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March 21, 2003

VIA HAND DELIVERY

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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:

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

- DIECA Communications, Inc. d/b/a Covad Communications Company's Prehearing Statement.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

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Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/bae
Enclosure

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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: March 21, 2003

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY'S PREHEARING STATEMENT

DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), pursuant to Order No. PSC-02-1589-PCO-TP, submits its Prehearing Statement.

A. APPEARANCES:

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117 South Gadsden Street
Tallahassee, FL 32301

B. WITNESSES:

Witness	Proffered by	Issues
Direct		
Valerie Evans and Michael Clancy (Panel)	Covad	2, 3, 4, 5, 8, 9, 13, 19, 22, 23, 24, 25, 27, 29, 30, 31, 32, 34, 36, 37, 38, 41, 42, 43, 44, 45, 46, 47, 48, 52.

Rebuttal

Valerie Evans and Michael Clancy (Panel)	Covad	2, 3, 4, 5, 9, 13, 19, 22, 23, 24, 25, 27, 30, 31, 32, 34, 37, 43, 45, 46

C. STATEMENT OF BASIC POSITION:

In addressing and resolving the issues in this arbitration, the Florida Public Service Commission ("Commission") must keep certain fundamental legal principles in mind. First, in Section 252 of Telecommunications Act of 1996 (the "Act"), Congress provided ALECs the right to negotiate rates, terms and conditions for interconnection, services or network elements pursuant to Section 251 of the Act. The Act fully contemplates customized and negotiated interconnection agreements and explicitly rejects the notion that an ILEC can meet its section 251 and 252 obligations through a "one size fits all" service offering. Therefore, it is inappropriate to defer an issue to a tariff provision if it does not meet or address the needs of the Parties. In this arbitration, there are many instances where this is the case and the Commission must establish contract language that addresses the specific needs of the parties and governs their on-going business relationship.

Second, the Commission must recognize the backdrop of this arbitration. With few exceptions, the terms being established define the rights of an ALEC to buy services and goods (UNEs) that the ALEC will use in direct competition with its ILEC supplier -- who is hostile to the ALEC's interests. Verizon only offers interconnection agreements with ALECs because it is compelled by law to do so. Moreover, it should not be assumed Verizon will feel constrained to assume duties that are not expressly spelled out in the Agreement. Rather, to the extent the obligations articulated in the Agreement are vague, Verizon's position will virtually always be

contrary to the ALEC's interests and engender disputes. Given this, it is vital that the Agreement expressly and properly set out the rights and duties of the Parties.

The Commission cannot presume that Verizon's obligations to enter into this Agreement in good faith will inspire its good faith performance. It will not. As the evidence in this proceeding will show, the history of Covad's commercial relations with Verizon over the past several years has been one of repeated unilateral decisions made by Verizon not to act in a manner that would have benefited Covad and increased competition. Verizon's actions or inactions, in many of these cases, have been based on unreasonable readings and interpretation of contract or, more commonly, tariff language. Yet Verizon maintained tenuous positions in a blatant effort to impede and frustrate Covad's ability to compete in the marketplace.

To help minimize potential future disagreements under this Agreement that are caused by Verizon's conduct in this regard and any other associated abuse of its role as the reluctant monopoly provider, the Commission should establish just and reasonable terms and conditions that comply with applicable law and are clear, express, and comprehensive. In selecting the contract language, it is vital that the Commission ensure that language in the Agreement is, among other things, (a) clear, (b) coherent, (c) creates stability between the parties, and (d) includes the necessary specificity regarding important procedures that the Parties must follow. Covad has proposed contract language regarding the disputed issues that adhere to these important principles.

Finally, Covad and Verizon continue to work diligently to resolve, or at least narrow, the issues in dispute in this arbitration. To date, the Parties have successfully resolved nearly one-third of the original issues. The positions of the Parties on many more issues are narrowing

toward resolution. It is Covad's intention to make every effort to resolve the remaining issues in this arbitration through business-to-business negotiation at as early a date as possible.

D. EXHIBITS

Covad has no exhibits at this time. Covad reserves the right to use appropriate exhibits on cross-examination.

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 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?

COVAD: Such a change of law should only be triggered when there is a final and non-appealable change in law relieving Verizon of the obligation to provide UNEs or other services under this Agreement. During any renegotiation or dispute resolution, the Parties should continue to perform their obligations in accordance with the terms and conditions of the Agreement, unless the Commission, the FCC, or a court of competent jurisdiction determines that modifications to the Agreement are required to bring it into compliance with the Act, in which case the Parties should perform their obligations in accordance with such determination or ruling. As the Commission knows well, the telecommunications industry has been subject to numerous changes in law that later were reversed (e.g., the various 8th Circuit decisions on TELRIC). The Commission should not permit Verizon to disrupt Covad's business operations and the service it provides to end users in Florida, unless and until there is a final and non-appealable change in law

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

COVAD: Neither party to the Agreement should bill the other party for previously unbilled charges that are for services rendered more than one year prior to the current billing date. Backbilling should be limited to services rendered within one year of the current billing date in order to provide some measure of certainty in the billing relationship between the Parties.

ISSUE 3. When a good faith billing dispute arises between the Parties, how should the claim be tracked and referenced?

COVAD: Resolved.

ISSUE 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?

COVAD: The Billing Party should acknowledge receipt of disputed bill notices within 2 business days. In responding to notices of disputed bills, the Billing Party should provide an explanation for its position within 30 days of receiving the notice of the dispute.

ISSUE 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?

COVAD: No. Late charges should not be imposed for any time that Verizon takes beyond thirty days to address a dispute. This will prevent Verizon from profiting from its own failure to comply with the requirement that it address the dispute in a timely manner. In addition, it will increase Verizon's incentive to provide a response within thirty days. Otherwise Verizon will have no incentive to do so. Similarly, Verizon should not be allowed to assess a late payment charge on unpaid previously billed late payment charges when the underlying charges are in dispute. Late payment charges should only apply to the initial outstanding balance and Verizon should not have the right to apply late penalties upon late penalties when a dispute remains regarding the original charges.

ISSUE 6. Following written notification of either Party's failure to make a payment required by the Agreement or either Party's material breach of the Agreement, how much time should a Party be allowed to cure the breach before the other Party can (a) suspend the provision of services under the Agreement or (b) cancel the Agreement and terminate the provision of services thereunder?

COVAD: Resolved.

ISSUE 7. For service-affecting disputes, should the Parties be required to 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?

COVAD: Yes and yes. Unlike situations subject to the standard dispute resolution provisions of the Agreement, in which the dispute involves only the relationship between Verizon and Covad, a service-affecting dispute harms either Covad's or Verizon's end users. The services that both Parties provide to their customers must be protected to the greatest extent possible, and a dispute that affects those services should be resolved faster than other disputes. Accordingly, either party

should be able to submit such a dispute to binding arbitration under the expedited procedures described in the Commercial Arbitration Rules of the American Arbitration Association (rules 53 through 57) in any circumstance where negotiations have failed to resolve the dispute within five (5) business days.

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

COVAD: No. Verizon should not be permitted to terminate the Agreement unilaterally for exchanges or other territory that it sells. Otherwise, Verizon will have no incentive to avoid disrupting Covad's provision of services to end users. Covad's proposed contract language for this provision allows Verizon to assign the Agreement to purchasers.

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

COVAD: Yes. As described under Issue 2, backbilling between the Parties should be limited to billing for services rendered within one year prior of the current billing date to provide a measure of certainty in the billing relationship between the Parties. If Covad's position on this issue is accepted, the waiver provisions of the Agreement should be modified to take this backbilling limit into account.

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: No. 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.*, 294 F.3d 307 (2d Cir. 2002), in which the court held that because Section 252 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 an interconnection agreement can extinguish an ALEC's right to damages for violations of Section 251. The court held that such ALECs have the right to sue for only common law damages for breach of contract. Covad and Verizon, however, did not negotiate the instant Agreement "without regard to the standards set forth in subsections (b) and (c) of section 251." Indeed, the Parties negotiated this Agreement with regard to Section 251, as many of the provisions thereof are based either explicitly or implicitly upon that section of the Act. Accordingly, Covad should be able to explicitly preserve causes of action that arise from Sections 206 and 207 of the Act because the Parties are incapable of enumerating

in the Agreement all potential causes of action that exist now or may exist in the future.

ISSUE 11. Should the definition of universal digital loop carrier ("UDLC") state that loop unbundling is not possible with integrated digital loop carrier ("IDLC")?

COVAD: Resolved.

ISSUE 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?

COVAD: The following language should be included in the Agreement:

> 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.
>
> Verizon, as part of its duty to provide access to the pre-ordering function, must provide Covad with nondiscriminatory access to the same detailed information about the loop at the same time and manner that is available to Verizon and/or its affiliate.

Although Covad does not have to be granted access to the same systems that Verizon uses for pre-ordering and ordering OSS functions for its own customers, Verizon must ensure that Covad has access to the same information that Verizon accesses with those systems. Verizon also must make certain that this access is available in the same manner as Verizon makes the information available to third parties and in a functionally equivalent manner to the way it makes the information available to itself and its affiliates. The FCC has consistently found that such nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. *See, e.g., Bell Atlantic New York Order*, at 3990, ¶ 83; *BellSouth South Carolina Order*, 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653; *see also Telecommunications Act of 1996*, § 271(c)(2)(B)(ii). Without such access, the FCC has determined that a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing." *Bell Atlantic New York Order* at 3990, ¶ 83. In order to meet the standards set by the FCC, Verizon must provide nondiscriminatory access to the systems, information, documentation, and personnel that support its OSS. *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, ¶ 84. For OSS functions that are analogous to those that Verizon provides to itself, its customers or its affiliates, the nondiscrimination standard requires that it offer requesting carriers access that

is ***equivalent in terms of quality, accuracy, and timeliness.*** *Id.* at 3991, ¶ 85 (emphasis added). Covad's proposed language accomplishes that.

ISSUE 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?

COVAD: Verizon should be required to return 95% of Firm Order Commitments to Covad for pre-qualified and fully mechanized Local Service Requests within three (3) hours. Verizon should be required to return 90% of Firm Order Commitments to Covad for pre-qualified and partially mechanized Local Service Requests within seven (7) hours. Verizon should be required to return 95% of Firm Order Commitments to Covad for pre-qualified and non-mechanized Local Service Requests within twenty-four (24) hours. These benchmarks are identical to benchmarks applied to other ILECs in Florida.

ISSUE 14. Should auditing rights regarding access to, and use and disclosure of, OSS information be reciprocal? How frequently should such audits be conducted?

COVAD: Resolved.

ISSUE 15. To the extent either party is granted audit rights under the Agreement, should a party be required to treat as confidential the information it obtains from the other party during the audit?

COVAD: Resolved.

ISSUE 16. Under what circumstances should Verizon be able to suspend Covad's license to use Verizon OSS information based upon a purported breach of the Agreement?

COVAD: Resolved.

ISSUE 17. Should auditing rights regarding access to, and use and disclosure of, customer information be reciprocal or should Verizon only have the right to such audits?

COVAD: Resolved.

ISSUE 18. Should the Agreement limit the scope of any future negotiations between Covad and Verizon with respect to Verizon's access to Covad's OSS?

COVAD: Resolved.

ISSUE 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?

COVAD: Yes. Verizon should provide Covad UNEs and UNE combinations in instances when Verizon would provide such UNE or UNE combinations to itself. Pursuant to Section 251(c)(3) of the Act, and applicable FCC rules, Verizon is obligated to provide Covad access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory terms. As the FCC itself has found, Section 251(c)(3)'s requirement that incumbents provide ALECs "nondiscriminatory access" to UNEs requires that incumbents provide ALECs access to UNEs that is "equal-in-quality" to that which the incumbent provides itself. *Local Competition Order*, ¶ 312; 47 C.F.R. § 51.311(b). Indeed, the United States Supreme Court has affirmed the fact that Section 251(c)(3) obligates incumbents to provide requesting carriers combinations that it provides to itself. *Verizon Communications v. F.C.C.*, 535 U.S. 467, 538, 122 S.Ct. 1646, 1687 (2002) ("otherwise, an entrant would not enjoy true 'nondiscriminatory access'" pursuant to Section 251(c)(3)). As the FCC has found, the same reasoning requires that incumbents provide requesting carriers UNEs in situations where the incumbent would provide the UNE to a requesting retail customer as part of a retail service offering. Verizon's proposed language would unduly restrict Covad's access to network elements and combinations that Verizon ordinarily provides to itself when offering retail services.

ISSUE 20. Should the parties be allowed to negotiate the terms, conditions, and pricing for UNE or UNE combinations resulting from a change in law?

COVAD: Resolved.

ISSUE 21. Should Verizon be required to provide Covad with access to Unbundled Network Elements at any technically feasible point?

COVAD: Resolved.

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: This issue has narrowed to the charge for failure to meet the appointment window. Covad proposes the following language to resolve the remaining narrow issue:

> If a dispatch does not occur (other than if the Covad end user was not available or upon the request of Covad), Covad may request a new appointment window outside of the normal provisioning interval by contacting Verizon's provisioning center directly and Covad shall not be required to pay the non-recurring dispatch charge for such appointment. Moreover, each additional instance in which the Verizon technician fails to meet the same customer

during future scheduled windows, Verizon will pay to Covad the missed appointment fee that will be equivalent to the nonrecurring dispatch charge that Verizon would have assessed to Covad had the Verizon technician not missed the appointment.

Like any provider of a service that requires installation in the end-user's home or business, Verizon should be obligated to provide its customer (Covad) a commercially reasonable appointment window when it will deliver the product (the loop). And when it fails to meet this committed timeframe, Verizon should waive the nonrecurring dispatch charges. Similarly, when Verizon misses additional appointment windows for that same end-user, Verizon should pay Covad a missed appointment fee equivalent to the Verizon non-recurring dispatch charge.

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

COVAD: The Agreement should refer to industry ANSI standards and not to Verizon's internal (and unilaterally changeable) technical references. Covad has requested that Verizon utilize only industry ANSI standards in the Agreement rather than Verizon Technical Reference 72575 (TR 72575) for ISDN, ADSL and HDSL loops. In an industry where it is routine for carriers to operate in multiple-states and in a variety of ILEC territories, use of national industry standards is the best means of defining technical terms for purposes of an interconnection agreement.

ISSUE 24. Subsumed within Issue 19.

ISSUE 25. Subsumed within Issue 19.

ISSUE 26. What language should be included in the Agreement with respect to Covad's ability to provide full-strength symmetric DSL services?

COVAD: Resolved.

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

COVAD: This issue has narrowed to a disagreement over Covad's inclusion of the language underlined in the paragraph below:

If Covad seeks to deploy over Verizon's network a new loop technology that is not among the loop technologies described in the loop types set forth above (or in the cross-referenced sections of Verizon's tariff), then Covad shall submit to Verizon a written

> request, citing this sub section 3.6, setting forth the basis for its claim that the new technology complies with the industry standards for one or more of those loop types. Within 45 calendar days of receiving this request, Verizon shall 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 that the new technology complies with industry standards. With respect to option (b), if Covad does not agree with Verizon's position, Covad may immediately institute an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction to resolve the dispute, without first pursuing dispute resolution in accordance with Section 14 of the General Terms and Conditions of this Agreement. With respect to option (a), if Verizon subsequently creates a new loop type specifically for the new loop technology, Covad agrees to convert previously-ordered loops to the new loop type, without any interruption of service and at no cost, and to use the new loop type on a going-forward basis. Verizon will employ good faith efforts to ensure that any such conversions are completed without any interruption of service.

With this language, Verizon will allow Covad to deploy new loop technology over its network, so long as the technology complies with industry standards, even though Verizon has not "officially" developed or released a product that utilizes similar technology. Otherwise said, Verizon will not prevent Covad from deploying a new technology that complies with industry standards on the grounds that Verizon has yet to deploy its own "product." By agreeing to this language, 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. Verizon wants, however, to penalize Covad's speed to market in deploying this new technology prior to Verizon by requiring that Covad pay for converting the loops upon which Covad's new technology is deployed to loop types that Verizon officially creates and designates subsequently to handle the new technology. Verizon's desire to foist such costs on Covad is highly inappropriate.

The disputed language underlined above is designed to protect the speed with which Covad can introduce new technologies from delaying tactics available under the dispute resolution provisions of the Agreement.

ISSUE 28. Should the Agreement allow Verizon to take unilateral action to alleviate alleged interference in violation of Applicable Law?

COVAD: Resolved.

ISSUE 29. Should Verizon maintain or repair loops it provides to Covad in accordance with minimum standards that conform to those of the telecommunications industry in general if those standards are more stringent than the standards Verizon applies in maintaining and repairing retail loops?

COVAD: Resolved.

ISSUE 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: Yes. The Agreement should provide specific terms and conditions reflecting how the Parties currently conduct cooperative testing and should continue to do so under the Agreement. Cooperative acceptance testing, or joint acceptance testing, assists in timely and efficient provisioning of newly requested stand alone UNE loops over which DSL and other advanced services will be provided. Additionally, cooperative testing can assure complete maintenance processes on such loops.

Covad, unlike other ALECs, primarily offers advanced services over UNE loops and, as a result, cooperative testing is absolutely critical to its business and ensuring that the loops serving its customers are properly provisioned. Covad therefore seeks to protect its business interests by including language in the Agreement that details what is involved in the cooperative testing process, rather than leaving it to the imagination of the parties.

Covad has proposed new language that does not detail the specific process that Verizon must follow when cooperative testing is performed. Instead, Covad proposes language that takes a more functional and less granular approach with regard to specifying the time when cooperative testing must take place and what should accomplished when it is performed. Specifically, Covad proposes general language about when cooperative testing will be performed, the types of tests that will be performed, when Verizon has to repeat the tests, the standard by which the loops should perform, and for what activities Verizon should use Covad's Interactive Voice Response ("IVR") system. In addition, Covad proposes language that allows for future improvement of cooperative testing, *i.e.*, additional testing, procedures and/or standards, upon agreement of the parties.

The specific tests referenced in Covad's proposed language, *i.e.*, (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing, are tests that Verizon performs today with Covad during the cooperative testing process. Rather than specify how these tests will be performed in the Agreement, Covad seeks

language that simply provides that a Verizon technician and a Covad technician will jointly perform them.

ISSUE 31. Should the Agreement specify procedures for enabling Covad to locate the loops Verizon provisions or should such procedures be established uniformly for all ALECs in Florida. If such procedures should be contained in this Agreement, what should those procedures be?

COVAD: Resolved.

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

COVAD: Yes. In instances when Verizon rejects a Covad mechanized loop qualification query, Covad should be allowed to submit an "extended query" to Verizon at no additional charge. Such a query could avoid the need for, and costs of, manual loop qualification. Covad should be able to submit either an extended query or a manual loop qualification request in instances when the Verizon customer listing is defective, not just in cases where the Verizon database does not contain a listing. Finally, Verizon should complete Covad's manual loop qualification requests within one business day.

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

COVAD: Yes. For certain order types, Verizon has agreed to accept Covad service orders without regard to whether they have been prequalified. However, Covad seeks language that would preserve its right to contest the prequalification "requirement" for an order or set of orders. Covad seeks this right because Verizon's prequalification tool has proven to be unreliable on certain orders types. In the event Covad uncovers significant and pervasive problems with Verizon's prequalification tool for an order or sets of order, Covad seeks to reserve its right to contest any requirement that such orders must pass prequalification.

ISSUE 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: Yes. Verizon should provision loops within the shortest of either: (1) the interval that Verizon provides to itself, or (2) the Commission-adopted interval, or (3) ten business days for loops needing conditioning, five business days for stand-alone loops not needing conditioning, and two business days for line shared loops not

needing conditioning. These intervals are reasonable and ensure that Covad receives reasonable and nondiscriminatory access to UNE loops.

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

COVAD: Consistent with the nondiscrimination provisions of the Act, when provisioning T1s or xDSL loops, after obtaining Covad's approval, Verizon should perform LSTs at no additional charge if Verizon does not charge its own customers for performing such work. Covad also believes that, except in line sharing situations, the standard provisioning interval should not change based on Verizon's need to conduct LSTs. Such work is routinely done by Verizon to provision loops and should already be captured by the standard interval. In fact, Verizon's retail provisioning intervals do not vary depending on whether it must conduct an LST for its retail end users.

ISSUE 36. Is Verizon obligated to provide line sharing where an end-user customer receives voice services from a reseller?

COVAD: Yes. Verizon should be obligated to offer a form of line sharing, called Line Partitioning, where end users receive voice services from a reseller of Verizon local services. There is no reason to deny competitive DSL service to end users who choose to purchase local voice services from a reseller, rather than Verizon.

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

COVAD: If a loop is mechanically prequalified by Covad, Verizon should return an LSR confirmation within two business hours for all Covad LSRs. This interval is reasonable and would ensure that Covad is provided reasonable and nondiscriminatory access to Verizon's OSS.

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

COVAD: Verizon should provision such augmentation in 45 days. This interval is reasonable and would ensure that Covad is provided reasonable and nondiscriminatory access to UNEs.

ISSUE 39. On what terms should Covad be permitted to access loops for testing purposes?

COVAD: Resolved.

ISSUE 40. Should Verizon provide 'dark fiber pursuant to rates, terms and conditions in applicable tariffs that are inconsistent with the Principal Document?

COVAD: Resolved.

ISSUE 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?

COVAD: Yes. The Agreement should clarify that Verizon's obligation to provide UNE dark fiber applies regardless of whether any or all fiber(s) on the route(s) requested by Covad are terminated. The FCC's definition of dark fiber includes both terminated and unterminated dark fiber. Fiber facilities still constitute an uninterrupted pathway between locations in Verizon's network whether or not the ends of that pathway are attached to a fiber distribution interface ("FDI"), light guided cross connect ("LGX") panel, or other facility at those locations. In addition, the termination of fiber is an inherently simple and speedy task.

Verizon's termination requirement would allow it unilaterally to 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 requests that the Commission clarify that the definition of unbundled loop, subloop, and transport dark fiber includes fiber that is deployed in the network but not yet terminated. Further, Verizon should be required to terminate unterminated dark fiber for requesting ALECs.

Verizon's current dark fiber inventory practices are unreasonable and discriminatory and violate section 251(c)(3) of the Act and FCC rule 51.319. For example, Verizon has argued that dark fiber that is not terminated at both ends does not meet the FCC's definition of unbundled dark fiber and need not be made available to ALECs as a UNE. Verizon considers fiber that is not terminated at both ends and completely spliced to be under construction and not part of the dark fiber inventory available to ALECs. Verizon's refusal to consider these unterminated fibers as part of its inventory results in Verizon grossly understating the amount of dark fiber that should be characterized by Verizon as "available" to requesting ALECs as UNEs. Such fiber may readily be made usable by Verizon, and should be considered usable by ALECs. Unless Verizon is required to terminate dark fiber for ALECs, it can deliberately leave dark fiber that has been pulled or lies just outside a central office or building unterminated in order to reduce the dark fiber inventory that is available to ALECs. The District of Columbia Public Service Commission ("DC PSC") recently rejected Verizon's policies regarding unterminated and unspliced dark fiber and concluded that unlit fiber that is not attached at both ends is within the scope of the dark fiber UNE and should be included in Verizon's dark fiber UNE inventory that is made available to CLECs.

ISSUE 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: Yes. Covad should be able to access dark fiber at any technically feasible point, which is the only criterion that Congress adopted for determining where carriers may access the incumbent's network. Verizon's attempt to limit access to dark fiber at central offices and via three defined products would diminish Covad's rights to dark fiber under Applicable Law.

Covad's proposed language, which permits it to have access to dark fiber in technically-feasible configurations consistent with Applicable Law, is simple, reasonable, and comports with the Act and FCC rules. Section 251(c)(3) of the Act and FCC Rule 51.307(c) specifically provide that ILECs shall provide to a requesting telecommunications carrier for the provision of a telecommunications service, "nondiscriminatory access to network elements on an unbundled basis at *any technically feasible* point" on terms and conditions that just, reasonable, and nondiscriminatory." Under the FCC definition of "technically feasible," access to unbundled network elements at a point in the network "shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier...for such access, or methods."

Furthermore, Covad's proposed language, which specifies that that "[t]he description of Dark Fiber Loop, Dark Fiber Sub-loop, and Dark Fiber IOF products, does not limit Covad's right to access dark fiber in other technically feasible configurations consistent with Applicable Law," comports with FCC's findings in the *Virginia Arbitration Award.*

ISSUE 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?

COVAD: The Agreement should clarify that Verizon's obligation to provide UNE dark fiber includes the duty to provide any and all of the fibers on any route requested by Covad regardless of whether individual segments of fiber must be spliced or cross connected to provide continuity end to end. This provision is consistent with the FCC's rules governing nondiscriminatory access to UNEs. Verizon should be required to splice because Verizon splices fiber for itself when provisioning service for its own customers and affiliates. In addition, according

to usual engineering practices for carriers, two dark fiber strands in a central office can be completed by cross-connecting two dark fiber strands with a jumper. The FCC, acting as the arbitrator for the state of Virginia, has determined that Verizon may not decline to cross connect fiber to complete a route. It is Covad's position, and the FCC agreed, that Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of fiber, and thus conflicts with FCC rules 51.307 and 51.311.

The Commission should require Verizon to route dark fiber transport through two or more intermediate central offices for Covad without requiring collocation at the intermediate central offices. Further, the Commission should require Verizon to provide any needed cross connects or splices between such fibers in order to facilitate routing of dark fiber through intermediate central offices.

ISSUE 44. Should Verizon be obligated to offer Dark Fiber Loops that terminate in buildings other than central offices?

COVAD: Yes. Covad should be able to access Dark Fiber Loops without regard to whether they terminate in central offices or other buildings (that effectively perform the functions of a central office for the Dark Fiber Loop).

Covad's proposed language on this issue is innocuous, unambiguous, comports with federal law, and protects Covad's legal rights to access Dark Fiber Loops. In particular, Section 51.319(a)(1) of the FCC's rules defines the loop network element as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC *central office* and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC." Verizon's proposed contract language, however, does not follow this definition because it limits the availability of dark fiber loops to "Wire Center" locations rather making dark fiber loops available in all Central Offices or Verizon locations that are de facto Central Offices.

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

COVAD: Yes. It is Covad's position, and the FCC found, that requiring a requesting carrier to submit separate requests for each leg of a fiber route places unreasonable burden on carriers that is not comparable to Verizon's own information about and access to its fiber, and is therefore discriminatory. As mandated by the *Virginia Arbitration Order*, Verizon has agreed to route dark fiber transport through intermediate offices for ALECs without requiring collocation at the intermediate central offices (an indirect route). Verizon has also agreed that where a direct

route is not available, Verizon will provide in its response to a Dark Fiber Inquiry information regarding alternative indirect routes. Verizon seeks to unreasonably limit its unbundling obligations, however, by imposing a restriction on its obligation to provide access to dark fiber UNEs and information regarding dark fiber UNEs that is inconsistent with FCC rules and the *Virginia Arbitration Order*. By limiting the number of intermediate offices that dark fiber may traverse, Verizon seeks to impose a limitation on the usage of UNE dark fiber that violates FCC rule 51.309(a).

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

COVAD: In order to meaningfully utilize dark fiber, Covad must be able to know where and how much dark fiber exists in the network in order to develop its business and network plans, evaluate competitive customer opportunities, and otherwise truly utilize dark fiber as a component of a network build out strategy. Verizon must provide Covad detailed dark fiber inventory information, including, but not limited to, field surveys and access to maps of routes that contain available dark fiber by LATA and availability of dark fiber between any two points in a LATA without regard to the number of dark fiber arrangements that must be spliced or cross connected together for Covad's desired route. Verizon performs field surveys for itself to determine the quality, sufficiency, and transmission characteristics of dark fiber. The FCC has made plain that Verizon must provide to Covad the same detailed underlying information regarding the composition and qualifications of the loop that Verizon itself possesses.

Verizon is required to provide access to requesting ALECs to the information available in any of its OSS, not merely the limited maps and other information it is convenient for Verizon to provide. Accordingly, Verizon cannot lawfully withhold detailed dark fiber transport maps, TIRKS data regarding availability of dark fiber, baseline fiber test data from engineering records or inventory management, and other data from ALECs as has been its standard practice.

Consistent with the FCC's decisions, Covad does not seek information that does not reside anywhere in Verizon's databases, fiber maps, paper records or elsewhere within Verizon's records, databases and other sources as alleged by Verizon in its Response. Rather, Covad seeks parity access to the same up-to-date pre-ordering and ordering information regarding dark fiber UNEs that is available anywhere in Verizon's backoffice systems, databases and other internal records, including but not limited to data from the TIRKS database, fiber transport maps, baseline fiber test data from engineering records or inventory management, and field surveys.

ISSUE 47. What information must Verizon provide in response to a field survey request? How detailed should any provisions of the Agreement be that address Verizon's responses to field survey requests?

COVAD: Verizon should be required to provide certain critical information about dark fiber via a response to a field survey request that allows Covad a meaningful opportunity to use dark fiber. Covad pays Verizon a nonrecurring charge to perform field surveys and should receive critical fiber specifications, including whether fiber is dual window construction; the numerical aperture of the fiber; and the maximum attenuation of the fiber. Verizon has an obligation to provide Covad parity access to dark fiber information under the FCC's rules. Based on Covad's experience, unless specific types of data are explicitly listed and described in an agreement or commission order, Verizon will simply deny access to that data.

ISSUE 48. What restrictions, if any, should apply to Covad's leasing of the dark fiber in any given segment of Verizon's network?

COVAD: Any and all dark fiber deployed by Verizon is subject to unbundling pursuant to the Act and FCC regulations. Verizon should not be able to take away Covad's ability to obtain dark fiber in a manner that will enable Covad to compete. Indeed, the improper exclusion of fiber will violate federal law defining UNE dark fiber unbundling requirements. Moreover, Covad is concerned with its ability to verify the accuracy of Verizon's reporting and method of calculation with respect to a 25% limit on dark fiber.

ISSUE 49. Should Verizon be permitted to reclaim dark fiber upon 12 months advance notice to Covad, or 24 months advance notice?

COVAD: Resolved.

ISSUE 50. Should Verizon provide Covad direct notification at least one business day before Verizon completes work on an end user's request to switch from Verizon Telecommunications Services that Covad resells to a retail Verizon Service?

COVAD: Resolved.

ISSUE 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: Yes. The charges for a service should be the Commission or FCC approved charges and should be accurately represented and warranted in Appendix A to the Agreement to the extent such rates are available. To the extent certain charges for a service have not yet been approved by the Commission or the FCC, when such rates are approved Verizon should be required to apply them retroactively starting on the effective date of the Agreement. Verizon should provide a refund to Covad of over-charged rates if necessary.

Verizon should not be able, by the mere filing of a tariff, to negate the established and effective rates contained in the Interconnection Agreement. Covad must be able to rely on the rates established by this Commission and contained in the Agreement. Otherwise, the Commission's rates and the rates in the Agreement are little more than placeholders, until Verizon determines to impose a different rate. Second, Verizon's position would require Covad and other ALECs to become "tariff police" who must scour every tariff filing Verizon makes with the Commission to find any page or paragraph which may impact Covad's interests.

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

COVAD: This issue has evolved to the more narrow issue of whether Verizon must provide Covad advanced written notice of any non-tariff revisions that serve to establish new rates or change existing rates in Appendix A. Verizon should have this obligation and Covad specifically proposes the following language for section 1.9 of the Pricing Attachment:

> Notwithstanding anything to the contrary in Sections 1.1 to 1.7 above, Verizon shall provide advance actual written notice to CLEC of any non-tariffed revisions that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A. Whenever such rate(s) becomes effective, Verizon shall, within 30 days, provide Covad with an updated Appendix A showing all such new or changed rates for informational purposes only.

This language is needed in the Agreement because Section 1.8 of the Pricing Attachment, which has been agreed upon, provides "In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the parties in writing." Section 1.8 primarily addresses circumstances in which there is no tariffed rate, no rate in the Appendix A, or Commission-approved rate for a service. As Section 1.8 requires, the parties must *mutually agree in writing* what will be charged for such services.

Covad requests this language because Verizon has a track record of not notifying Covad regarding a new charge that will be assessed that is non-tariffed and not allowing Covad to agree to the charge. Instead, Verizon begins billing or, to make matters worse, backbills Covad for such charges and thereby places the burden on Covad to "rifle through the thousands of pages" of bills and find the newly assessed charge buried in it. After a charge is uncovered, an extremely prolonged and burdensome billing dispute with Verizon ensues that can be a nightmare for Covad to resolve with Verizon.

ISSUE 53. Should Verizon provide collocation to Covad pursuant to Commission-approved tariffs?

COVAD: Resolved.

ISSUE 54. Does Covad have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Act?

COVAD: Resolved.

ISSUE 55. Should the Agreement specify the minimum amount of DC power and additional power increments Covad may order?

COVAD: Resolved.

F. STIPULATED ISSUES:

The following issues have been resolved: 3, 6, 11, 14, 15, 16, 17, 18, 20, 21, 26, 28, 29, 31, 39, 40, 49, 50, 53, 54, and 55. In addition, Issues 24 and 25 have been subsumed in other issues.

G. PENDING MOTIONS:

Covad has no motions pending.

H. PENDING CONFIDENTIALITY CLAIMS:

Covad has no pending confidentiality claims.

I. REQUIREMENTS WHICH CANNOT BE COMPLIED WITH:

Covad is aware of no requirements with which it cannot comply at this time.

J. DECISIONS PREEMPTING THE COMMISSION'S ABILITY TO RESOLVE THIS MATTER:

The Triennial Review Order may impact some of the issues in this case; however, that Order has not been issued yet and will have to be evaluated when it becomes available.

COVAD COMMUNICATIONS COMPANY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DIECA Communications, Inc. d/b/a Covad Communications Company's Prehearing Statement has been provided by (*) hand delivery, (**) electronic mail, or U.S. Mail this 21st day of March 2003, to the following:

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