

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

August 5, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

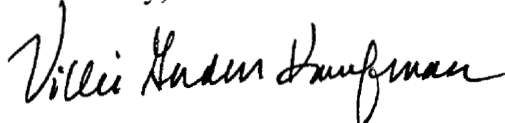
Re: Docket No.: 020960-TP

Dear Ms. Bayo:

Enclosed for distribution and filing are the original and 15 copies of Revised page 18 to Covad Communications Company's Post-Hearing Brief filed on June 16, 2003. The only change is to delete "no" and insert "yes" in Covad's position on Issue 10. This was a scrivener's error which was just brought to our attention.

We apologize to you and the parties for any inconvenience this may have caused. Please do not hesitate to contact me if you have any questions.

Sincerely,



Vicki Gordon Kaufman

VGK/bae

Enclosure

cc: Parties of Record w/enclosure
Gene Watkins w/enclosure

buyer could conceivably terminate Covad's service on the date Verizon officially sells or transfers its territories to the buyer. As a result, Covad would be forced to choose between capitulating to the buyer's unreasonable positions or abandoning service. Either option is draconian and entirely improper.

ISSUE 10: Should the Agreement include language addressing whether Covad can bring a future action against Verizon for violation of section 251 of the Act?

Covad's Position ** Yes. Covad should be permitted to seek damages and other relief from Verizon based upon sections 206 and 207 of the Act, which provide a cause of action in federal district court or at the FCC and a right to damages for violations of any other provision of the Act, including section 251. **

Covad's proposed language is intended to address *Trinko v. Bell Atlantic Corp.*, 305 F.3d 89, 103-105 (2d Cir. 2002), *cert. granted*, *Verizon v. Law Offices of Curtis Trinko*, 123 S.Ct. 1480 (2003). In *Trinko*, the court held that because section 252(a)(1) of the Act allows the parties to negotiate interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1), the act of entering into a negotiated interconnection agreement with an ILEC can extinguish a CLEC's right to recover damages, pursuant to 47 U.S.C. §§ 206 & 207, for violations of section 251.²⁴ Arguably, the court's holding could be viewed by some to find that CLECs that have negotiated certain provisions of an interconnection agreement with an ILEC only have the right to sue for common law damages for breach of contract (as opposed to invoking §§ 251 or 252) unless the agreement specifies that the terms are

²⁴ This does not apply to arbitrated provisions because a state commission, in resolving open issues that are being arbitrated, must ensure that resolution of the issue meets the requirements of section 251, including the regulations prescribed by the FCC pursuant to section 251. *See* 47 U.S.C. § 252(c)(1).