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November 3, 2003

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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 Verizon Florida Inc.'s
Opposition to Motion for Reconsideration of Covad Communications Company. A diskette with
a copy of the Opposition in PDF format is included in this filing. Service has been made as
indicated on the Certificate of Service.

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

If you have any questions, please call me at 202-326-7959.

Sincerely,


Scott H. Angstreich

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Enclosures

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FPSC-COMMISSION CLERK

**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

**VERIZON FLORIDA INC.'S OPPOSITION TO MOTION
FOR RECONSIDERATION OF COVAD COMMUNICATIONS COMPANY**

Verizon Florida Inc. ("Verizon") asks the Commission to deny the Motion for Reconsideration filed by Covad Communications Company ("Covad") on October 28, 2003. In that Motion, Covad seeks reconsideration of one aspect of the October 13, 2003 Order ("Order") in this case: the Commission's ruling adopting Verizon's proposed change-in-law language and rejecting Covad's proposed language, because only Verizon's proposed language ensured that "a change in law [will] be implemented when it takes effect." Order at 10.

Covad has not met the standard for reconsideration of the challenged ruling. Covad argues that the Commission failed to give sufficient weight to rulings of the New York Public Service Commission and of the Wireline Competition Bureau of the Federal Communications Commission ("FCC") in rejecting Covad's proposal, but in fact the Commission explicitly acknowledged both decisions and simply took a different (and better) approach by adopting Verizon's proposal. Covad also argues that the Commission misinterpreted its prior *GNAPs Arbitration Order*,¹ but that order does not support Covad's position. In short, Covad's Motion

¹ Final Order on Arbitration, *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.*

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must be denied because Covad has not raised any “material and relevant point of fact or law which was overlooked, or which [the Commission] failed to consider when it rendered the order in the first instance.” *ALEC-ILEC Interconnection Reconsideration Order* at 2.²

ARGUMENT

In Issue 1, the Commission considered the question of when Verizon may discontinue providing Covad with access to any unbundled network element (“UNE”) or other service, payment, or benefit if a change in applicable law eliminates the requirement that Verizon to provide such access. Under Verizon’s proposed language, such changes will take effect immediately, except that Verizon will maintain existing arrangements for 45 days, or for the period specified by applicable law. 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, Covad initially proposed language that would require Verizon to wait until the entry of a final and nonappealable order before it could discontinue providing Covad with access to a UNE or other arrangement as a result of a change in law. As this Commission noted, “[n]umerous state commissions have previously rejected [such] language.” Order at 8 n.1. After filing its petition for arbitration, Covad changed its proposal, but its revised language would still result in a lengthy delay between the date on which a change in law takes effect and the date on

Docket No. 011666-TP, Order No. PSC-03-0805-FOF-TP (Fla. PSC July 9, 2003) (“*GNAPs Arbitration Order*”).

² Order on Motions for Reconsideration, *Resolution of Petition(s) To Establish Nondiscriminatory Rates, Terms, and Conditions for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.162, F.S.*, Docket No. 950985-TP, PSC-96-1148-FOF-TP (Fla. PSC Sept. 12, 1996) (“*ALEC-ILEC Interconnection Reconsideration Order*”).

which Verizon could discontinue providing Covad with access to a UNE or other arrangement. Under that language, Verizon would be required continue providing Covad with access to a UNE or other arrangement until the parties agreed upon an amendment implementing the change in law or Verizon obtained a legal ruling confirming that Verizon was, indeed, entitled to the benefit of that effective order. As Verizon has demonstrated, Covad's proposal threatens to permit Covad to delay implementation of an effective change in law for many months.

The Commission correctly adopted Verizon's proposed language and rejected Covad's. *See id.* at 10. As the Commission explained, Covad's position, as reflected in its original and revised language, "is that a law should not take effect until tested and ruled upon by a commission or judicial body." *Id.* Because changes in law are "controlling from the[ir] effective date," the Commission concluded that it was "more persuaded by the position of Verizon." *Id.* Finally, the Commission found that the "record [here] supports the same conclusion" as in another, recent arbitration order, where the Commission held that "a change in law should be implemented when the law takes effect, unless it is stayed by a court or commission having jurisdiction." *Id.* (citing *GNAPs Arbitration Order*).

Covad claims that, in adopting Verizon's language, the Commission made a mistake of fact and a mistake of law. *See Covad Mot.* at 1. But Covad simply recycles material that this Commission has already considered and mischaracterizes the Commission's *GNAPs Arbitration Order*. In no event has Covad identified any "material and relevant point of fact or law" that would "change the outcome of the case." *ALEC-ILEC Interconnection Reconsideration Order* at 2.

First, Covad disputes the Commission's statement that "Covad did not cite an instance where its specific position has been adopted." *Order* at 10; *see Covad Mot.* at 4. But the

Commission correctly found that Covad had identified no state commission or court that had ever approved the language that Covad proposed when it filed its arbitration petition — and Covad does not claim otherwise. *See* Order at 8 n.1. Instead, Covad seeks reconsideration because it cited orders by the New York Public Service Commission (“PSC”) approving its *revised* proposal and an order of the FCC’s Wireline Competition Bureau approving similar language. *See* Covad Mot. at 4-8. But the Commission did not overlook any of these points. On the contrary, the Order expressly references Covad’s arguments with respect to both the New York PSC’s and Wireline Competition Bureau’s decisions. *See* Order at 7-8. Notwithstanding those decisions — none of which is binding on this Commission — the Commission adopted Verizon’s proposed language because it ensures that “a change in law [is] implemented when the law takes effect,” not many months later as under Covad’s language. Order at 10. Thus, Covad’s Motion “rehash[es] matters which were already considered” and “rais[es] immaterial matters which even if adopted would not materially change the outcome of the case.” *ALEC-ILEC Interconnection Reconsideration Order* at 2. Reconsideration “is not an appropriate venue” for such arguments. *Id.*

Second, Covad takes issue with the Commission’s reliance on the *GNAPs Arbitration Order*. *See* Covad Mot. at 9-12. Covad does not dispute that the *GNAPs Arbitration Order* held that “a change in law should be implemented when the law takes effect,” Order at 10, nor does it claim that the language the Commission adopted is inconsistent with that holding. Instead, Covad points to another section of that order, which Covad claims held that an agreement should not contain “multiple change in law provisions.” Covad Mot. at 11. That is not what the Commission held. GNAPs contended that its agreement should include a provision explicitly requiring the parties to renegotiate the reciprocal compensation provisions in their agreement in

the event of a change in law modifying the FCC's *ISP Remand Order*.³ See *GNAPs Arbitration Order* at 42. GNAPs, however, conceded that the existing, agreed-upon change-in-law provision already required such renegotiations; the Commission, therefore, found that the additional provision GNAPs sought was superfluous. See *id.* at 42-43. Here, in contrast, the dispute between the parties is over when Verizon may discontinue providing Covad with access to any UNE or other arrangement following a change in law eliminating Verizon's obligation to provide such access.⁴ No other provision of the agreement addresses that issue. Because the language the Commission approved here is not, as Covad erroneously claims, "akin to [GNAPs'] additional change in law provision," there is no inconsistency between the Commission's decision here and the *GNAPs Arbitration Order*.

³ Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert. denied, 123 S. Ct. 1927 (2003).

⁴ Covad claims that Verizon's proposed language "**IS NOT** a section addressing what constitutes the 'effective date'" of a change in law. Covad Mot. at 9. Covad is wrong. As the Commission recognized, under Verizon's proposed language, changes in law take effect for purposes of the agreement as soon as they have legal effect (*e.g.*, on "the date of the court's decision" or the "date designated by the legislative body"). Order at 10.

CONCLUSION

The Commission should deny Covad's Motion for Reconsideration.

Respectfully submitted,



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November 3, 2003

CERTIFICATE OF SERVICE

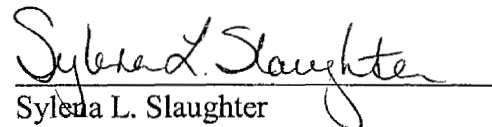
I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to Motion for Reconsideration of Covad Communications Company were sent by First Class, U.S. Mail on November 3, 2003 to the following parties:

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