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February 20, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
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Betty Easley Conference Center
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Re: Docket No.: 020960-TP

Dear Ms. Bayo:

On behalf of DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), enclosed for filing and distribution are the original and 15 copies of the following:

- ◆ Joint Rebuttal Testimony of Valerie Evans and Michael Clancy on behalf of Covad Communications Company.

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Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of open issues
resulting from interconnection negotiations with
Verizon Florida, Inc. by DIECA Communications,
Inc. d/b/a Covad Communications Company.

Docket No.: 020960-TP
Filed: February 20, 2003

**JOINT REBUTTAL TESTIMONY OF VALERIE EVANS AND MICHAEL CLANCY
ON BEHALF OF COVAD COMMUNICATIONS COMPANY**

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REGISTRATION CLERK

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1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. The purpose of our joint rebuttal testimony is to provide the factual basis for
3 DIECA Communications, Inc.'s, d/b/a Covad Communications Company,
4 ("Covad") position on those issues in this arbitration which are not purely
5 legal in nature and to respond to factual assertions and assumptions contained
6 in the direct testimony of Verizon's witnesses.

7 **Q. Ms. Evans, please state your name, title and business address.**

8 A My name is Valerie Evans, Vice President – Government and External Affairs
9 for Covad, located at 600 14th Street, N.W., Suite 750, Washington, D.C.
10 20005.

11 **Q. Ms. Evans, please describe your responsibilities at Covad.**

12 A As Vice President – Government and External Affairs for Covad, I act as a
13 liaison between Covad's business personnel and Verizon. I am also
14 responsible for participating in various federal and state regulatory
15 proceedings, representing Covad.

16 **Q. Ms. Evans, please describe your career prior to joining Covad.**

17 A. Before joining Covad, I was employed by Verizon Communications for 13
18 years. After joining that company in 1985, I held various management
19 positions including Assistant Manager of Central Office Operations and
20 Manager of Installation, Maintenance and Dispatch Operations. In those
21 positions, I oversaw the installation and maintenance of services to retail
22 customers. Specifically, I supervised several groups that were responsible for

1 the physical end-to-end installation of facilities and the correction of any
2 defects or problems on the line. In 1994, I became Director of ISDN
3 Implementation. In that position, I established work practices to ensure
4 delivery of ISDN services to customers and to address ISDN facilities issues -
5 - issues very similar to those encountered in the DSL arena.

6 **Q. Ms. Evans, have you previously filed testimony in this proceeding?**

7 A. Yes. I filed Joint Direct Testimony with Michael Clancy on January 17, 2003.

8 **Q. Mr. Clancy, please state your name, title and business address.**

9 A. My name is Michael Clancy, Director of Government and External Affairs for
10 Covad, located at 15 Exchange Place, Suite 620, Jersey City, NJ 07302.

11 **Q. Mr. Clancy, please describe your responsibilities at Covad.**

12 A. As Director of Government and External Affairs for Covad, my
13 responsibilities include negotiating resolutions to business and collocation
14 disputes with Verizon; coordinating Operations, Product Development and
15 Engineering relations with Verizon; representing Covad in performance
16 assurance plan development with Verizon; and representing Covad at
17 regulatory and industry collaboratives and proceedings.

18 **Q. Mr. Clancy, please describe your career prior to joining Covad.**

19 A. Prior to my current position, I performed customer support and operations
20 functions for Covad's New York tri-state region. In particular, I was
21 responsible for building out Covad's network in New York and all other
22 operations activities. Prior to coming to Covad, I was employed by Verizon's
23 predecessor companies, in various network services, special services, and

1 engineering assignments, with increasing levels of responsibility, for over 27
2 years. My last assignment in Verizon New York was director of interoffice
3 facility provisioning and process management for the Bell Atlantic 14-state
4 footprint.

5 **Q. Mr. Clancy, have you previously filed testimony in this proceeding?**

6 A. Yes. I filed Joint Direct Testimony with Valerie Evans on January 17, 2003.

7 **Q. What role did each witness play in the preparation of this testimony?**

8 A. Although both of us have reviewed and support this testimony in its entirety,
9 each of us assumed primary responsibility for specific segments of testimony.
10 We each rely on the facts and analyses developed by the other in his or her
11 areas of primary responsibility. Specifically:

- 12 • Ms. Evans is primarily responsible for the billing and operation
13 process issues
- 14 • Mr. Clancy is primarily responsible for technical, engineering and
15 operations issues.

16 **Q. Is detailed Interconnection Agreement language necessary for those**
17 **issues for which Covad already enjoys non-contractual legal protections?**

18 A. Yes. Detailed contract language is needed to prevent future disputes between
19 Covad and Verizon. It has been Covad's experience that Verizon attempts to
20 limit its obligations to Covad, not to the extent required by the
21 Telecommunications Act of 1996, but only as specifically stated in the
22 Agreement or a tariff. Accordingly, Covad is at risk of losing substantive
23 rights if it has failed to include express language in the Agreement regarding

1 its entitlements. For instance, as noted in regard to Issues 19, 24, and 25,
2 Covad's experience involving "no facilities"— when Verizon unilaterally
3 announced on July 24, 2001 that it would change its practice of provisioning
4 DS1 and DS3 UNE loops and IOF, claiming that its new practice, which has
5 caused Covad to lose significant revenues, was supported by law—clearly
6 demonstrates that the risk of backsliding is real, and that the need for express
7 contractual provisions describing Verizon's duties in this regard is significant.

8 **ISSUES 2 AND 9:**

9 **2. Should the parties have the unlimited right to assess previously unbilled**
10 **charges for services rendered?**

11 **9. Should the anti-waiver provisions of the agreement be implemented**
12 **subject to the restriction that the parties may not bill one another for**
13 **services rendered more than one year prior to the current billing date?**

14 **Q. Do Mr. Hansen's suggestions that: 1) Verizon's need to backbill is**
15 **related to the fact that carrier-to-carrier billing is a complicated and**
16 **evolving process; or 2) Verizon is often required to provide a new**
17 **unbundled network element before the rates are set for the UNE and**
18 **before Verizon has implemented processes to bill for the UNE, explain the**
19 **backbilling problems underlying Covad's position in this proceeding?**

20 **A.** No. The facts clearly contradict Mr. Hansen's claim that Verizon's
21 backbilling was due to the complexity of billing for new UNEs as opposed to
22 Verizon's own poor billing practices. As we previously testified, line sharing
23 charges for \$1.1 million first appeared in Covad's September 2001 billing

1 cycle and included charges relating back to as far as July 2000. The FCC,
2 however, required ILECs to provide line sharing in December 1999.¹

3 Prior to the service being offered, Verizon's Director of Wholesale
4 Product Management, Amy Stern, presented "interim rates" to the ALECs
5 attending the New York DSL Collaborative. The ALECs agreed to these
6 "interim rates" and agreed to a "true-up" once tariffs were approved. Verizon
7 had all the rate elements defined. Verizon had the ability to immediately
8 automate and in fact, would have made the "true-up" easier had they
9 mechanized based upon the rate elements they defined.

10 Thus, there is no excuse for Verizon to start billing these charges well
11 over a year later. Moreover, there is no excuse for Verizon's failure to
12 designate the charges as new charges, instead placing them in the first bill in
13 which they appeared under "Balance Due Information." There is also no
14 excuse for these line sharing charges to appear on a high capacity
15 access/transport bill and for the charges to be all included on a New York bill
16 when they covered multiple jurisdictions. There is also no justification for the
17 lack of detail provided as to the charges and Verizon's failure to identify the
18 circuits being billed. Verizon can proffer no exculpatory argument for the fact
19 that, by its own admission, the backbill was at least 30% inaccurate.

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999).

1 In short, the “billing for a new UNE” rationale fails to provide any
2 justification for Verizon’s backbilling practice. The FCC noted that it was
3 “troubled by the manner in which Verizon chose initially to bill for this
4 aggregate charge.”² This example in a nutshell demonstrates why Verizon’s
5 ability to backbill should be limited.

6 **Q. Does the one year limit on backbilling proposed by Covad provide**
7 **Verizon with sufficient time to identify and bill for the services it**
8 **provides?**

9 A. Yes A one-year period provides more than sufficient time for Verizon to bill
10 for a new UNE or for any other charges. Moreover, Verizon’s bill achieving
11 practice further discredits Verizon’s position. Verizon begins to archive
12 billing data after 60 days. If Verizon feels that a 60 day period is appropriate
13 to begin archiving billing data, it is clearly able to bill for those charges in a
14 timely manner before the 60 day period ends.

15 **ISSUE 3:**

16 **3. When a good faith dispute arises between the parties, how should the**
17 **claim be tracked and referenced?**

18 **Q. What is the dispute over this issue?**

² *Joint Application by Verizon Virginia, Inc., et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, FCC 02-297, ¶ 50 (Oct. 30, 2002) (“*Virginia 271 Order*”).

1 A. There appears to be little disagreement over the propriety of Covad's request
2 to have Verizon use Covad's tracking number in referencing disputes. Mr.
3 Hansen states that Verizon is in the process of implementing a new Wholesale
4 Claims and Inquiry Tracking ("WCIT") system which will contain the ability
5 to track a dispute using Covad's claim number as well as Verizon's claim
6 number. Many of the time commitments made by Verizon have already come
7 and gone – in a New York proceeding, Verizon promised WCIT by last
8 October. Nevertheless, in the interim, Mr. Hansen states that Verizon "will
9 identify ALECs' billing disputes regarding UNE and resale products in
10 correspondence using both a Verizon- and an ALEC-assigned claim number
11 for claims" Verizon's interim commitment should not be limited to UNE
12 and resale products. Covad's claim number should be provided in regard to
13 disputes pertaining to all the products Covad receives from Verizon including
14 interconnection and collocation. If use of Covad's claim number is feasible
15 for UNE and resale products it should be feasible for the other products
16 Verizon provides to Covad.

17 The only area of disagreement appears to be whether the process for
18 tracking billing claims is an operational matter that is appropriately addressed
19 in an interconnection agreement. Covad is simply seeking to insert additional
20 language into Verizon's template language that already seeks to spell out the
21 operational process in regard to billing dispute resolution. In addition, since
22 what Covad is seeking is, per Mr. Hansen's contention, already reflected in

1 both its interim solution and the proposed WCIT system, Verizon will not
2 need to customize its procedures for Covad on this issue.

3 Our direct testimony already demonstrated the importance of the use of
4 Covad's claim number, including the numerous problems that arose as a result
5 of Verizon's inconsistent use of Covad's claim number. In particular,
6 Verizon's failure to reference Covad's claim number when it issued credits on
7 bills made it difficult, if not impossible, for Covad to relate the credit to the
8 claim. Covad needs an assurance in its interconnection agreement that all
9 correspondence and other documents, including bills, pertaining to its claims
10 will include Covad's claim number. If a credit on a bill does not specify the
11 claim number there is no way for Covad to know which claim is being closed.

12 Finally, while the FCC recently rejected Covad's challenges to
13 Verizon's billing dispute resolution process in its Virginia 271 Order, the FCC
14 never addressed the issue of Verizon's use of claim numbers. In addition, the
15 FCC noted that there were a number of outstanding billing disputes before
16 Verizon implemented a new internal task force to address the problem.³ The
17 FCC stated that Verizon had "a number of problems with its billing system in
18 the past"⁴ Based on this history, Covad is fully justified in seeking
19 protection in its interconnection agreement in regard to billing dispute
20 resolution.

21

³ *Virginia 271 Order*, ¶ 49.

⁴ *Virginia 271 Order*, ¶ 40.

1 **ISSUES 4 AND 5:**

2 4. **When the billing party disputes a claim filed by the billed party, how**
3 **much time should the billing party have to provide a position and**
4 **explanation thereof to the billed party?**

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

9 **Q. What is wrong with Verizon's position that it should only be**
10 **contractually obligated to "use commercially reasonable efforts to resolve**
11 **billing disputes in a timely manner"?**

12 **A.** At the outset, Verizon's proposed language is so patently general that it
13 essentially creates no contractual obligation at all. Covad has demonstrated
14 how it has been impacted by Verizon's protracted billing dispute resolution.
15 In Covad's experience, it takes an average of 221 days to resolve a high
16 capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76
17 days to resolve a collocation claim in the Verizon East region. Covad still has
18 3 disputed billing claims with Verizon that have been open since the year
19 2001. One of these disputes amounts to \$83,000.00. Covad needs better –
20 and contractually enforceable – assurance of performance than the amorphous
21 language proposed by Verizon provides.

1 In regard to providing sufficient information, Mr. Hansen gives no
2 indication that the amount of information provided by Covad is the cause of
3 Verizon's delay in responding to Covad's claims. Requiring Verizon to
4 provide a response within 30 days would ensure that if the information
5 provided by Covad is insufficient for Verizon to formulate its response, then
6 Verizon will promptly notify Covad of this fact. Finally, disputes should not
7 be limited, as Verizon proposes, to wholesale billing. As this Commission
8 well knows, ALECs often need to purchase facilities via Verizon's retail
9 tariffs, and ALECs have experienced numerous problems due to Verizon's
10 poor provisioning of such facilities. Thus, Verizon should be required to
11 respond within 30 days for these disputes as well. Finally, Verizon also
12 argues that Covad's proposal is unreasonable because it does not exclude
13 billing disputes on charges that are over 60 days old. Given Verizon's history
14 of backbilling, and Verizon's manual application of charges on bills, it may
15 take Covad some time to identify problems with the bills. Verizon controls
16 the billing process. If it wants prompt submission of disputes, it should bill in
17 a timely and easily auditable manner.

18 **Q. How do you respond to Ms. Raynor's assertion that Covad's proposed**
19 **language regarding Issue 4 may be at odds with a performance**
20 **measurements plan in Florida?**

21 A. In New York, Verizon is currently required pursuant to metric BI-3-05 to
22 resolve 95% of claims within 28 calendar days of acknowledgment. Under
23 metric BI-3-04, Verizon is required to acknowledge 95% of "valid/complete

1 billing adjustment claims within two business days.” Thus, it is clearly
2 reasonable for Covad to ask Verizon to provide a position and explanation on
3 its claim within 30 days. Whether Florida will adopt more stringent
4 performance measurements is purely hypothetical, but it is fair to assume
5 Florida metrics will not be significantly different. Irrespective of the metrics
6 involved, Covad needs a better assurance of performance, particularly given
7 the ineffectual nature of the metrics in curbing Verizon’s tendency towards
8 unduly dilatory responses to Covad’s claims to this day.

9 **Q. With regard to Issue 5, how do you respond to Mr. Hansen’s testimony**
10 **that Covad’s position is inconsistent with the basis for Verizon’s late**
11 **payment policy: 1) giving ALECs an incentive to pay undisputed bills**
12 **and 2) compensating Verizon?**

13 A. The dispute over Issue 5 arises from each party’s belief that late payment
14 charges, or their absence, carry incentives for the other party. For Verizon,
15 the incentive is for prompt payment of undisputed charges, and for Covad, the
16 incentive is for Verizon to rapidly resolve disputes. The important difference
17 between these two positions is whether the payment at issue is for disputed
18 claims or undisputed claims. Covad does NOT object to late payment charges
19 accruing to *undisputed* charges. The issue here is over the accrual of late
20 payment charges for disputed charges. Issue 5 and Issue 4 are paired here
21 because Covad’s position is that if Verizon is obligated under the Agreement
22 to respond to claims within 30 days, then Verizon should not be rewarded – in

1 the form of late payment charges – for failing to meet that obligation. Once a
2 claim is sent to Verizon, it is entirely within Verizon’s control to respond.
3 Currently, it takes Verizon an average of 221 days to resolve a high capacity
4 access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to
5 resolve a collocation claim in the Verizon East region. If late payment
6 charges are accruing over these extended resolution time frames, then Verizon
7 is essentially being rewarded for delaying resolution of disputes. Mr. Hansen
8 does not assert that Covad has ever “submitted barebones claims in order to
9 generate ‘disputes’ that will necessarily take longer than 30 days to resolve” in
10 order to “simply avoid payment.” Mr. Hansen’s spurious hypothetical is
11 ridiculous. Covad has never engaged in such behavior, nor would it.

12 **ISSUES 13, 32, 34 AND 37:**

13 **32. What terms, conditions and intervals should apply to Verizon’s manual**
14 **loop qualification process?**

15 **34. In what interval should Verizon provision loops?**

16 **Q. How does Covad respond to Mr. White’s testimony regarding Issue 32?**

17 **A.** Given that Verizon in Florida does not offer Extended Query, Covad proposes
18 that the following language be included in Section 3.13.5 of the Verizon
19 Florida Agreement:

20 If the Loop is not listed in the mechanized database described in
21 Section 3.11.2 or the listing is defective, Covad may request a manual
22 loop qualification at no additional charge prior to submitting a valid
23 electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI

1 ISDN Loop. Verizon will complete a manual loop qualification
2 request within one business day.
3

4 **ISSUES 19, 24 AND 25:**

5 **19. Should Verizon be obligated to provide Covad nondiscriminatory access**
6 **to UNEs and UNE combinations consistent with Applicable Law?**

7 **24. Should Verizon relieve loop capacity constraints for Covad to the same**
8 **extent as it does so for its own customers?**

9 **25. Should Verizon provision Covad DS-1 loops with associated electronics**
10 **needed for such loops to work, if it does so for its own end users?**

11 **Q. What is Covad's response to Mr. White's testimony regarding Issue 19**
12 **and its implications for Issues 24 and 25?**

13 A. Mr. White claims that Covad has proposed language that would require
14 Verizon to "build facilities." This is not the case. Covad recognizes that
15 occasional loop orders may be placed to locations where Verizon does not
16 currently have facilities. For example, orders in new office or residential
17 developments are more likely to be returned legitimately Lack of Facilities
18 ("LOF") because Verizon may not have built out to the development.
19 Moreover, Covad has never expected Verizon to engage in construction
20 activities such as trenching streets and pulling cable as part of the UNE
21 ordering process.

1 While Covad expects occasional LOF rejections from the Verizon
2 UNE ordering process, Covad also expects that loops will be provisioned and
3 conditioned for use as UNEs just as they would be if Verizon were using the
4 loop to serve its own customers. The provisioning of DS1 UNE loops has
5 always involved various types of equipment and/or conditioning necessary to
6 make the loop ready to provide digital services. In fact, the Act and FCC
7 rules and orders require Verizon to take affirmative steps to condition
8 existing loop facilities to enable competing carriers to provide services not
9 currently provided over the facilities.

10 Covad's proposed contract language does not require construction of
11 new facilities. It only obligates Verizon to perform tasks routinely performed
12 for its retail customers. For instance, Verizon provisions its DS1 Special
13 Access circuits over fiber facilities, which require electronic equipment
14 placed at both ends of the fiber. The equipment terminates to a shelf at the
15 Central Office and at the customer's location. If all the slots on the shelf
16 were in use and a Verizon customer requested a DS1 loop, Verizon would
17 add another shelf and provision the circuit at no additional charge to the
18 customer. The same is not true for a Covad order. If all the slots on the shelf
19 of equipment are full, Verizon rejects Covad's order and will only provision
20 the order if Covad orders it as a retail customer would. If Covad agrees to
21 this outrageous requirement in order to satisfy its customer's request, it will
22 now get the service but at much higher rates. However, the next request for a
23 DS1 circuit will be provisioned with no problem until all the slots on the

1 newly installed shelf are filled. This policy is completely outrageous and
2 allows Verizon to play musical chairs when provisioning service to
3 competitors. Also, in instances where a shelf is added to provision a line for
4 a competitor, the competitor bears the brunt of costs for the shelf and all the
5 lines that will get installed on that shelf, including Verizon's lines.

6 Verizon's outrageous policy is exacerbated by the fact that it allows
7 competitors to convert the circuit back to a UNE after a 3 month "minimum
8 service period." Verizon, upon Covad's request, should be required to
9 augment the DS1 equipment with additional equipment in order to provide
10 the added DS1 capacity requested by Covad's customer at no additional
11 charge, the same as they do for their customer. Covad's request for this
12 contract language is based on the fact that Verizon has rejected a number of
13 Covad orders for high capacity UNEs claiming that no facilities are available
14 on the basis that the capacity on its facilities is exhausted. Notably, it is not
15 that the capacity of the transmission facility is exhausted; but rather that the
16 electronics are not configured for the particular level of capacity required to
17 serve Covad alongside Verizon's existing customers.

18 Covad's request is based on what Verizon does for itself when its own
19 customers make similar requests for services and what it offers to Covad on a
20 retail rather than on a UNE basis. Verizon does not treat ALEC orders for
21 high capacity loops in parity with orders for its retail access customers.
22 Based on this, it is undisputed that Verizon regularly reconfigures or
23 substitutes electronics on its fiber facilities in order to accommodate its own

1 needs and the needs of its customers and its affiliates. Because Verizon does
2 not deny that it engages in this practice for itself, Verizon argues instead that
3 it is constructing something new for its customer when it performs this task.
4 For example, it is well known that Verizon will typically construct more fiber
5 to a location, put up a new multiplexer that may be the same size or may be
6 bigger to add additional capacity to the location to serve the customer, all the
7 while leaving the existing service in place so that the customer does not lose
8 service.

9 Covad believes there is a clear distinction between constructing a new
10 facility and modifying an existing one to improve its capacity. Both the FCC
11 and the Eighth Circuit have recognized this distinction and held that ILECs
12 are required to modify existing facilities if necessary to provision UNEs and
13 to comply with the nondiscrimination mandate.

14 Indeed, another ILEC, Pacific Bell, has agreed to perform this function
15 for AT&T. In its Agreement with AT&T, Pacific Bell is obligated in the
16 following manner:

17 7.2. TECHNICAL REQUIREMENTS

18 This Section sets forth the technical requirements for all Dedicated Transport.

19 PACIFIC shall offer Dedicated Transport in all documented bandwidth
20 interfaces used within PACIFIC's network including, but not limited to, DS1
21 and DS3 transport systems, SONET interfaces including OC-3, OC-12, and
22 where PACIFIC has deployed fiber, OC-48 or higher served by a higher
23 capacity system. PACIFIC is not required to construct new point-to-point

1 facilities to meet AT&T's request for OC-48 or higher capacity transport.
2 However, where Pacific has deployed fiber between two points, Pacific shall
3 provide the capacity requested by AT&T by upgrading the electronics.

4 **ISSUE 22:**

5 **22. Should Verizon commit to an appointment window for installing loops**
6 **and pay a penalty when it misses the window?**

7 **Q. How do you respond to Mr. White and Ms. Raynor's testimony regarding**
8 **Issue 22?**

9 A. As an initial matter, Covad would like to clarify that it is not seeking a three
10 hour appointment window, but is seeking the same morning or afternoon
11 appointment windows that Verizon offers to its retail customers. Thus,
12 contrary to Mr. White's contentions, there will be no issue of different
13 windows for different ALECs. Verizon states, however, that four-hour
14 appointment windows are available based on the available workforce and
15 existing workload. Verizon, however, controls the scheduling process,
16 particularly its workforce's vacation and overtime policies. It is hard to
17 imagine that a Verizon retail customer desiring a four-hour appointment
18 window would not be provided one. Verizon should, therefore, be required to
19 provide a morning or afternoon appointment window unless it can
20 demonstrate that workforce considerations preclude use of such a window.

21 In addition, Verizon's description of obtaining appointment windows
22 via the Service order Management Administrative Report Tracking System

1 (“SMARTS”) application describes a somewhat interactive process. This may
2 have been acceptable in the early stages of doing business with Verizon, but
3 Covad has moved to completely mechanized platforms (i.e., flow through)
4 that are ill-suited to the iterative scheduling process described by Verizon’s
5 witness. The process Verizon describes is a very interactive process,
6 apparently requiring use of manual applications by the ALEC. Use of manual
7 interfaces will impede the scalability of the ordering process and thus limit
8 competition. To obtain appointment windows, Covad would have to sacrifice
9 flow-through of its orders.

10 Verizon contends that Covad’s proposed penalty for a Verizon miss of
11 an appointment window seeks to modify existing performance standards and
12 the Performance Assurance Plan. Covad is not seeking to modify existing
13 performance standards or the PMAP, particularly as they relate to “no access”
14 situations, i.e., those situations where the ALEC customer is not present when
15 the Verizon technician arrives. Instead, Covad is seeking to provide Verizon
16 the same incentive to meet the appointment window as Covad has to ensure its
17 customer is available. Currently Covad faces a tremendous incentive to
18 ensure that its customer is present for the installation. Not only are “no
19 access” situations excluded from performance metrics, but Covad has to pay a
20 penalty if its customer is not present. Inclusion of an equivalent penalty on
21 Verizon for failure to meet appointment windows would provide an equivalent
22 incentive for Verizon to meet those appointments. The party that will

1 ultimately benefit from such a penalty is the end user who hopefully will
2 enjoy timely installation of its service.

3 **ISSUE 23:**

4 **23. What technical references should be used for the definition of the ISDN,**
5 **ADSL and HDSL loops?**

6 **Q. What is Covad's response to Ms. Clayton's testimony regarding Issue 23?**

7 A. In her testimony regarding this issue, Ms. Clayton states that "[I]f an
8 ALEC believes that the Verizon technical documents are in conflict with
9 industry standards, Verizon has offered to research the standard and area of
10 'conflict' identified by the ALEC." Ms. Clayton further submits that, "if
11 necessary, Verizon will, based on its investigation, negotiate specific aspects
12 of the Verizon technical documents to address areas of concern." In short,
13 Verizon's stance is that it wants to have the unilateral discretion on whether it
14 will abide by industry standards.

15 The FCC explicitly rejected giving ILECs discretion to dictate
16 unilaterally what standards apply with respect to advanced services. For these
17 reasons, the Commission should reject Verizon's request to include its in-
18 house standards in the definitions of ISDN, ADSL, and HDSL loops in the
19 Agreement.

20 **ISSUE 27:**

21 **27. Should the Agreement make clear that Covad has the right, under**
22 **Applicable Law, to deploy services that either (1) fall under any of the**

1 **loop type categories enumerated in the Agreement (albeit not the one**
2 **ordered) or (2) do not fall under any of loop type categories?**

3 **Q. How does Covad respond to Ms. Clayton’s testimony on behalf of Verizon**
4 **regarding Issue 27?**

5 A. With respect to the first issue raised here, Verizon incorrectly claims that
6 “Covad’s proposed language would give it the right to deploy advanced
7 services on loops that it obtains from Verizon without informing Verizon of
8 the particular type of advanced service Covad is deploying on the loop.”
9 Covad is not asserting that it will not provide the requisite information when
10 Verizon is legally entitled to it. Covad is willing to give Verizon such
11 information pursuant to Applicable Law, i.e., FCC Rule 51.231(b); however,
12 Verizon has no authority to deny, limit, or otherwise restrict a UNE request
13 based on this information. In short, Verizon cannot require that Covad order
14 and deploy certain services over UNE loops based on Verizon’s prefabricated
15 selection of UNE loops. Moreover, Covad’s future legal obligation to
16 provide Verizon any information pursuant to FCC rule 51.231 will be short
17 lived because industry has recommended that this rule be rescinded.

18 Verizon also submits that Verizon’s possession of this information
19 better enables end users to receive the services they order. Otherwise said,
20 Verizon needs this information to ensure that the ALEC customers receive the
21 services they order from the ALEC. Although Covad will provide the
22 information as indicated above, Verizon’s argument has no merit. Verizon

1 provides loop qualification tools to ALECs so that ALECs can verify whether
2 the loop can handle certain advanced services. Verizon does not need to
3 concern itself with the ALEC's relationship with its customer. The ALEC is
4 accountable to its customer for service quality and the assurance of service
5 quality. Covad can provide poor quality service to its own detriment, but not
6 to the detriment of Verizon. Covad is responsible to its investors and its
7 customers and does not need Verizon to try to play that role.

8 With respect to the second issue raised here, Verizon states that Covad
9 must follow the BFR process if it wants to deploy a new loop type or
10 technology. Covad is not requesting new loop type but rather the ability to
11 provide services, as the law allows, over loops that conform to industry
12 standards. Covad should not be relegated to the BFR process to obtain what it
13 is immediately entitled to pursuant to law. This process is an unreasonable
14 requirement. Indeed, Verizon's explanation that Covad would have to wait
15 approximately 90 days before Verizon completes the process demonstrates
16 this and is entirely unacceptable.

17 **ISSUE 30 AND 31:**

18 **30. Should Verizon be obligated to cooperatively test loops it provides to**
19 **Covad and what terms and conditions should apply to such testing?**

20 **31. Should the Agreement obligate Verizon to ensure that Covad can locate**
21 **the loops Verizon provisions?**

22 **Q. How does Covad respond to Mr. White's testimony regarding Issue 30?**

1 A. Mr. White suggests that Verizon's cooperative testing process is clearly
2 defined and understood by the industry. Nothing could be further from the
3 truth. As a general matter, Verizon has not revealed specific procedures
4 associated with the cooperative testing process to the industry. Verizon
5 proposes a general description of the procedures; however, this is entirely
6 insufficient. Furthermore, although the New York DSL collaborative has
7 agreed to the process itself, Verizon has not articulated the specific procedures
8 on paper that individuals outside of the collaborative may review, rely on, and
9 follow. Covad simply asks that the process be clearly spelled out in the
10 Agreement. Furthermore, the cooperative testing procedures that Covad
11 proposes are consistent with the process that Verizon currently follows and
12 Covad's proposed language includes flexible terms that allows for future
13 evolution of the procedures.

14 Significantly, Verizon did not discuss in the DSL collaborative the use
15 of the Interactive Voice Response ("IVR") system when performing
16 cooperative testing; however, Verizon does use a similar system when it tests
17 retail services. In fact, in his declaration, Mr. John White stated that Verizon
18 "uses a Mechanized Loop Testing ("MLT") process, whereby central office
19 switching equipment enables any technician – whether that technician is in a
20 dispatch center, a central office, or the field – to do a full test of a loop,
21 independent of all other activities and personnel." Covad's gateway is the
22 IVR and it operates in a similar manner to Verizon's MLT. Furthermore,
23 Covad permits Verizon to access to its IVR so that Verizon can pre-test the

1 loops using Covad's testing process, which thereby makes the cooperative
2 testing process much more efficient. Hence, the refinement Covad proposes
3 to specify in its proposed contract language is one that Verizon has already
4 agreed to and follows.

5 This is supported by the fact that Mr. White recommends to alleviate
6 the iterative requirement sometimes associated with cooperative testing - "In
7 those cases where the loop is not acceptable, additional testing calls — from
8 the field, the central office, and/or the Verizon dispatch center — may need to
9 occur to complete the provisioning or maintenance activity." Given this
10 statement, there is complete agreement not only on what state of the art testing
11 capability can be provided by an ALEC, which Covad provides, but on the
12 need to document the practices used by the parties, since evidently there is a
13 lack of awareness on Verizon's part as to the actual process used today.

14 It is important to note that the IVR is used by Verizon technicians to
15 sectionalize any loop trouble in the provisioning process, prior to making the
16 cooperative test call, to minimize the duplication of effort. Additionally,
17 Verizon technicians use Covad's IVR to test and sectionalize loop troubles in
18 the maintenance process. All Covad has requested is to publicly document the
19 process. Verizon and Covad can, at any time, mutually agree to amend the
20 process.

21 To put this issue in historical perspective, it was Covad who was
22 asking for the cooperative testing process during the Bell Atlantic (Verizon
23 predecessor company) New York 271 proceeding because Bell Atlantic's

1 operations management decided they could provide fully functioning loops
2 that ALECs did not have to test to ensure they were properly functioning.
3 Once Bell Atlantic began cooperatively testing loops, their loop delivery
4 performance dramatically improved, saving enormous resources. Covad has
5 taken the lead in bringing this concept to the industry and continues to work
6 with Verizon to refine the processes. It would serve the industry and
7 consumers to document the result of all those efforts.

8 Unlike other ALECs, Covad is unique and primarily offers advanced
9 services over UNE loops and, as a result, cooperative testing is absolutely
10 critical to its business and ensuring that its customers loops are properly
11 provisioned. Therefore, the cooperative testing process must be fully
12 articulated in the Agreement and cannot be left to the imagination of the
13 parties.

14 **Q. How does Covad respond to Mr. White's testimony regarding Issue 31?**

15 A Mr. White's claim that a tag "may become dislodged or confused with other
16 tags" is a straw man. In most circumstances, the tags placed on a loop by
17 Verizon will be readily found by Covad technicians, which will allow them to
18 handle service calls expeditiously and without having to having to call
19 Verizon to find the loop (which would serve to prolong such calls).
20 Verizon should not impose "treasure hunts" on Covad in order for Covad to
21 determine where Verizon has provisioned the loop. Moreover, as discussed
22 below, Verizon's refusal to provide sufficient information to Covad to enable

1 Covad to locate the circuit being provisioned demonstrates that the
2 demarcation point information Verizon provides is entirely inadequate.

3 **DARK FIBER ISSUES**

4 **ISSUES: 43 and 45**

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

10 **45. Should Covad be permitted to request that Verizon indicate the**
11 **availability of dark fiber between any two points in a LATA without any**
12 **regard to the number of dark fiber arrangements that must be spliced or**
13 **cross connected together for Covad's desired route?**

14 **Q. What is Covad's response to Mr. Albert and Ms. Shocket's testimony**
15 **regarding Issues 43 and 45?**

16 **A.** Mr. Albert and Ms. Shocket assert that Verizon will provide fiber optic cross-
17 connects to join dark fiber IOF strands at intermediate central offices. Such
18 cross-connects are required in order to implement the FCC's mandate in the
19 *Virginia Arbitration Award* that Verizon must route dark fiber transport
20 through two or more intermediate central offices for ALECs without requiring

21

1 collocation at the intermediate central offices.⁵ In order to implement this
2 FCC mandate in the Parties' interconnection agreement, the Commission
3 should adopt the following contract language for section 8.2.4 below as
4 proposed by Covad:

5 Verizon shall perform all work necessary to install (1) a
6 cross connect or fiber jumper from a Verizon Accessible
7 Terminal to a Covad collocation arrangement or (2) from a
8 Verizon Accessible Terminal to Covad's demarcation point
9 at a Customer's premise or Covad Central Office; *or (3)*
10 *install a fiber cross connect or fiber jumper in order to*
11 *connect two dark fiber IOF strands at intermediate central*
12 *offices.*

13 The agreement should clarify that Verizon's obligation to provide
14 UNE dark fiber includes the duty to provide any and all of the fibers on any
15 route requested by Covad regardless of whether individual segments of fiber
16 must be spliced or cross connected to provide continuity end to end. Verizon
17 should be required to splice because Verizon splices fiber for itself when
18 provisioning service for its own customers and affiliates. In addition,
19 according to usual engineering practices for carriers, two dark fiber strands in

⁵ *Virginia Arbitration Award* at ¶ 457 ("We reject Verizon's position that connecting fiber routes at central offices may not be required of Verizon . . . Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311.").

1 a central office can be completed by cross-connecting them with a jumper.

2 Again, this procedure is simple and speedy.

3

4 **ISSUE: 46**

5 **46. Should Verizon provide Covad detailed dark fiber inventory**
6 **information?**

7 **Q. How does Covad respond to Mr. Albert and Ms. Shocket's testimony on**
8 **Issue 46?**

9 A. Verizon's testimony misrepresents Covad's position regarding Issue 46.
10 Verizon asserts that Covad seeks "information identifying all available dark
11 fiber in Florida" and "nonexistent" maps that provide "a snapshot picture of
12 all available dark fiber in Florida at any given time."

13 To the contrary, Covad merely seeks what federal law already
14 requires. Covad does not seek information that does not reside anywhere
15 within Verizon's records, databases and other sources as alleged by Verizon.
16 Further, Covad does not seek a "snapshot" of all dark fiber available across
17 the entire state. Rather, Covad merely seeks parity access to the same up-to-
18 date pre-ordering and ordering information regarding dark fiber UNEs that is
19 available in Verizon's backoffice systems, databases and other internal
20 records, including but not limited to data from the TIRKS database, fiber
21 transport maps, baseline fiber test data from engineering records or inventory
22 management, and field surveys. Verizon cannot, as it has done in the past,

1 limit an ALEC's access to this information simply because it is inconvenient
2 or contrary to Verizon's competitive interest to provide the information.

3 Covad requests that the Commission unequivocally affirm that
4 Verizon is required under federal and state law to afford ALECs
5 nondiscriminatory, parity access to fiber maps, including any fiber transport
6 maps for the entire specified dark fiber route, TIRKS data, field survey test
7 data, baseline fiber test data from engineering records or inventory
8 management, and other all other available data regarding the location,
9 availability and characteristics of dark fiber. Further, in the context of
10 Verizon's response to a specific Dark Fiber Inquiry, Covad requests that the
11 Commission require Verizon to provide the same information that the New
12 Hampshire⁶ and Maine Commissions have required Verizon to provide to
13 ALECs. Verizon cannot argue that such detailed information does not exist
14 because it is has already provided such information to CTC Communications

⁶ The New Hampshire Public Utilities Commission has required Verizon to provide the following information: "total number of fiber sheath and strands between points on the requested routes, number of strands currently in use and the transmission speed on each strand (e.g. OC-3, OC-48), the number of strands in use by other carriers, the number of strands reserved for Bell Atlantic's use, the number of strands lit in each of the three preceding years, the estimated completion date of any construction jobs planned for the next two years or currently underway, and an offer of any alternate route with available dark fiber. In addition, for fibers currently in use, Bell Atlantic shall specify if the fiber is being used to provide non-revenue producing services such as emergency service restoration, maintenance and/or repair." *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 8-9 (May 19, 1998).

1 Corp. and other ALECs.⁷ For example, the Maine Public Utilities
2 Commission (“ME PUC”) has determined that if Verizon believes that dark
3 fiber is unavailable, then within thirty (30) days, Verizon must provide the
4 ALEC with “written documentation and a fiber map.”⁸ The written
5 documentation must, at a minimum include, the following detailed
6 information:

- 7 • a map (hand-drawn, if necessary) showing the spans along the most direct route
8 and two alternative routes (where available), and indicating which spans have
9 spare fiber, no available fiber, and construction jobs planned for the next year
10 or currently in progress with estimated completion dates;
- 11 • the total number of fiber sheaths and strands in between points on the requested
12 routes;
- 13 • the number of strands currently in use or assigned to a pending service order;
- 14 • the number of strands in use by other carriers;
- 15 • the number of strands assigned to maintenance;
- 16 • the number of spare strands; and
- 17 • the number of defective strands.

18 Accordingly, in order to leave no doubt regarding its position, Covad
19 hereby proposes the following contract language for section 8.2.5.1 of the
20 UNE Attachment in lieu of its initial proposal for that section:

21 Verizon shall provide Covad nondiscriminatory and parity access to
22 fiber maps, including any fiber transport maps showing a portion of
23 and/or the entire dark direct and indirect dark fiber routes between any
24 two points specified by the ALEC, TIRKS data, field survey test data,
25 baseline fiber test data from engineering records or inventory
26 management, and other all other available data regarding the location,

⁷ See, *CTC Communications Corp. Request for Fast Track Arbitration of Verizon NH’s Denial of Dark Fiber Request*, DT 02-028, Recommended Decision of Arbitrator (2002).

⁸ *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849, Letter of Dennis L. Keshl (March 1, 2002).

1 availability and characteristics of dark fiber. Further, within 30 days
2 of Covad's request Verizon shall provide, at a minimum, the following
3 information for any two points comprising a dark fiber route specified
4 by Covad: a map (hand-drawn, if necessary) showing the spans along
5 the most direct route and two alternative routes (where available), and
6 indicating which spans have spare fiber, no available fiber, and
7 construction jobs planned for the next year or currently in progress
8 with estimated completion dates; the total number of fiber sheaths and
9 strands in between points on the requested routes; the number of
10 strands currently in use or assigned to a pending service order; the
11 number of strands in use by other carriers; the number of strands
12 assigned to maintenance; the number of spare strands; and the number
13 of defective strands

14 In sum, Covad requests that the Commission adopt Covad's proposed
15 language for section 8.2.5.1 of the UNE Attachment set forth in the paragraph
16 above.

17 **Q. Does that conclude your testimony at this time?**

18 **A.** Yes, it does.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Joint Rebuttal Testimony of Valerie Evans and Michael Clancy on Behalf of Covad Communications Company has been provided by (*) hand delivery or (**) Federal Express this 20th day of February 2003 to the following:

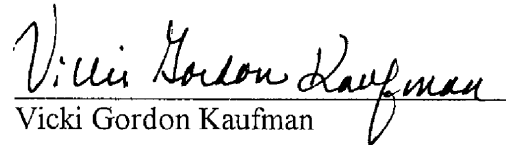
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