, without limitation, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic)), interLATA traffic (including, without limitation, Foreign Exchange Traffic (i.e. V/FX Traffic) that traverses LATA boundaries), Information Access, or exchange services for Exchange Access or Information Access.
	7.2.2 Intentionally Left Blank.	7.2.2 Reciprocal Compensation shall not apply to ISP-Bound Traffic.
	7.2.3 Reciprocal Compensation shall not apply to Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis.	7.2.3 Reciprocal Compensation shall not apply to Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis.
	7.2.6 Intentionally Left Blank.	7.2.6 Reciprocal Compensation shall not apply to Tandem Transit Traffic.
	8.3 Intentionally Left Blank.	8.3 For any traffic originating with a third party carrier and delivered by CLI to Verizon, CLI shall pay Verizon the same amount that such third party carrier would have been obligated to pay Verizon for termination of that traffic at the location the traffic is delivered to Verizon by CLI.
Issue II.D. Foreign Exchange	6.5 Intentionally Left Blank.	6.5 If and, to the extent that, a CLI Customer receives V/FX Traffic, CLI shall promptly provide notice thereof to Verizon (such notice to include, without limitation, the specific telephone

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
("FX") Traffic (Sections 6.5, 7.2.1, and 7.2.9 of Interconnection Attachment)		number(s) that the Customer uses for V/FX Traffic, as well as the LATA in which the Customer's station is actually physically located) and shall not bill Verizon Reciprocal Compensation, intercarrier compensation or any other charges for calls placed by Verizon's Customers to such CLI Customers.
	7.2.1 Reciprocal Compensation shall not apply to exchange access, information access, and exchange services for exchange access or information access as defined by Section 251(g) of the Act.	7.2.1 Reciprocal Compensation shall not apply to Exchange Access (including, without limitation, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic)), interLATA traffic (including, without limitation, Foreign Exchange Traffic (i.e. V/FX Traffic) that traverses LATA boundaries), Information Access, or exchange services for Exchange Access or Information Access.
	7.2.9 Intentionally Left Blank.	7.2.9 Reciprocal Compensation shall not apply to Virtual Foreign Exchange Traffic (i.e., V/FX Traffic). As used in this Agreement, "Virtual Foreign Exchange Traffic" or "V/FX Traffic" is defined as calls in which a CLI Customer is assigned a telephone number with an NXX Code assigned to a Verizon Rate Center Area (as set forth in the LERG) that is different than the Verizon Rate Center Area (based on Verizon's tariff) associated with the actual physical location of such Customer's station. "InterLATA V/FX Traffic" and "intraLATA V/FX Traffic" refer to V/FX Traffic where the actual physical location of the called party's station is, respectively, in a different LATA than, or in the same LATA as (but in a different Verizon Rate Center Area than) the location of the calling party's station. For the avoidance of any doubt, and provided that Applicable Law requires Reciprocal Compensation to be paid on a LATA-wide basis in New York, CLI shall pay: (i) Verizon's originating access charges for all interLATA V/FX Traffic originated by a Verizon Customer; (ii) Verizon's terminating access charges for all interLATA V/FX Traffic originated by a CLI Customer; and (iii) Verizon's originating access-rated transport charges for intraLATA V/FX Traffic originated by a Verizon Customer. For further avoidance of doubt, if Applicable Law does not require Reciprocal Compensation to be paid on a LATA-wide basis in New York, CLI shall pay Verizon's originating access charges for all V/FX Traffic originated by a Verizon Customer, and CLI shall pay

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
		Verizon's terminating access charges for all V/FX Traffic originated by a CLI Customer.
Issue II.E. Measurement and Billing of Traffic (Sections 1.41, 1.50a, 1.50b, 1.76 and 1.77; Section 6.2 of Interconnection Attachment)	1.41 Intentionally Left Blank.	1.41 Measured ISP-Bound Traffic. Dial-up, switched ISP-Bound Traffic originated by a Customer of one Party ("Originating Party") on that Party's network at a point in a LATA, and delivered to a Customer or an Internet Service Provider served by the other Party ("Receiving Party"), on that other Party's network at a point in the same LATA. Measured ISP-Bound Traffic does not include: (1) any traffic that is carried by a third party carrier at any point between the Customer of the Originating Party and the Customer or Internet Service Provider served by the Receiving Party; or, (2) traffic that is carried by a Party as either a presubscribed call (1+) or a casual dialed (10XXX/101XXXX) call originated by a Telephone Exchange Customer of another carrier. For the avoidance of any doubt, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic) (as defined in the Interconnection Attachment) does not constitute Measured ISP-Bound Traffic.
	1.50(a) Percent Interstate Usage ("PIU"). A factor that is used to determine the interstate portion of minutes of traffic exchanged via Traffic Exchange Trunks. PIU is developed from the measurement of calls in which the calling and called parties are not located within the same state. PIU is the first such factor applied to traffic for jurisdictional separation of traffic.	1.76 Traffic Factor 1. For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the number of minutes of interstate traffic (excluding Measured ISP-Bound Traffic) by the total number of minutes of interstate and intrastate traffic. ([Interstate Traffic Total Minutes of Use {excluding Measured ISP-Bound Traffic Total Minutes of Use} ÷ {Interstate Traffic Total Minutes of Use + Intrastate Traffic Total Minutes of Use}] x 100). Until the form of a Party's bills is updated to use the term "Traffic Factor 1," the term "Traffic Factor 1" may be referred to on the Party's bills and in billing related communications as "Percent Interstate Usage" or "PIU."
	1.50(b) Percent Local Usage ("PLU"). A factor that is used to determine the portion of traffic exchanged via Traffic Exchange Trunks that is made up of Section 251(b)(5) Traffic minutes. PLU, in New York, is developed from the measurement of calls in which the calling and called party are	1.77 Traffic Factor 2. For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the combined total number of minutes of Reciprocal Compensation Traffic and Measured ISP-Bound Traffic by the combined total number of minutes of intrastate

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	located within a given LATA. The PLU factor is applied to traffic only after the PIU factor has been applied for jurisdictional separation of traffic.	traffic and Measured ISP-Bound Traffic. ([{Reciprocal Compensation Traffic Total Minutes of Use + Measured ISP-Bound Traffic Total Minutes of Use} ÷ {Intrastate Traffic Total Minutes of Use + Measured ISP-Bound Traffic Total Minutes of Use}] x 100). Until the form of a Party's bills is updated to use the term "Traffic Factor 2," the term "Traffic Factor 2" may be referred to on the Party's bills and in billing related communications as "Percent Local Usage" or "PLU."
	6.2 At such time as a receiving Party has the capability, on an automated basis, to use such CPN to classify traffic delivered over Interconnection Trunks by the other Party by Traffic Rate type (e.g., Section 251(b)(5) Traffic/, intrastate Switched Exchange Access Service, interstate Switched Exchange Access Service, or intrastate/interstate Tandem Transit Traffic), such receiving Party shall bill the originating Party the Traffic Rate applicable to each relevant minute of traffic for which CPN is passed. If the receiving Party lacks the capability, on an automated basis, to use CPN information on an automated basis to classify traffic delivered by the other Party by Traffic Rate type, the originating Party will supply an auditable Percent Interstate Usage (PIU) and Percent Local Usage (PLU). PIU/PLU shall be supplied in writing by the originating Party within thirty (30) days of the Effective Date and shall be updated in writing by the originating Party quarterly. Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds (the time in seconds that the Parties equipment is used for a completed call, measured from the receipt of answer supervision to the receipt of disconnect supervision). Measurement of billing minutes for originating toll free service access code (e.g., 800/888/877) calls shall be in accordance with applicable Tariffs. Determination as to whether traffic is Section 251(b)(5) Traffic or shall be made in accordance with the FCC Internet Order and other binding related rulings or judicial decisions.	6.2 At such time as a receiving Party has the capability, on an automated basis, to use such CPN to classify traffic delivered over Interconnection Trunks by the other Party by Traffic Rate type (e.g., Reciprocal Compensation Traffic/Measured ISP-Bound Traffic, intrastate Switched Exchange Access Service, interstate Switched Exchange Access Service, or intrastate/interstate Tandem Transit Traffic), such receiving Party shall bill the originating Party the Traffic Rate applicable to each relevant minute of traffic for which CPN is passed. If the receiving Party lacks the capability, on an automated basis, to use CPN information on an automated basis to classify traffic delivered by the other Party by Traffic Rate type, the originating Party will supply Traffic Factor 1 and Traffic Factor 2. The Traffic Factors shall be supplied in writing by the originating Party within thirty (30) days of the Effective Date and shall be updated in writing by the originating Party quarterly. Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds (the time in seconds that the Parties equipment is used for a completed call, measured from the receipt of answer supervision to the receipt of disconnect supervision). Measurement of billing minutes for originating toll free service access code (e.g., 800/888/877) calls shall be in accordance with applicable Tariffs. Determination as to whether traffic is Reciprocal Compensation Traffic or Measured ISP-Bound Traffic shall be made in accordance with the FCC Internet Order and other binding related rulings or judicial decisions.
Issue II. Definition of	1.67 Switched Exchange Access Service. The offering of transmission and switching services for the	1.67 Switched Exchange Access Service. The offering of transmission and switching services for the

Attachment 1 — Unresolved Issues Chart

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
Switched Exchange Access Service (Section 1.67)	purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.	purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.
Issue II. Definition of Toll Traffic (Section 1.74)	1.74 Toll Traffic. Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Section 251(b)(5) Traffic or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic," depending on whether the originating and terminating points are within the same LATA.	1.74 Toll Traffic. Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Reciprocal Compensation Traffic, Measured ISP-Bound Traffic, or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are within the same LATA.
Issue II. Databases & Signaling (Section 2.5)	2.5 The Parties will provide CCS Signaling to each other, where and as available, in conjunction with all Section 251(b)(5) Traffic, Toll Traffic, Meet Point Billing Traffic, and Transit Traffic. The Parties will cooperate on the exchange of TCAP messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its Customers. All CCS Signaling parameters will be provided upon request (where available), including called party number, Calling Party Number, originating line information, calling party category, and charge number. All privacy indicators will be honored as required under applicable law.	2.5 The Parties will provide CCS Signaling to each other, where and as available, in conjunction with all Reciprocal Compensation Traffic, Toll Traffic, Meet Point Billing Traffic, and Transit Traffic. The Parties will cooperate on the exchange of TCAP messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its Customers. All CCS Signaling parameters will be provided upon request (where available), including called party number, Calling Party Number, originating line information, calling party category, and charge number. All privacy indicators will be honored as required under applicable law.
Issue II. Voice Information Service Traffic (Section 3.1)	3.1 For purposes of this Section 3, (a) Voice Information Service means a service that provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public, and (b) Voice Information Service Traffic means intraLATA switched voice traffic, delivered to a Voice Information Service. Voice Information Service Traffic does not include any form of ISP-Bound Traffic. Voice Information Service Traffic also does not include 555 traffic or similar traffic with AIN service interfaces, which traffic shall be subject to separate arrangements between the Parties. Voice Information Service Traffic is not	3.1 For purposes of this Section 3, (a) Voice Information Service means a service that provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public, and (b) Voice Information Service Traffic means intraLATA switched voice traffic, delivered to a Voice Information Service. Voice Information Service Traffic does not include any form of ISP-Bound Traffic. Voice Information Service Traffic also does not include 555 traffic or similar traffic with AIN service interfaces, which traffic shall be subject to separate arrangements between the Parties. Voice Information Service Traffic is not

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	subject to Reciprocal Compensation charges under Section 7 of the Interconnection Attachment to this Agreement.	subject to Reciprocal Compensation charges under Section 7 of the Interconnection Attachment to this Agreement.
Issue II. Interconnection Trunks (Section 2.2.1.1)	2.2.1.1 Interconnection Trunks for the transmission and routing of Section 251(b)(5) Traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Telephone Exchange Service Customers, and Tandem Transit Traffic, all in accordance with Sections 5 through 8 of this Attachment;	2.2.1.1 Interconnection Trunks for the transmission and routing of Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Telephone Exchange Service Customers, Tandem Transit Traffic, and Measured ISP-Bound Traffic, all in accordance with Sections 5 through 8 of this Attachment;
Issue II. Fiber Meets (Section 3.3 of Interconnection Attachment)	3.3 Except as otherwise agreed by the Parties, Fiber Meet arrangements shall be used only for the termination of Section 251(b)(5) Traffic, and IntraLATA Toll Traffic.	3.3 Except as otherwise agreed by the Parties, Fiber Meet arrangements shall be used only for the termination of Reciprocal Compensation Traffic, Measured ISP-Bound Traffic, and IntraLATA Toll Traffic.
Issue II. Calling Party Number (Sections 6.1.1 and 6.1.3)	6.1.1 As used in this Section 6, "Traffic Rate" means the applicable Section 251(b)(5) Traffic rate, intrastate Switched Exchange Access Service rate, interstate Switched Exchange Access Service rate, or intrastate/interstate Tandem Transit Traffic rate, as provided in the Pricing Attachment or an applicable Tariff. 6.1.3 If the originating Party passes CPN on less than ninety percent (90%) of its calls and the originating Party chooses to combine Section 251(b)(5) Traffic and Toll Traffic on the same trunk group, the receiving Party shall bill the higher of its interstate Switched Exchange Access Service rates or its intrastate Switched Exchange Access Services rates for all traffic that is passed without CPN, unless the Parties agree that other rates should apply to such traffic.	6.1.1 As used in this Section 6, "Traffic Rate" means the applicable Reciprocal Compensation Traffic rate, Measured ISP-Bound Traffic rate, intrastate Switched Exchange Access Service rate, interstate Switched Exchange Access Service rate, or intrastate/interstate Tandem Transit Traffic rate, as provided in the Pricing Attachment, an applicable Tariff, or for Measured ISP-Bound Traffic, the FCC Internet Order. 6.1.3 If the originating Party passes CPN on less than ninety percent (90%) of its calls and the originating Party chooses to combine Reciprocal Compensation Traffic and Toll Traffic on the same trunk group, the receiving Party shall bill the higher of its interstate Switched Exchange Access Service rates or its intrastate Switched Exchange Access Services rates for all traffic that is passed without CPN, unless the Parties agree that other rates should apply to such traffic.
Issue II. Exchange of Reciprocal	7.1 Reciprocal Compensation. The Parties shall exchange Section 251(b)(5) Traffic at the technically feasible Point(s) of Interconnection on Verizon's	7.1 Reciprocal Compensation. The Parties shall exchange Reciprocal Compensation Traffic at the technically feasible Point(s) of Interconnection on Verizon's

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
Compensation Traffic (7.1)	network in a LATA designated in accordance with the terms of this Agreement.	network in a LATA designated in accordance with the terms of this Agreement.
PRICING		
Issue III.A. Reciprocal Compensation Rate (Sections 7.1.1, 7.1.4, and 7.3 of Interconnection Attachment; Note 2 of Pricing Appendix)	7.1.1 The Party originating Section 251(b)(5) Traffic shall compensate the terminating Party for the transport and termination of such traffic to its Customer in accordance with Section 251(b)(5) of the Act at the equal and symmetrical rates stated in the Pricing Attachment; it being understood and agreed that Verizon shall charge (and CLI shall pay Verizon) the End Office Reciprocal Compensation rate set forth in the Pricing Attachment for Section 251(b)(5) Traffic CLI physically delivers to a POI via direct End Office Interconnection Trunks, and otherwise that Verizon shall charge (and CLI shall pay Verizon) the Tandem Reciprocal Compensation rate set forth in the Pricing Attachment for Section 251(b)(5) Traffic CLI delivers to Verizon via Tandem Interconnection Trunks; it also being understood and agreed that CLI shall charge (and Verizon shall pay CLI) the Tandem Reciprocal Compensation rate set forth in the Pricing Attachment for Section 251(b)(5) Traffic Verizon delivers to CLI. 7.1.4 Notwithstanding any other provision of this Agreement, the TCG Terms or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of ISP-Bound Traffic shall be consistent with the FCC Internet Order, other applicable FCC orders and FCC Regulations, the New York Public Service Commission Opinion No. 99-10 in Case 99-C-0529, and related binding judicial decisions; and, (b) a Party shall not be obligated to pay any intercarrier compensation for ISP-Bound Traffic that is in excess of the intercarrier compensation for ISP-Bound Traffic that such Party is required to pay under the FCC Internet Order,	7.1.1 The Party originating Reciprocal Compensation Traffic shall compensate the terminating Party for the transport and termination of such traffic to its Customer in accordance with Section 251(b)(5) of the Act at the equal and symmetrical rates stated in the Pricing Attachment; it being understood and agreed that Verizon shall charge (and CLI shall pay Verizon) the End Office Reciprocal Compensation rate set forth in the Pricing Attachment for Reciprocal Compensation Traffic CLI physically delivers to a POI at the Verizon Wire Center in which the terminating Verizon End Office is located, and otherwise that Verizon shall charge (and CLI shall pay Verizon) the Tandem Reciprocal Compensation rate set forth in the Pricing Attachment for Reciprocal Compensation Traffic CLI delivers to Verizon; it also being understood and agreed that CLI shall charge (and Verizon shall pay CLI) the End Office Reciprocal Compensation rate set forth in the Pricing Attachment for Reciprocal Compensation Traffic Verizon delivers to CLI, unless Verizon is required under Applicable Law to pay the Tandem Reciprocal Compensation rate set forth in the Pricing Attachment. 7.1.4 Notwithstanding any other provision of this Agreement, the TCG Terms or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of ISP-Bound Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations binding; and, (b) a Party shall not be obligated to pay any intercarrier compensation for ISP-Bound Traffic that is in excess of the intercarrier compensation for ISP-Bound Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations binding.

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	other applicable FCC orders and FCC Regulations, New York Public Service Commission Opinion No. 99-10 in Case 99-C-0529, and related binding judicial decisions, unless the Party has met the rebuttable presumption established by the New York Public Service Commission in Opinion 99-10 in Case 99-C-0529. 7.3 Intentionally Left Blank. *See* Attachment 1A for Lightpath's Proposed Pricing Appendix.	7.3 The Reciprocal Compensation rates (including, but not limited to, the Reciprocal Compensation per minute of use charges) billed by CLI to Verizon shall not exceed the Reciprocal Compensation rates (including, but not limited to, Reciprocal Compensation per minute of use charges) billed by Verizon to CLI. *See* Attachment 1B for Verizon's Proposed Pricing Appendix.
Issue III.B. Restrictions on Lightpath Rates (Section 2.11; Section 3 of Pricing Attachment)	2.11 Each Party shall charge the other Party mutual and reciprocal rates for any usage-based charges for CCS Signaling, toll free service access code (e.g., 800/888/877) database access, LIDB access, and access to other necessary databases, as follows: Verizon shall charge CLI in accordance with the Pricing Attachment and the terms and conditions in applicable Tariffs. CLI shall charge Verizon rates equal to the rates Verizon charges CLI, unless CLI's Tariffs for CCS signaling provide for different rates, in which case CLI shall charge Verizon CLI's tariffed rates. Notwithstanding the foregoing, to the extent a Party uses a third party vendor for the provision of CCS Signaling, such charges shall apply only to the third party vendor. 3. Notwithstanding any other provision of this Agreement, the Charges that CLI bills Verizon for CLI's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that CLI's charges for comparable Verizon Services have been approved by the Commission or the FCC.	2.11 Each Party shall charge the other Party mutual and reciprocal rates for any usage-based charges for CCS Signaling, toll free service access code (e.g., 800/888/877) database access, LIDB access, and access to other necessary databases, as follows: Verizon shall charge CLI in accordance with the Pricing Attachment and the terms and conditions in applicable Tariffs. CLI shall charge Verizon rates equal to the rates Verizon charges CLI, unless CLI's Tariffs for CCS signaling provide for lower generally available rates, in which case CLI shall charge Verizon such lower rates. Notwithstanding the foregoing, to the extent a Party uses a third party vendor for the provision of CCS Signaling, such charges shall apply only to the third party vendor. 3. CLI Prices. Notwithstanding any other provision of this Agreement, the Charges that CLI bills Verizon for CLI's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that CLI's cost to provide such CLI's Services to Verizon exceeds the Charges for Verizon's comparable Services and CLI has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
Issue III.C. Services and Facilities To Be Included in the Pricing Appendix (Pricing Appendix)	*See* Attachment 1A for Lightpath's Proposed Pricing Appendix.	*See* Attachment 1B for Verizon's Proposed Pricing Appendix.
ASSURANCE OF PAYMENT		
Issue IV. Assurance of Payment (Section 7)	7.1 Upon request by either Party, the Parties shall provide to the requesting Party adequate assurance of payment of amounts due (or to become due) to the Parties hereunder. 7.2 Assurance of payment of charges may be requested by the Parties if one Party (a) prior to the Effective Date, has failed to timely pay a bill rendered to one Party by the other Party or its Affiliates, (b) on or after the Effective Date, fails to timely pay a bill rendered to one Party by the other Party or its Affiliates, (c) in the requesting Party's reasonable judgment at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding. 7.3 Unless otherwise agreed by the Parties, the assurance of payment shall, at the requesting Party's option, consist of an unconditional, irrevocable standby letter of credit naming the requesting Party as the beneficiary thereof and otherwise in form and substance satisfactory to the requesting Party from a financial	7.1 Upon request by Verizon, CLI shall at any time and from time to time provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder. 7.2 Assurance of payment of charges may be requested by Verizon if CLI (a) prior to the Effective Date, has failed to timely pay a bill rendered to by Verizon or its Affiliates, (b) on or after the Effective Date, fails to timely pay a bill rendered to by or its Affiliates, (c) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding. 7.3 Unless otherwise agreed by the Parties, the assurance of payment shall, at Verizon's option, consist of an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a financial institution acceptable to

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	institution acceptable to the requesting Party. The letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by the requesting Party, for the Services to be provided by one Party to the other Party in connection with this Agreement or the TCG Terms. If one Party meets the condition in subsection 6.2(d) above or has failed to timely pay two or more bills rendered by the other Party or its affiliates in any twelve (12) month period, the Parties may, at their option, demand and the other Party shall provide additional assurance of payment, consisting of monthly advanced payments of estimated charges, as reasonably determined by the requesting Party, with appropriate true-up against actual billed charges no more frequently than once per calendar quarter.	Verizon. The letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by Verizon, for the Services to be provided by Verizon to CLI in connection with this Agreement or the TCG Terms. If CLI meets the condition in subsection 6.2(d) above or has failed to timely pay two or more bills rendered by or a Verizon Affiliate in any twelve (12) month period, may, at option, demand and shall provide additional assurance of payment, consisting of monthly advanced payments of estimated charges, as reasonably determined by, with appropriate true-up against actual billed charges no more frequently than once per calendar quarter.
	7.6 The Parties may (but are not obligated to) draw on the letter of credit, as applicable, upon notice to the other Party in respect of any amounts to be paid by the other Party hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement or the TCG Terms.	7.6 Verizon may (but is not obligated to) draw on the letter of credit, as applicable, upon notice to CLI in respect of any amounts to be paid by CLI hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement or the TCG Terms.
	7.7 If the Parties draw on the letter of credit, upon request by one Party, the other Party shall provide a replacement or supplemental letter of credit conforming to the requirements of Section 7.2.	7.7 If Verizon draws on the letter of credit, upon request by Verizon, CLI shall provide a replacement or supplemental letter of credit conforming to the requirements of Section 7.2.
	7.8 Notwithstanding anything else set forth in this Agreement or the TCG Terms, if one Party makes a request for assurance of payment in accordance with the terms of this Section, then that Party shall have no obligation thereafter to perform under this Agreement or the TCG Terms until such time as the other Party has provided the requesting Party with such assurance of payment.	7.8 Notwithstanding anything else set forth in this Agreement or the TCG Terms, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement or the TCG Terms until such time as CLI has provided Verizon with such assurance of payment.
	7.9 The fact that a letter of credit is requested by one Party hereunder shall in no way relieve the other Party from compliance	7.9 The fact that a letter of credit is requested by Verizon hereunder shall in no way relieve CLI from compliance with the

ISSUES	CLI LANGUAGE	VERIZON LANGUAGE
	with the requirements of this Agreement or the TCG Terms (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement or the TCG Terms. 7.10 Either Party may satisfy the foregoing obligations of this Section 7 if and, to the extent that, it has a net worth of not less than one hundred million U.S. dollars ($100,000,000.00) or its Affiliate with such a net worth serves as a guarantor of the Party's obligations hereunder.	requirements of this Agreement or the TCG Terms (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement or the TCG Terms. 7.10 Intentionally Left Blank.
MEET POINT BILLING		
Issue V. Meet Point Billed Traffic (Section 10 of Interconnection Attachment)	10.3 The Parties shall establish MPB trunks to each of the Verizon access Tandems in the LATA, unless otherwise agreed to by the Parties. 10.19 The Parties shall not charge one another for the services rendered or information provided pursuant to this Section 10.	10.3 Interconnection for the MPB arrangement shall occur at each of the Verizon access Tandems in the LATA, unless otherwise agreed to by the Parties. 10.19 Intentionally Left Blank.

CERTIFICATE OF SERVICE

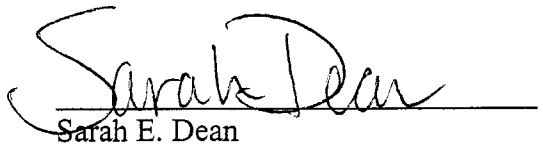
I HEREBY CERTIFY that copies of the Post-Hearing Brief of Verizon Florida Inc. in Docket No. 020960-TP were sent via U.S. mail on June 13, 2003 to the following parties:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Vicki Gordon Kaufman
McWhirter Reeves Law Firm
117 South Gadsden Street
Tallahassee, FL 32301

Charles E. Watkins
William H. Weber
Covad Comm. Co.
1230 Peachtree Street N.E.
19th Floor
Atlanta, GA 30309

Anthony Hansel
Covad Comm. Co.
600 14th Street, NE, Suite 750
Washington, D.C. 20005



Sarah E. Dean