ORIGINAL

McWHIRTER REEVES
ATTORNEYS AT LAW

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

PLEASE REPLY TO:

TALLAHASSEE

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

June 16, 2003

VIA HAND DELIVERY

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

Re: Docket No.: 020960-TP

Dear Ms. Bayo:

On behalf of DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), enclosed for filing and distribution are 1 disk and the original and 15 copies of the following:

- DIECA Communications, Inc. d/b/a Covad Communications Company's Post-Hearing Brief.

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

Sincerely,

Vicki Gordon Kaufman

VGK/bae
Enclosures

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MMS
SEC 1
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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: June 16, 2003

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DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY'S POST-HEARING BRIEF

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

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

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications, Company

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McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Attorneys for DIECA Communications, Inc. d/b/a Covad Communications, Company

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COVAD COMMUNICATIONS POST-HEARING BRIEF

In an attempt to resolve many open issues raised in this arbitration Covad has put forth a great effort to find compromise language that is just and reasonable and strives for mutuality. At this time, out of the 55 issues that were originally set-forth in Covad's Petition for Arbitration, 25 issues have been settled.[1] As a consequence, only 30 issues remain for the Commission to resolve. Because of the nature of this proceeding, which encouraged ongoing settlement, some of the issues, as identified herein, have evolved to the point where the parties have (1) narrowed the disputed language from the original issue; with certain aspects of the new language still in dispute, or (2) offered new language in an effort to achieve a settlement; although full agreement on the newly proposed language does not yet exist.

The open issues addressed herein should be resolved in Covad's favor consistent with federal law and applicable Commission precedent. Covad's position with respect to these open issues is just and reasonable, and its proposed language is mutual and fairly addresses the concerns of both parties given the underlying facts and the need for the contractual provisions.

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

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[1] Issues 3, 6, 11, 14-18, 20-21, 26, 28-29, 31, 39, 40, 44, 45, 47-50, and 53-55 have been resolved and are not addressed herein.

services required under the Act and the Agreement resulting from this proceeding, when should that change of law provision be triggered?

Covad's Position ** During the pendency of any renegotiation or dispute resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, unless the Commission, the Federal Communications Commission, or a court of competent jurisdiction determines otherwise. **

In an attempt to compromise and settle this issue, Covad proposed, in its best and final offer to Verizon, new language for section 4.7 that states as follows:

> During the pendency of any renegotiation or dispute resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, unless the Commission, the Federal Communications Commission, or a court of competent jurisdiction determines that modifications to this Agreement are required to bring it into compliance with the Act, in which case the Parties shall perform their obligations in accordance with such determination or ruling.

Attachment A, Revised Proposed Language Matrix, Issue 1, page 1.

In the New York AT&T arbitration with Verizon, the New York Commission concluded that this language "provides suitable procedures for continuing services when further negotiations and disputes occur. The interconnection agreement provisions shall continue to operate unless the FCC, the Commission, or a court of competent jurisdiction mandates a differing obligation."[2]

Significantly, the FCC, in the *Virginia Arbitration Award*, flatly rejected Verizon Virginia's proposed change of law language which included discontinuance terms and

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[2] *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues, at 8 (N.Y. P.S.C. July 30, 2001) ("*AT&T NY Arbitration Award*").

separate changes in law provisions that are similar to what Verizon proposes here.[3] The FCC held that:

> Based upon the record in this proceeding, we agree with WorldCom that *all* changes in law that materially affect the parties' obligations should be governed by a single change of law provision, regardless of whether the change increases or decreases Verizon's UNE obligations. We thus adopt the language proposed by WorldCom with respect to this issue, and reject Verizon's language. We find that Verizon has failed to justify the special treatment of changes in law that relieve it of obligations regarding network elements. We find that Verizon's concern that the Commission would issue rules that create new obligations or terminate existing obligations without specifying the effective date of such rules is unfounded. Commission orders adopting rules routinely specify effective dates. If, however, after the issuance of any particular Commission order, Verizon identifies operational concerns about the general applicability of a Commission decision, then Verizon should address those specific concerns with the Commission at that time.[4]

Notably, the language the FCC adopted in the *Virginia Arbitration Award* for the change of law provision was similar in many respects to language the Commission adopted in the *AT&T NY Arbitration Award*.[5] Consistent with the New York

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3 *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 & 00-249, Memorandum Opinion and Order, DA 02-1731, ¶ 717 (Chief, Wireline Competition Bureau rel. July 17, 2002) ("*Virginia Arbitration Award*").

4 *Virginia Arbitration Award* ¶ 717.

5 In particular, the FCC adopted the following language, which did not allow Verizon to unilaterally discontinue service:

> 25.2 In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially alter the obligation(s) to provide services or the services themselves embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date of such rules, regulations or orders become effective, then

Commission's determinations in the AT&T arbitration, Covad's newly proposed language is abundantly fair and reasonable because it provides suitable procedures for continuation of services when renegotiations are taking place, pursuant to section 4.6, due to changes in law that materially affect any provision of the Agreement.

Verizon's proposed language for section 4.7 is both one-sided and draconian in that it freely allows Verizon to discontinue services under the Agreement shortly after the release of an FCC or court decision based on Verizon's unilateral interpretation of the decision. In particular, Verizon's proposed section 4.7 permits Verizon to interpret a governmental decision, order, determination or action in a light that is most favorable to it and, based upon Verizon's unilateral interpretation, immediately discontinue or discontinue services currently provided 45 days after the decision regardless of potential ambiguities with the decision and differing interpretations of it.

For the foregoing reasons, the Commission should reject Verizon's proposed language and adopt Covad's proposed language, which is consistent with *AT&T NY Arbitration Award* and the FCC's *Virginia Arbitration Award*.

ISSUE 2: What time limit should apply to the Parties' rights to assess previously unbilled charges for services rendered?[6]

Covad's Position ** Neither Party should bill 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 to provide certainty in the billing relationship between the Parties. **

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

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the parties shall resolve their disputes under the applicable procedures set forth in Section [13] (Dispute Resolution Procedures) hereof.

Virginia Arbitration Award ¶ 717.

[6] Issues 2 and 9 are discussed together.

Covad's Position ** If Covad's position on Issue 2 is accepted, the waiver provisions of the Agreement should be modified to take this back billing limit into account. **

Verizon's ability to assess previously unbilled charges for services rendered (*i.e.*, its ability to back bill) should be limited to services rendered within one year of the current billing date. Verizon, on the other hand, believes that its ability to back bill should be governed by a statute of limitations unrelated to the telecommunications industry. Covad has experienced significant problems with Verizon in regard to back billing which will be perpetuated under Verizon's proposal.[7] For instance, in New York during the September 4, 2001 billing cycle, Covad received a bill from Verizon amounting to approximately $1.1 million for various unidentified back billed charges dating back to July 1, 2000. (TR. 11-12). Despite state regulations requiring that Verizon explain the reason for late billing,[8] Verizon did not even set apart the charge as a "new" charge under current charges. Rather, the charges showed up for the first time under "Balance Due Information." More appalling is the fact that these charges (i) were for line sharing loop charges, but appeared on a High Capacity Access/Transport Bill and (ii) were included a Verizon-New York bill, despite the fact that the charges covered services rendered in other jurisdictions. (TR. 11-12).

Moreover, the extent of the detail regarding the $1.1 million was limited to "Adjustment of local switching charges loop/line sharing 7/1/00-6/30/01," and there was no identification of the circuits being billed. (TR. 12). After expending significant

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7 *See* Transcript of Hearing, Docket No. 020960-TP, Florida Public Service Commission, May 14, 2003 at pages 11-15, 55-57 (hereinafter referred to as "TR").

8 N.Y. Comp. Codes R. & Regs. Tit. 16, § 609.10 (2002).

resources to identify what the $1.1 million in charges were for, Covad determined, and Verizon agreed, that over $358,000 of the back-bill were invalid charges. By Verizon's own admission, its back-bill was at least 30% inaccurate. (TR. 12).

Backbilling by Verizon provides Covad a misleading picture of its costs of doing business and will impede Covad's efforts to track these costs. As the FCC observed, this results in CLECs operating "with a diminished capacity to monitor, predict, and adjust expenses and prices in response to competition."[9] Thus, Verizon's backbilling will impede Covad's ability to manage its business effectively. Additionally, Covad's officers must attest to the accuracy of financial statements filed with the Securities and Exchange Commission ("SEC"). If Verizon is able to back-bill Covad for material billing errors based on the statute of limitations Verizon proposes—then Covad may be faced with amending multiple years of SEC filings to adjust for material errors created by Verizon's poor billing practices.

The one-year limitation proposed by Covad is in accord with FCC rulings on backbilling. While the FCC has not established a fixed time limit for permissible backbilling by telecommunications carriers, the FCC's Enforcement Bureau will determine if the backbilling period in question is unreasonable under section 201(b) of the Communications Act on a case-by-case basis. In the *People's Network* decision, the FCC found that AT&T had violated section 201(b) of the Act by backbilling TPN's

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9 *In the Matter of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269, ¶¶ 22-24 (Sept. 19, 2001) ("*FCC Verizon Pennsylvania 271 Order*").

customers for services rendered more than 120 days after charges had accrued.[10] TPN resold AT&T's Software Defined Network ("SDN") and Distributed Network services ("DNS") pursuant to an agreement signed in 1989. However, AT&T's billing system was not able to handle the unanticipated increase in demand for SDN services, and numerous calls were not matched to client identifiers at the time they were placed. Ultimately, matching the calls to the appropriate client identifiers was a time-consuming and largely manual process. As a result, some of TPN's customers received bills as many as 15 months after provision of service and at least one customer received a bill for calls placed 20 months earlier. On average, TPN customers were billed for services rendered more than 10 months previously. AT&T conceded that billing was delayed but claimed that it had instituted steps to rectify the situation in a timely and reasonable manner.

TPN argued that billing customers for charges that accrued more than 60 days earlier was prohibited under section 201(b) of the Act. Because the FCC found AT&T's position to be credible, it declined to adopt the *per se* 60-day limit advocated by TPN. However, the Commission did find that backbilling that had occurred in excess of 120 days was unreasonable under section 201(b). In reaching this conclusion, the Commission relied on several factors: (1) AT&T amended its tariff in 1993 to guarantee that calls would be billed within 120 days of being placed; (2) TPN was a resale carrier, and as such, was both a customer and competitor of AT&T; and (3) AT&T failed to describe its corrective policies and procedures with adequate specificity to determine the period reasonably necessary to render and prepare some or all of the late bills.

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10 *The People's Network, Inc. v. AT&T Corp.*, Memorandum and Order, File No. E-92-99, 11 FCC Rcd 21081 (1997) (*"TPN"*).

In the *Brooten* decision, the FCC found that backbilling that occurred up to 160 days after the charges had accrued was reasonable.[11] In *Brooten*, an end-user customer argued that it was *per se* unreasonable to be billed for calls up to 160 days after they were made. AT&T conceded that it billed Brooten, the customer, for calls placed up to 150 days earlier. As in the *TPN* decision, the late billing was attributed to a computer error whereby usage information was not attributed to the appropriate billing account. Once again, AT&T claimed to have rectified the problem as swiftly as possible, including promptly rendering bills to the correctly identified customers.

In spite of its similarity to the *TPN* decision, the FCC was inclined to find a longer backbilling period acceptable in *Brooten* because AT&T both apologized to the affected consumer and offered more than half of the backbilled charges as a credit to the customer's account. In addition, the FCC recognized AT&T's obligation to collect its lawful, tariffed charges. However, the Commission was careful to note that delays significantly longer or shorter than 160 days could be held unjust and unreasonable under different circumstances. A one-year period, which is more than *double* 160 days and, thus, "significantly longer," is more than ample a time frame for Verizon to correct its bills.

Accordingly, a one-year limitation on backbilling is well-supported under FCC precedent, Florida rules[12], and would provide much-needed certainty for Covad's business needs and SEC reporting obligations. If the Commission does apply a one-year

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11 *Brooten v. AT&T*, Memorandum Opinion and Order, File No. E-96-32, 11 FCC Rcd 13343, (1997) (*"Brooten"*).

12 Rule 25-4.110(10), Florida Administrative Code.

limitation, the waiver provisions of the Agreement should be modified to reflect this limitation.

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?**[13]

Covad's Position ** 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's Position ** Late charges should not be imposed for any time that Verizon takes beyond thirty days to address a dispute. 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.

Verizon should provide its position and a supporting explanation regarding a disputed bill within thirty (30) days of receiving notice of the dispute. In the past, Verizon has often failed to respond to disputes filed by Covad or has responded at an unacceptably slow pace. In the year 2002, Covad has filed over 1,300 billing claims with Verizon East. In Covad's experience, it takes an average of 221 days to resolve a high capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to resolve a collocation claim in the Verizon East region. (TR. 18).

An additional problem caused by Verizon's dilatory claim resolution is that Verizon has repeatedly misapplied Covad payments to the wrong accounts, resulting in underpayments in the accounts for which payment was intended, unnecessary and

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[13] Issues 4 and 5 will be discussed together.

unwarranted late fees for Covad, and raising the prospect of unwarranted service disconnection by Verizon. (TR. 18-20, 60-62). Indeed, Covad has received multiple disconnect notices for several billing account numbers for which Covad's records indicate it has paid all amounts due in full. Verizon agreed that Covad's accounts were correct and is adjusting their accounts accordingly. (TR. 19). Verizon's inability to apply Covad's payments correctly results in wasteful efforts by both Verizon's and Covad's organizations to identify and resolve unnecessary billing disputes. Covad needs prompt resolution of these issues to ensure that service to its customers is not jeopardized. Verizon's inability to bill competitors correctly is a problem that is growing in scope and prevalence, reflecting a pattern of behavior that is anticompetitive and discriminatory, whether by design or otherwise. (TR. 19-20).

The FCC has recognized that billing errors can be disabling to CLECs by denying them a meaningful opportunity to compete. For example, in its *Pennsylvania 271 Order*, the FCC noted that if CLECs receive bills that are not readable, auditable, and accurate, CLECs must spend additional monetary and personnel resources reconciling each bill and pursuing bill corrections.[14] Covad's experiences with Verizon corroborates the FCC's observation that billing errors can deny a CLEC a meaningful opportunity to compete.

When asked to improve its responsiveness to claims in the Verizon West region, Verizon started closing out claims within 24 hours by denying claims without any investigation. Such a response is clearly unacceptable. (TR. 19). The Interconnection Agreement between Verizon and Covad must provide for specific deadlines for the

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14 *FCC Verizon Pennsylvania 271 Order*, ¶¶ 22-24.

procedures used to resolve claims. When claim resolution procedures are not clearly set-out, Verizon has shown a willingness to play games with the procedures.

The requirement of providing a response within thirty days is also in accord with applicable billing performance metrics to which Verizon is currently subject in New York and Pennsylvania. Metric BI-3-04 requires that 95% of CLEC billing claims be acknowledged within two (2) business days.[15] Metric BI-3-05 requires 95% of CLEC billing claims to be resolved within 28 calendar days.[16] Thus, requiring Verizon to state its position and provide a supporting explanation within thirty days is by no means unreasonable.

Verizon claims that Covad's requirement is unreasonable because there is no requirement that Covad's notice of dispute contain sufficient information for Verizon to investigate the matter, nor is there any requirement that the billing dispute be sufficiently current so that Verizon has relatively easy access to the data it needs to investigate. Verizon, however, is the party in control of the billing process, and has the ability to rectify these problems. There is nothing that limits Verizon's ability to ask for more information, and because Verizon is required to investigate the matter promptly, Verizon should ascertain quickly that it needs more information. Verizon's timing controls the timing of the other events in the billing process. The billing resolution process proposed by Covad, by prodding Verizon not only to bill in a timely manner, but also to investigate and respond to any disputes promptly, will become much less arduous for all concerned.

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15 *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports,* NY PSC Case No. 97-C-0139, May 2002 Compliance Filing at 94 (May 14, 2002).

16 *Id.* These metrics are the same in Pennsylvania.

If the Commission does apply the thirty-day requirement, it should also hold that late charges will not be imposed for any time that Verizon takes beyond thirty days to address the 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. Verizon's position, which will place no time limit on a response and allow late charges to accrue indefinitely, would provide Verizon incentive to drag out a dispute. Verizon suggests that Covad's position would give Covad an "incentive to submit frivolous claims to earn interest on the 'disputed' amounts." (TR. 62-63). Covad would still be subject to late payment charges for the initial 30 days which is quite a disincentive to filing any dispute, much less a frivolous one. (TR. 62-63). Moreover, Verizon possesses the ability to counteract any such exposure to any such behavior by investigating and resolving the dispute in a prompt manner.

Also, Verizon should not be allowed to assess a late payment charge to unpaid previously billed late payment charges when the underlying charges are in dispute.[17] Late payment charges should only apply to the initial outstanding balance. Verizon is attempting to apply late penalties upon late penalties. As discussed above, Verizon is not resolving billing disputes in a timely manner. Applying late payment charges in a cumulative manner will only heighten the deleterious effects of Verizon's lengthy resolution process.

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[17] Verizon's claim that the issue of assessing multiple late charges was resolved in Order No. PSC-01-2017-FOF-TP, Docket No. 001797-TP is incorrect. That Order provides that a late payment charge on the amount in dispute, once the dispute is resolved, is permissible, *not* that multiple late charges may be assessed on the same amount.

Once a claim has been acknowledged by Verizon, the late payment charges associated with that claim should be suppressed until the claim is resolved. Verizon's current practice results in numerous unnecessary claims. Currently, Verizon is assessing Covad late payment charges on amounts that are in the process of being disputed. Covad then files a dispute for those late payment charges. The following month, Verizon will assess late payment charges on the original disputed amount *as well as* the disputed late fee charges from the prior month. (TR. 20, 62-63).

It can take months for a dispute to be resolved and Covad must file a dispute each time a late payment charge is assessed in addition to the original dispute. (TR. 20). So, instead of having to file only one claim for a dispute, Covad ends up having to file multiple claims to address the late payment charges, depending on how long it take to resolve the claim and issue a credit. Typically, Covad gets charged a late fee for the disputed amount on the same invoice that has the credit on it and therefore, Covad must, *yet again*, file one more claim for late payment charges once the credit has been applied. (TR. 20). All of this unnecessary bureaucracy can be avoided easily by suspending late payment charges until the underlying dispute is 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's Position ** Either Party should be able to submit service-affecting disputes 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. **

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 must be resolved quickly. 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.

This approach is in accord with the recent rulings of the New York Commission on this issue. In the *AT&T NY Arbitration,* the Commission held that it had the authority to require commercial arbitration and alternative dispute resolution ("CAADR") provisions in interconnection agreements established pursuant to the 1996 Act.[18] The New York Commission noted that such procedures are a typical feature in the interconnection agreements it has approved in the past. The New York Commission observed:

> An ADR process makes sense for disputes arising out of the interconnection agreement affecting the obligations and performances of the parties, and we include only one in this interconnection agreement . . . . This process is intended to provide for the expeditious resolution of all disputes between the parties arising under this agreement. Dispute resolution under the procedures provided in this agreement shall be the exclusive remedy for all disputes arising out of this agreement

The New York Commission also found that "a provision for expedited resolution of service-affecting disputes is an essential element of the agreement" because "the failure

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18 *AT&T NY Arbitration Award* at 10.

to seasonably address service issues could directly impact customers."[19] The New York Commission required that its Expedited Dispute Resolution process be included as an option for either party in the *AT&T NY Arbitration* because the ADR in the subject agreement was shown to be inadequate for expedited resolutions. The New York Commission therefore required that its EDR process be included to supplement the ADR processes in the agreement.[20]

Covad's proposal to shorten the negotiation timeframe before invocation of the CAADR process and the use of the expedited procedures of the Commercial Arbitration Rules of the American Arbitration Association should render the process more adequate for expedited resolution of service-affecting disputes. The need for an expedited process is heightened when the dispute is between a wholesale provider with virtually monopoly control over necessary facilities and a competitor of the wholesale provider. Given the lack of alternatives to Verizon's network, any service-affecting dispute will inevitably put the customer out of service and imperil the operations of the competitor.

The New York Commission correctly rejected Verizon's argument that a party cannot be required to submit to arbitration a dispute which he has not agreed to submit. The contract arbitration provisions of the 1996 Act are designed to determine just, reasonable and nondiscriminatory contract provisions that conform to the requirements of the Act. In enacting the 1996 Act, Congress clearly recognized that absent legislative compulsion, ILECs would refuse to agree to reasonable contract provisions because of

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19 *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 01-C-0095, Order On Rehearing at 11 (2001) ("*AT&T Arbitration Order on Rehearing*").

20 *AT&T Arbitration Order on Rehearing* at 12.

their superior bargaining power.[21] Thus, it did not limit the establishment of interconnection agreements to the voluntary negotiations of the parties, but instead provided for an arbitration process conducted by state commissions to ensure the development of just and reasonable interconnection agreements. Thus, the very existence of the arbitration process before state commissions was designed to remedy deficiencies in the negotiation process that would otherwise exist in the telecommunications industry. The statutory provisions of the Act would be undercut if state commissions could not mandate provisions deemed necessary merely because Verizon does not want to subject itself to such provisions. As such, the Commission is well within its authority to mandate use of such processes.[22]

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

> **Covad's Position** ** 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. **

Verizon's proposed language, which would allow Verizon to terminate the Agreement unilaterally in connection with the sale or transfer of a Verizon-served

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21 *See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket. No. 96-98, CC Docket No. 95-185, 11 FCC Record 15499, ¶¶ 216-218 (1996) ("*Local Competition Order*") (subsequent history omitted).

22 Other state commissions have also stated that they have the authority to mandate arbitration provisions in interconnection agreements. *See, e.g., AT&T Communications of California, et al.,* California Public Utilities Commission Application No. 00-01-022, Decision 00-88-011, Opinion, 2000 WL 1752310 (August 3, 2000).

territory, would expose Covad to unwarranted risk and uncertainty, and should not be permitted.[23] In order to enter into and compete in the local exchange market throughout Florida, Covad must be assured that if Verizon sells or otherwise transfers operations in certain territories to a third-party, then such an event will not alter or cast doubt on Covad's rights under the Interconnection Agreement, or undermine Covad's ability to provide service to its residential and business customers. (TR. 21-22). If Verizon's contract language is adopted, Covad – and its customers - will be unable to rely on continuous wholesale service pursuant to the terms of an interconnection agreement. (TR. 21-22).

The Agreement, as proposed by Verizon, specifies that Covad will be given no less than 90 calendar days prior written notice that the Agreement will terminate when it sells or transfers its operations in a territory. It is unreasonable to expect that Covad will be able to negotiate a new agreement with a prospective buyer. *See* Agreement § 43.2. Significantly, under the Act, a CLEC must have good faith negotiations with an ILEC for a period of 135 days before a CLEC can petition to arbitrate an open issue. If the buyer in this instance were intransigent regarding any issues in the Agreement and refused to honor them or negotiate in good faith, the

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[23] Verizon's proposed section 43.2 of the contract language would provide:

> Notwithstanding, any other provision of this Agreement, Verizon may terminate this Agreement with respect to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such termination, which shall be effective upon the date specified in the notice. *See* Attachment A, Revised Proposed Language Matrix at Issue 8, p. 3.

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

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

> **Covad's Position** ** 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.*, 305 F.3d 89, 103-105 (2d Cir. 2002), *cert. granted, Verizon v. Law Offices of Curtis Trinko,* 123 S.Ct. 1480 (2003). In *Trinko,* the court held that because section 252(a)(1) of the Act allows the parties to negotiate interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1), the act of entering into a negotiated interconnection agreement with an ILEC can extinguish a CLEC's right to recover damages, pursuant to 47 U.S.C. §§ 206 & 207, for violations of section 251.[24] Arguably, the court's holding could be viewed by some to find that CLECs that have negotiated certain provisions of an interconnection agreement with an ILEC only have the right to sue for common law damages for breach of contract (as opposed to invoking §§ 251 or 252) unless the agreement specifies that the terms are

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

premised on the standards set forth in sections 251(b) and (c) of the Act. Accordingly, Covad wishes explicitly to preserve causes of action that arise from sections 206 and 207 of the Act and make clear that nothing in the Agreement waives either Party's rights or remedies available under Applicable Law, including 47 U.S.C. §§ 206 & 207.

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's Position** ** 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. **

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.

The FCC has consistently found that such nondiscriminatory access to OSS, which includes access to loop qualification information, is a prerequisite to the development of meaningful local competition.[25] Without such access, the FCC has determined that a competing carrier "will be severely disadvantaged, if not precluded

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25 *See, e.g., Bell Atlantic New York 271 Order*, 15 FCC Rcd at 3990, ¶ 83; *BellSouth South Carolina 271 Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana 271 Order*, 13 FCC Rcd at 20653; *see also* 47 U.S.C. § 271(c)(2)(B)(ii).

altogether, from fairly competing."[26] To meet the FCC standards, Verizon must provide nondiscriminatory access to the systems, information, documentation, and personnel that support its OSS.[27] Significantly, the FCC's OSS unbundling rule 51.319(g) specifies that "[a]n incumbent LEC must...provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC."[28] 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.*[29] Rather than rely upon a passing reference that acknowledges Verizon's obligation to provide Covad nondiscriminatory access to OSS information, as Verizon proposes, Covad requests express language so that the extent of Verizon's obligation in this regard is unequivocal.

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?[30]

Covad's Position ** Verizon should be required to return Firm Order Commitments to Covad within the intervals established in Docket No. 000121C-TP. **

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

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26 *Bell Atlantic New York 271 Order* at 15 FCC Rcd at 3990, ¶ 83.

27 *Id.* at ¶ 84.

28 47 C.F.R. § 51.319(g).

29 *Id.* at 3991, ¶ 85 (emphasis added).

30 Issues 13, 32, 34 and 37 are discussed together.

Covad's Position ** If a loop is not listed in the mechanized database available from Verizon Florida or the listing is defective, Covad should be able to request a manual loop makeup at no additional charge prior to submitting a valid electronic service order, and receive a response within one business day. **

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 CLECs (for products with no retail analog)?

Covad's Position ** 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. **

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

Covad's Position ** 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. **

A. Issue 13 and 37: LSRs and FOCs

Verizon should be required to return firm order commitments within the intervals proposed by the parties in Docket No. 000121C-TP[31]: Verizon should return 95% of firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically; Verizon should also be required to return 95% of firm order commitments for UNE DS1 loops within twenty-four (24) clock hours, and 90% of firm order commitments for UNE DS3 loops within forty-eight (48) clock hours.

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31 The parties' proposed settlement agreement has been filed with the Commission and is the subject of a favorable Staff recommendation which the Commission will consider on June 17, 2003.

Firm Order Commitments ("FOCs") are critical to Covad's ability to provide its customers with reasonable assurances regarding the provisioning of their orders. A FOC from Verizon confirms that Verizon will deliver what Covad requested and allows Covad to inform a customer that the service they requested will be delivered. (TR. 24-26). A FOC date is also critical for the provisioning process of stand-alone loops. It identifies the date Verizon will schedule its technician to perform installation work at the end user's address. The end user is required to provide access to its premises, and potentially to negotiate access to shared facilities, where Verizon's terminal is located, at their premises. This capability assists in resolving one of the remaining inefficiencies that remain in the provisioning process: "No Access" to the end user's premises for the Verizon technician. If the end user is not able to provide access on the originally scheduled FOC date, Covad can communicate with the end user and work with to Verizon to reschedule the FOC. The efficiency gained by such an improvement will provide significant savings to Verizon and Covad -- as well as significantly improving the customer experience.

Importantly, Covad is not seeking to rewrite the Florida performance standards for Verizon. Certain intervals, the majority of which are contained in the Parties' settlement, are of particular importance to Covad, and Covad insists that these timeframes be included in its Interconnection Agreement.

Carrier-to-Carrier Guidelines and Performance Assurance Plans (PAP) were designed to work in conjunction with interconnection agreements. Verizon-NY itself represented that the PAP was only one part of a larger regulatory system designed to

create incentives for adequate performance, and the New York Commission agreed with Verizon's assessment, noting:

> Verizon-NY noted that it is at risk in interconnection agreements with each CLEC for damages as well [as under the PAP] . . . . The Performance Assurance Plan and Change Control Plans represent a substantial counterweight to any incentive to thwart competitive entry. These incentives are in addition to those already contained in interconnection agreements.[32]

The New York Commission subsequently noted:

> Although the performance provisions of [existing interconnection agreements] will be in effect during the term of the agreements, [Verizon-NY] will engage in good faith negotiations on new performance provisions when the current interconnection agreements expire. When an existing interconnection agreement with a CLEC in New York State incorporates performance standards and remedies, such standards and remedies will not be unilaterally withdrawn by [Verizon-NY]. Such standards and remedies will continue to be offered by [Verizon-NY] in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions.[33]

The New York Commission thus clearly anticipated that performance standards will continue to be included in the next generation of interconnection agreements. The FCC has also noted that:

> The performance plans adopted by the New York Commission do not represent the only means of ensuring that Bell Atlantic continues to provide nondiscriminatory service to competing carriers. In addition to the $269 million at stake under this Plan, as noted above, Bell Atlantic faces other consequences if it fails to sustain a high level of service to

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32 *Petition of New York Telephone Company for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Cases 99-C-0949 and 97-C-0271, Notice of Proposed Rulemaking at 10 (August 30, 1999).

33 *Petition of New York Telephone Company for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Cases 99-C-0949 and 97-C-0271, Amended Performance Assurance Plan at 1 and n. 2 (Dec. 22, 2000).

> competing carriers, including . . . liquidated damages under 32 interconnection agreements.[34]

Thus, standards set in interconnection agreements, and corresponding penalties, are vital cogs in assuring adequate performance. These standards in interconnection agreements are all the more valuable because they allow performance to be tailored to the interests of the particular carrier. In this case, the standards pertain to provisioning intervals of great importance to Covad.

Covad is simply seeking to exercise its right to include performance metrics on issues of great import to its operations in the Interconnection Agreement. The intervals it proposes are reasonable and should be included in its interconnection agreement with Verizon.

B. Issue 32: Manual Loop Qualification

Verizon asserts that it has no manual loop qualification process or 'extended query' and explains that a single electronic loop qualification transaction that Verizon offers to itself and to CLECs in Florida not only provides all the information that is provided by various electronic transactions offered in Verizon's former Bell Atlantic Service Areas, but also provides information that is usually only available on a manual basis in those areas. Verizon further states that it will perform manual investigation of loop qualification and will complete such investigations. Given that Verizon Florida

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[34] *In the Matter of Application by Bell Atlantic New York, et al., for Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 435 (1999).

does not offer Extended Query, Covad proposes that the following language be included in section 3.13.5 of the Verizon Florida Agreement, which is consistent with its request:

> If the Loop is not listed in the mechanized database available from Verizon Florida or the listing is defective, Covad may request a manual loop makeup at no additional charge prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. Verizon will complete a manual loop qualification request within one business day.

Loop qualification is the process of identifying the characteristics of loops, such as loop length and the presence of obstacles to the provision of DSL service, such as load coils, bridged taps or repeaters, and determining the technical acceptability of a loop for the purpose of providing DSL services. Initially, CLECs such as Covad submit mechanized loop qualification queries to determine if a loop is acceptable for a customer's service. However, there are instances where Verizon rejects a Covad mechanized loop qualification query because the mechanized database or the listing is defective. In these instances, Covad should be permitted to submit a manual loop makeup to Verizon at no additional charge because it is no fault of Covad's that Verizon's database has these deficiencies. Significantly, the Pennsylvania Commission rejected all loop qualification charges that Verizon proposed in the Pennsylvania UNE cost proceeding for that very reason.[35] Specifically, the Pennsylvania Commission held that:

> Because a forward-looking network would not contain inherent obstacles to the provision of DSL services, there would be no need for loop qualification. Accordingly, we adopt the recommendation of the ALJ to disallow the charge.[36]

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35 *See Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates*, R-00016683, Tentative Order, at 202 (Penn. P.U.C. Oct. 24, 2002) (rejecting Verizon's changes for Mechanized Loop Qualification, (2) Manual Loop Qualification; and (3) Engineering Query.).

36 *Id.*

In addition, Verizon should complete Covad's manual loop qualification requests within one (1) business day because there is no reason why Verizon cannot do this. Moreover, the fact that Verizon consistently meets its performance standard in this regard strongly indicates that Verizon has far too much time to complete manual loop qualification requests. The public interest demands that services be provided as timely and expeditiously as possible. Therefore, the interval should be revisited and at a minimum be shortened as Covad proposes.

C. Issue 34: Loop Provisioning Intervals

Covad requests that Verizon be required to provision loops within the shortest interval of either (A) the interval Verizon provides to itself, or (B) any Commission-adopted interval, or (C) ten (10) business days for loops needing conditioning, five (5) business days for stand-alone loops not needing conditioning, and two (2) business days for line-shared loops not needing conditioning.

These requested intervals are reasonable because Verizon is already required to provision 1-10 loops within six (6) days and 11-20 within 10 days. Furthermore, Verizon is required to provision 1-20 line shared loops within 3 business days.[37] To the extent that Verizon claims that Covad is requesting that the intervals be reduced, Verizon has not provided any evidence that it cannot install loops within these intervals. As stated above, the fact that Verizon consistently meets its performance standard in this regard strongly indicates that Verizon has far too much time to provision loops. The public interest requires that services be provided as timely and expeditiously as possible.

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[37] UNE Product Interval Guide, *available at* http: // www22.verizon.com /wholesale/lsp/bridge/1,2631,4-lib,FF.html#handbooks.

Therefore, the interval should be revisited and at a minimum be reduced as Covad proposes.

While Covad generally seeks language in the Interconnection Agreement that replicates certain important Carrier-to-Carrier metrics and standards, on the issue of line sharing provisioning intervals, a shorter interval is warranted. Verizon's current business target of provisioning loops within three days is outdated and should be significantly shortened. (TR. 25-26). If Verizon is claiming that it provides good performance on loop provisioning intervals, then it should be the goal of the Commission to continually seek to raise the bar and shorten the intervals to bring advanced services to Florida consumers more quickly.

This concept was explored by the DSL Collaborative and in Technical Conferences related to Case 00-C-0127 in July and August 2000 in New York State. The participants discussed starting the Line Sharing interval at three days and revisiting the interval to progressively reduce it; first to two days and possibly to a single day. This was based upon the significantly reduced amount of work required to deliver a line shared service, as compared with a stand-alone service. (TR. 25).

For line sharing, the loop already exists and is working since the voice line is in service. The Hot-Cut process calls for all the pre-wiring to be complete within two days. Since the cross-wiring and assignment requirements for line sharing are less than those required for Hot Cuts, and there is no coordination requirement, Verizon should recognize these facts and reduce the line sharing interval to two days. (TR. 25-26). Notably, BellSouth, where the splitter is ILEC owned and requires an additional assignment step, has reduced the line sharing provisioning interval to two days. (TR. 26).

The experience that Verizon has gained in several years for provisioning loops to CLECs and to its advanced services affiliate should allow it provide services within these provisioning intervals. A three-day interval has been in place since the beginning, and it is time for this interval to be revised. Verizon should be required to either meet (A) the interval Verizon provides to itself, or (B) any Commission-adopted interval, or (C) ten (10) business days for loops needing conditioning, five (5) business days for stand-alone loops not needing conditioning, and two (2) business days for line-shared loops not needing conditioning under the terms of the Interconnection Agreement.

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?
[Issues 24 ("Should Verizon relieve loop capacity constraints for Covad to the same extent as it does so for its own customers?") and Issue 25 ("Should Verizon provision Covad DS-1 loops with associated electronics needed for such loops to work, if it does so for its own end users?") are subsumed within Issue 19].

Covad's Position ** Verizon should provide Covad UNEs and UNE combinations in instances when Verizon would provide such UNE or UNE combinations to itself, including a requesting retail customer as part of a retail service offering. **

Verizon should provide Covad UNEs and UNE combinations in instances in which 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 concluded, section 251(c)(3)'s requirement that incumbents provide CLECs "nondiscriminatory access" to UNEs requires that incumbents provide CLECs 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 confirmed that section 251(c)(3) obligates incumbents to provide requesting carriers combinations that it provides to itself. *Verizon Communications v. FCC*, 122 S.Ct. 1646, 1169 (2002) ("otherwise, an entrant would not enjoy true 'nondiscriminatory access'" pursuant to section 251(c)(3)).

In addition, the same legal obligations require that incumbents provide requesting carriers UNEs in situations in which 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. Verizon should provide Covad UNEs and UNE combinations in accordance with Applicable Law and cannot limit Covad to those UNEs combinations that are already set forth in Verizon tariffs. Furthermore, consistent with the nondiscrimination provisions of the Act, the Agreement should obligate Verizon to relieve capacity constraints in the loop network to provide loops to the same extent and on the same rates, terms and conditions that it does for its own retail customers.

Verizon claims that the dispute is not over whether Verizon must provide Covad with nondiscriminatory access to UNEs and UNE combinations to the extent required by federal law. Instead, Verizon asserts that this issue pertains to Covad's attempt to expand Verizon's unbundling obligations under federal law, by requiring Verizon to build facilities in order to provision Covad's UNE orders.

Section 51.311(b) of the FCC's rules requires that "the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at

least equal in quality to that which the incumbent LEC provides to itself."[38] Furthermore, section 51.313(b) of the FCC's rules requires that "the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself."[39]

The parity requirement of these rules include the tasks involved in performing routine network expansions and modifications to electronics and other facilities that ILECs normally perform for their retail customers.[40] Thus, if an ILEC "upgrades its own network (or would do so upon receiving a request from a [retail] customer), it may be required to make comparable improvements to the facilities that it provides to its competitors to ensure that they continue to receive at least the same quality of service that

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38 47 C.F.R. § 51.311(b); *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket. No. 96-98, CC Docket No. 95-185, 11 FCC Record 15499, ¶¶ 312-13 (1996) ("*Local Competition Order*") (subsequent history omitted); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Record 3696, ¶¶ 490-491 (1999) ("*UNE Remand Order*") (subsequent history omitted).

39 47 C.F.R. § 51.313(b); *see also Local Competition Order* ¶¶ 315-16.

40 *See, e.g., US West Communications, Inc. v. AT&T Communications of the Pacific Northwest*, Inc, 31 F.Supp.2d 839, 856 (D. Or. 1998) *rev'd and vacated in part on other grounds sub nom. US West Communications, Inc. v Hamilton*, 224 F.3d 1049 (9th Cir. 2000); *U.S. West Communications, Inc. v. Jennings*, 46 F.Supp.2d 1004, 1025 (D. Ariz. 1999).

the [ILEC] provides to its own customers."[41] The parity requirements of section 51.311(b) and 51.313(c) already mandate that network modifications be made so that CLECs can access underlying network elements or interconnect at the same level of quality or pursuant to the same terms and conditions, respectively, that an ILEC provides to itself.

Consistent with the 8th Circuit decisions in *Iowa I*[42] and *Iowa II,*[43] this obligation does not, however, require that ILECs construct a superior network. In fact, courts recognize that ILECs are required to modify or expand their networks at existing quality levels and that the construction of new facilities does not necessarily mean providing a superior network.[44] Indeed, "new facilities could be necessary just to create equivalent interconnection and access."[45]

To elaborate, although *Iowa I* and *Iowa II* vacated the FCC's superior quality rules, these decisions did not absolve ILECs from their obligation to treat CLECs in a nondiscriminatory manner and at parity, as the Act[46] and FCC rules require,[47] with

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41 31 F.Supp.2d at 856; *see also* 46 F.Supp.2d at 1025.

42 *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Cir. July 18, 1997)("*Iowa I*").

43 *See Iowa Utilities Board v. FCC*, 219 F.3d 744, 758 (8th Cir. July 18, 2000)("*Iowa II*").

44 *See Iowa I* at 813 n.33; *see also US West Communications, Inc. v, Minnesota Public Utilities Commission,* 55 F.Supp.2d 968, 983 (D.Minn. Mar. 30, 1999); 46 F.Supp.2d at 1025; 31 F.Supp.2d at 856; *US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc.*, 1998 WL 1806670 *4 (W.D. Wash. 1998); *MCI Telecommunications Corp. v. US West Communications, Inc.*, 1998 WL 34004509 *4 (W.D.Wash 1998).

45 55 F.Supp.2d at 983.

46 47 U.S.C. § 251(c)(3).

respect to routine network modifications and expansions that are needed so that CLECs can interconnect and access UNEs on an equivalent basis. Although *Iowa I* stated that the Act only requires unbundled access to an ILEC's existing network, "not to yet unbuilt superior one," [48] this statement does not stand for the proposition that an ILEC may refuse to perform routine network modifications and expansions in order to make an existing network element available as it does for itself and its retail customers.[49]

In fact, the decision does not suggest this at all. *Iowa I* holds that ILECs cannot be required to *substantially* alter their networks in order to provide superior quality interconnection or superior quality access to network elements.[50] Furthermore, the *Iowa I* court limited this holding and explained that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include *modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.*"[51] When the

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47 47 C.F.R. §§ 51.311(a)&(b) and 51.313(a)&(b); *see also Local Competition Order* ¶¶ 312 (stating that Act's requirement that ILECs "'provide nondiscriminatory access to network elements on an unbundled basis' refers to the physical or logical connection to the element and the element itself.") & 313 (finding that ILECs must provide access and UNEs that are at least equal-in-quality to what the ILECs provide themselves unless it is technically infeasible to do so which the ILEC must demonstrate); see also *UNE Remand Order* ¶¶ 490-491.

48 *Iowa I*, 120 F.3d at 812-13.

49 *See, e.g.*, 31 F.Supp.2d at 856; 46 F.Supp.2d at 1025.

50 *See US WEST Communications, Inc. v. THOMS*, 1999 WL 33456553 *8 (S.D. Iowa Jan. 25, 1999) ("*US West*") (citing *Iowa I*, 120 F.3d at 813 n.33).

51 *See Iowa I*, 120 F.3d at 813 n.33 (emphasis added) (citing *Local Competition Order*, ¶ 198); *see also US West*, at *8 (noting that the Eight Circuit endorsed the FCC's statement that the obligations imposed by section 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities "to the extent necessary to accommodate interconnection or access to network elements"); 55 F.Supp.2d at

court revisited this decision in *Iowa II*, it simply reaffirmed its opinion. In doing so, the *Iowa II* court noted that its ruling was limited in its applicability because "*the Act prevents an ILEC from discriminating between itself and a requesting competitor with respect to the quality of interconnection provided.*"[52]

Hence, the crucial limitation established in the *Iowa I* and *Iowa II* decisions requires that an ILEC (in treating CLECs at parity and in a nondiscriminatory manner[53]) make those modifications to its facilities that are necessary to accommodate interconnection or access to network elements, but do not require the ILEC "to provide superior interconnection or access by substantially altering its network."[54] As the court in *US West* found, the proper interpretation of this limitation requires that the term "necessary" be given a meaning consistent with FCC precedent.[55] Significantly, the FCC deems equipment to be "necessary" for interconnection or access to unbundled network elements within the meaning of 251(c)(6) "if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network

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983 (same); 31 F.Supp.2d at 856 (same); 1998 WL 1806670 *4 (same); 1998 WL 34004509 *4 (same).

52 *See Iowa II*, 219 F.3d at 758 (emphasis added).

53 *See* 47 C.F.R. § 51.311(a) & (b) and 51.313(a)&(b); *see also, e.g.*, 46 F.Supp.2d at 1025; 31 F.Supp.2d at 856.

54 *See US West* at *8.

55 *See also US WEST* at *8 (citing *Local Competition Order* at ¶ 59) (concluding that the state commission's interpretation of the word "necessary" as it applied to the *Iowa I* limitation was appropriate because it tracked the FCC's definition of necessary in the context of 251(c)(6)). Subsequent to this court's decision, the FCC modified its definition of the term necessary in the *Fourth Report and Order* as discussed herein. *See Fourth Report and Order* ¶ 21.

elements."[56] Thus, applying this FCC definition of the word "necessary" within the context of the *Iowa I* and *Iowa II* limitation means that modifications or expansions to equipment is *necessary* because a CLEC cannot obtain interconnection or access to UNEs without them.

This is the precise situation that Covad faces with respect to Issues 19, 24 and 25, and the limitation on *Iowa I* and *Iowa II* directly applies because Covad cannot access the associated DS1 and DS3 UNEs if Verizon does not make the same basic network modifications and expansions for CLECs that Verizon performs for its retail customers.[57] (TR. 28). Because these modifications are basic and routinely offered to Verizon's retail customers, such modifications do not involve substantial alteration to Verizon's network and may not be rejected on the grounds that the request involves providing superior interconnection or access. (TR. 64-68). Indeed, Covad is not requesting that Verizon provision network facilities that are superior in quality to that

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56 *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capacity*, CC Docket No. 98-147, Fourth Report and Order, FCC 01-204, 16 FCC Rcd 15435, ¶ 21 (rel. Aug. 8, 2001) ("*Fourth Report and Order*").

57 *See* 46 F.Supp.2d at 1025; 31 F.Supp.2d at 856. Notably, the Sixth Circuit's recent September 30, 2002 opinion in *Michigan Bell Tel Co. v. Strand*, 2002 WL 31155092 *10 (6th Cir. Sept. 30, 2002) is inapposite and does not change this result. In *Michigan Bell,* the court found that Ameritech could price discriminate when there was no retail analog. *Id.* In particular, the court found that because Ameritech does not provide loop conditioning to its retail customers, there was no retail analog and thus it was not discriminatory if Ameritech assessed CLECs such construction charges and did not assess its retail customers such charges. *Id.* In contrast to *Michigan Bell*, where there was no retail analog, a retail analog exists when ILECs reject CLEC requests for UNE circuits on the basis that no facilities exist. In fact, when Verizon responds to a CLEC request for high capacity UNEs that no facilities exist, Verizon instructs CLECs to purchase the identical facility out of a retail tariff.

which Verizon provides to itself or build a new, superior network; Verizon is already and routinely offering the same services to its retail customers. In short, these facilities are necessary to create *equivalent*, not "superior," quality of interconnection or access to network elements. (TR. 28, 64-68).

The FCC recognized in the *Virginia Arbitration Award* that "Verizon cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment, because the requesting carrier is entitled to a fully functioning loop."[58] This decision quite clearly instructs that at least two of the six reasons Verizon consistently offers to avoid provisioning UNE DS1s – the need to place a multiplexer or adjust a multiplexer to increase capacity – are *not* legitimate reasons for refusing to provision a loop.[59] Hence, to the extent that Verizon undertakes minor upgrades such as these to make DS1s available to its own retail end users, rather than reject their orders, Verizon's refusal to accord its CLEC wholesale customers comparable treatment is discriminatory and deprives CLECs of the ability to offer their own customers a competitive service.

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58 *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 & 00-249, Memorandum Opinion and Order, DA 02-1731, ¶ 499, n.1658 (Chief, Wireline Competition Bureau rel. July 17, 2002) ("*Virginia Arbitration Award*").

59 Nonetheless, Verizon has indicated its intention to continue rejecting UNE loop orders due to no facilities where there is a need to place a multiplexer or to turn up a shelf or multiplexer to fill the order. In its September 19, ex parte to the FCC, Verizon again confirmed that it will not turn up, or reconfigure a shelf on an existing multiplexer or place a new multiplexer to provision UNE orders. See letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147 (filed Sep. 19, 2002).

Accordingly, Verizon has a duty under the Act, FCC rules and implementing orders, and applicable judicial determinations to make such network modifications or expansions because such changes are necessary to accommodate CLEC interconnection or access to network elements. Further, Verizon's failure to do so is patent discrimination because such network modifications do not involve providing superior access to network elements in that such modifications are routinely made to accommodate requests for services made by Verizon's retail customers. (TR. 64-68).

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

> **Covad's Position** ** When Verizon misses additional appointment windows beyond the original missed appointment window for that same end-user, Verizon should pay Covad a missed appointment fee equivalent to the Verizon non-recurring dispatch charge. **

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). Verizon

should waive the nonrecurring dispatch charges when it fails to meet this committed timeframe. If 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.

The ability to schedule appointments is a powerful tool that Verizon possesses vis-à-vis CLECs. The day when a carrier could tell a customer they will deliver a product sometime during a certain day is long gone. Customers today demand precise appointment windows and have little tolerance for carriers that fail to meet such windows. (TR. 29-30, 68-70). The penalty for either failure to provide an appointment window or failure to meet the appointment window will be the potential loss of the customer. Since Covad and other CLECs are dependent on Verizon for installation of loops, Verizon's failure to provide appointment windows to CLECs for delivery of the product or a failure to meet the appointment would be very detrimental to the CLEC's interests. (TR. 29-30, 68-70).

Imposing a penalty on Verizon for missed appointments would provide an incentive for Verizon to meet the appointment that is similar to the incentive Covad already has to make sure its customers are present when Verizon arrives. For instance, the New Hampshire Public Service Commission determined that symmetry was needed in the levying of charges for unnecessary trouble shooting by CLECs and Verizon.[60] Verizon would impose a charge on CLECs if the CLEC filed a trouble report and Verizon determined the problem is not in its network. The New Hampshire PSC found that a

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60 *Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996*, New Hampshire Public Service Commission Docket DT 97-171, Order Addressing Motions for Reconsideration, Order No. 23,847 at 57-59 (Nov. 21, 2001).

similar service charge should be assessed on Verizon when it erroneously reports that the trouble was not on Verizon's network.[61] This Commission should likewise penalize Verizon if it fails to meet an appointment window in the same manner that Covad is currently penalized for "no access" situations. This will provide both parties equal incentive to ensure the customer receives a timely installation. (TR. 69-70).

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

> **Covad's Position** ** The Agreement should refer to industry ANSI standards rather than Verizon's internal (and unilaterally changeable) Technical Reference 72575 (TR 72575) for ISDN, ADSL and HDSL loops. Use of national industry standards is the best means of defining technical terms for purposes of an interconnection agreement. **

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. Covad requires this language because 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 are the best means of defining technical terms for purposes of an interconnection agreement. (TR. 31).

Significantly, the FCC recognizes that industry standards bodies are appropriate bodies to help foster the deployment of advanced services consistent with section 706 of the Act and has mandated that ILECs abide by them rather than imposing their own rules.[62] The FCC rendered this decision because it did not want ILECs to unilaterally

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61 *Id.* at 59.

62 *Deployment of Wireline Service Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, Third Report and Order in CC Docket No. 98-147,* Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, ¶ 179-180 (1999) ("*Line*

dictate what standards applied. Instead, it wanted "competitively neutral spectrum compatibility standards and spectrum management rules and practices."[63] In deriving the rules, the FCC stated "by establishing, minimal ground rules now, we enable the industry, through its standards-setting bodies, to develop spectrum compatibility standards and spectrum management practices on a continuously ongoing basis, with our assumption of the standards-setting function only in extreme cases where industry standards bodies continue to fail in upholding the general policies that underlie spectrum compatibility standards and spectrum management rules and practices."[64] The FCC reiterated its "belief that industry standards bodies can, and should, create acceptable standards for deployment of xDSL-based and other advanced services."[65] The FCC concluded that the "ATIS [Alliance for Telecommunications Industry Solutions] standards setting processes, which may culminate ultimately in the ANSI [American National Standards Institute] standards approval process, are facially neutral, open to all interested parties, and contain safeguards against domination by any one particular interest."[66] The FCC therefore presumes, in accordance with this decision and FCC rule 51.230(a) that was promulgated as a result of it, that advanced service loops are acceptable so long as industry standards are met.

In effectuating this decision in an arbitration context, the FCC, in the *Virginia Arbitration Award*, required Verizon to "comply with all applicable national and

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Sharing Order") vacated on other grounds sub nom. USTA v FCC, 290 F.3d 415 (D.C. Cir. May 24, 2002)

63 *Line Sharing Order* ¶ 180.

64 *Line Sharing Order* ¶ 179.

65 *Line Sharing Order* ¶ 183.

66 *Line Sharing Order* ¶ 183.

international industry standards (e.g., ANSI and ITU) for the provision of advanced services."[67] The FCC also found that "referencing applicable standards is preferable to actually articulating the standards in the contract, because the standards may change over time."[68] Moreover, the FCC explained that parties shall "work cooperatively, using industry standards, to minimize interference and cross talk." [69] Some of the contract language that the FCC adopted includes the following:

> 4.2.9 Compliance with Industry Standards. Verizon shall adopt and comply with all applicable national and international industry standards, including those adopted and amended from time to time by ANSI and ITU respectively, for the provision of advanced services.[70]

In the *Virginia Arbitration Award*, the FCC never "split the baby" and allowed Verizon to impose its discretionary standards along with Industry Standards in provisioning advanced service loops. The FCC's specific and unequivocal mandate was that Verizon comply solely with Industry Standards for the provision of advanced services. Hence, Verizon's proposal that its own in-house provisioning terms, as specified in (Verizon Technical Reference 72575), apply should be rejected because it is inconsistent with federal law.

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

> **Covad's Position** ** Covad should not pay to convert 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. **

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67 *Virginia Arbitration Award* ¶ 480.

68 *Virginia Arbitration Award* ¶ 480.

69 *Virginia Arbitration Award* ¶ 480.

70 *Virginia Arbitration Award* ¶ 480.

The Parties have resolved this issue for the most part and have agreed upon the language set forth below except for the bolded and underlined portion.

> Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.
>
> 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**, 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.[71]

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 product that does. In addition, by agreeing to this language, Verizon

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[71] Attachment A, Revised Proposed Language Matrix at 9-10.

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. (TR. 32, 71-72). Verizon's desire to foist such costs on Covad is highly inappropriate and should be rejected.

Rather than having very generic loop definitions that can support a wide variety of loop technologies, Verizon has chosen to make narrower definitions of each of its loop offerings and associated technologies. (TR 71-72). Verizon's decision to develop and mange its UNE loop "products" in this manner is of its own doing and should not be permitted to impact Covad. Covad is legally entitled to use a loop in any manner it deems fit so long as the technology meets industry standards. Significantly, FCC rule 51.230(a) provides that:

> (a) An advanced services loop technology is presumed acceptable for deployment under any one of the following circumstances, where the technology:
>
> (1) Complies with existing industry standards; or
>
> (2) Is approved by an industry standards body, the Commission, or any state commission; or
>
> (3) Has been successfully deployed by any carrier without significantly degrading the performance of other services.[72]

When it established these and other spectrum management rules, the FCC declared that ILECs "may not unilaterally determine what technologies may be deployed [over UNE

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[72] 47 C.F.R. § 51.230(a).

loops]."[73] The FCC concluded the better approach is to "establish competitively neutral spectrum compatibility standards and spectrum management rules and practices so that all carriers know, without being subject to unilateral incumbent LEC determinations, which technologies can be deployed and can design their networks and business strategies accordingly."[74] Because the FCC does not give ILECs unilateral control in this regard, the FCC's spectrum management rules are fully harmonious with FCC Rule 51.309(a), that prohibits an incumbent LEC from imposing "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements, that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends."[75]

Despite Covad's legal right in this regard (which allows Covad to continue to use a UNE loop upon which it provides new loop technology without having to later convert it), Covad has voluntarily agreed to convert previously ordered UNE loops to new loop types Verizon designates for this new technology and to use the new loop type on a going-forward basis. (TR. 71). However, because the conversion is necessitated by (1) Verizon's inability to offer the new technology on a timely basis as Covad provides it and (2) the manner in which Verizon prefers to designate its UNE loop products, Verizon's request that Covad pay the costs associated with converting its UNE loops to Verizon's

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73 *Line Sharing Order* ¶ 180 (citing Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) ("*Advanced Services First Report and Order and FNPRM*")).

74 *Line Sharing Order,* ¶ 180 (citing *Advanced Services First Report and Order and FNPRM*).

75 47 C.F.R. § 51.309(a).

newly designated UNE loop type is unreasonable when Covad gains nothing from the conversion. (TR. 71-72).

Thus, the Commission should not permit Verizon to charge Covad for converting loops as described above and should therefore adopt Covad's language that specifies that Verizon may not do so.

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's Position** ** 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. **

Covad seeks language in the Agreement that provides specific terms and conditions reflecting how the Parties currently conduct cooperative testing and should continue to do so under the Agreement.[76] 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. (TR. 34-30). Additionally, cooperative testing can assure complete maintenance processes on such loops. (TR. 34-30).

Verizon's proposed language does not set forth the specific procedures it follows when performing or what is involved when it performs cooperative testing. Covad, unlike other CLECs, 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. (TR. 34-30). Covad therefore seeks to protect its

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[76] Please note that the parties have agreed on the language to address the tagging requirement that was associated with this issue.

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. And Covad has made its need for such certainty in the Agreement abundantly clear in this arbitration. (TR. 34-30, 72-76). Verizon objects, however, to including a detailed process for cooperative testing in the Agreement.

To address Verizon's concerns in this regard, Covad has proposed new language in its best and final offer 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. Covad's proposed language for § 3.13.13 is as follows:

> Verizon will cooperatively test jointly with a Covad technician (i) all stand alone loops ordered by Covad and provide demarcation information during the cooperative test and (ii) any loop on which Covad has opened a maintenance ticket to close out any loop troubles. Cooperative testing is a procedure whereby a Verizon technician and a Covad technician jointly perform the following tests: (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing. At the conclusion of such testing, Covad will either accept or reject the loop. If Covad rejects the loop, then Verizon shall correctly provision the loop and re-contact the Covad representative to repeat the cooperative test. Verizon shall deliver loops that perform according to the characteristics of the described loop

> types set forth in Sections 3.1-3.7, above. Covad will make its automated testing equipment ("IVR") available for Verizon technicians to utilize to sectionalize troubles on loops connected to Covad's network, either during provisioning or maintenance activities.
>
> If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Agreement or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards.[77]

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. (TR. 73-75) 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. (TR. 34-39, 72-75).

Verizon has by contrast proposed revised language that is still extremely vague and does not provide any contractual commitment to Covad regarding (1) when the cooperative testing process will be performed, (2) how it will be performed, *i.e.*, whether it will be a joint or automated test, and (3) what will be accomplished when it is performed.[78] Apart from being vague, Verizon's language states that "'Cooperative Testing' is a procedure whereby a Verizon technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's

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[77] Attachment A, Revised Proposed Language Matrix at Issue 30, pages 12-13.

[78] Attachment A, Revised Proposed Language Matrix at Issue 30, pages 12-13.

completion of the order."[79] With this language, Verizon appears to gives itself the unilateral right to decide whether it will perform cooperative testing on an automated or on a manual basis. This is not *cooperative* testing – it is unilateral testing.

Covad needs manual Joint Acceptance Testing so that it can verify that the Verizon Technician is at the correct demarcation point when the technician calls into Covad's center. (TR. 38-39). The communication between the Verizon technician and Covad's technician provides information that would not be otherwise transmitted to Covad that supports final provisioning of the Covad service to the end user. (TR. 36-38). Joint Acceptance Testing also ensures that the Verizon technician is testing the overall end-to-end loop and not testing at some intermittent point. (TR. 38). Even though Verizon has been doing Joint Acceptance Testing for over four years, Covad still encounters many instances where the Verizon technician is not at the correct location for testing and has not terminated the circuit at the correct demarcation point. (TR. 36, 38). Covad's automated IVR process would not identify this problem and Verizon and Covad would be required to re-test the loop via Joint Acceptance Testing. If Verizon's language were adopted, and Verizon unilaterally elected to perform cooperative testing on an automated basis before Covad agreed to allow Verizon to replace joint testing that is done with a Covad technician, these problems would remain and Verizon would not correctly provision Covad's loops. (TR. 36-38).

Covad envisions transitioning from the joint testing process to the fully automated IVR process for cooperative testing and is eager to implement this automated system when it determines that Verizon's performance is acceptable. (TR. 36-37). As indicated

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[79] *Id.*

above, Covad has proposed language in the Agreement that allows for such evolution and future improvement of the testing process. In the meantime, *i.e.*, until Verizon's performance is improved, Covad proposes language, as specified in the last sentence of the first indented paragraph above, that makes the system available to Verizon technicians to utilize when determining troubles on loops connected to Covad's network, either during provisioning or maintenance activities.

Apart from the above, Covad objects to Verizon's language that attempts to assess cooperative testing charges on Covad. Verizon's continued pursuit in this arbitration of the right to impose a cooperative testing charge for new stand alone loops is in utter disregard of the New York and Pennsylvania Commissions' explicit rulings to the contrary.[80] The rationale for the New York Commission's decision has been fully litigated and Verizon accepted those terms with prejudice.[81] Despite this and the unlawfulness of Verizon's position, Verizon contends that it should be able to charge Covad for cooperative testing because it is performing such tests at Covad's request. The test is not, however, necessitated by Covad; it is required to ensure that Verizon has in fact provided a fully functioning loop at the time of provisioning and after the loop is

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80 *Proceeding on Motion by the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case No. 98-C 1357, Order on Unbundled Network Elements, at 138-39 (N.Y. P.S.C. Jan. 28, 2002). The Commission did find that a cooperative testing charge may be imposed when ordered with line sharing, however, that charge "should be waived if the CLEC can show the flaw to have been Verizon's fault." *Id.* at 139

81 See *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to investigate the Future Regulatory Framework; Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case Nos. 00-C-1945 & 98-C-1357, Order Instituting Verizon Incentive Plan, at Appendix A Sec. VIII.C. (Feb. 27, 2002) ("*Joint Proposal*"). http://www.dps.state.ny.us/fileroom/doc11226.pdf.

maintained or repaired. Notably, Verizon performs this test for its retail customers. (TR. 36).

For similar reasons, the Pennsylvania Commission recognized that Verizon-PA's cooperative testing charge was inappropriate and disallowed it because it "is intended to recover the labor costs associated with coordinating with a CLEC and performing continuity testing on a DSL-compatible loop on the due date for the loop's installation."[82] The Pennsylvania Commission emphasized that this charge is, essentially, intended to determine whether Verizon is providing the facility (UNE) that has been ordered – a loop that is continuous from one end to the other.[83] The Pennsylvania Commission upheld the Administrative Law Judge's rationale that an analogous retail situation would require a new retail customer of Verizon to pay Verizon to test his or her line from the network interface device to the central office to ensure that it was working. In another commercial context, "a car buyer would be asked by the car dealer to pay for a test of the new car by the dealer to make sure it is functioning when it was delivered....such a charge would be considered ridiculous."[84] The Pennsylvania Commission emphasized that the objective of the test "still pertains to confirmation that Verizon's facility is capable of meeting its commercial purpose and not deficient."[85]

Likewise, no charges for cooperative testing should be assessed after a loop is repaired *subsequent* to it being provisioned. Regardless of whether cooperative testing is

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82 *Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates*, Docket No. TR-00016683, Tentative Order, at 193 (Pa. P.U.C. Oct. 24, 2002) ("*PA 10/24/02 UNE Cost Decision*").

83 *PA 10/24/02 UNE Cost Decision* at 193.

84 *PA 10/24/02 UNE Cost Decision* at 193.

85 *PA 10/24/02 UNE Cost Decision* at 193.

performed at the time the loop is provisioned or after a loop is repaired, Covad is paying for a fully functioning stand alone DSL loop and if cooperative testing is needed *after* Verizon makes repairs to the loop, Covad should not be assessed a charge for cooperative testing that is needed to ensure that the loop is properly and fully functioning as Verizon originally provisioned it and that the repair was actually performed.

Covad's revised proposed contract language - unlike Verizon's - is an eminently reasonable compromise that is necessary, *i.e.*, factually justified, and consistent with Applicable Law. The Commission should, therefore, adopt Covad's proposed contract terms.

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

> **Covad's Position** ** Covad seeks language preserving its right to contest the prequalification "requirement" for an order or orders. If Covad uncovers significant and pervasive problems with Verizon's prequalification tool for an order or orders, Covad seeks to reserve its right to contest any requirement that such orders must pass prequalification. **

Covad should have the right to contest Verizon's prequalification requirement. Prequalification pertains to the pre-order access that Verizon provides for a carrier to determine if a loop is qualified to provide xDSL service. Verizon requires Covad to prequalify its orders prior to submitting the order. For certain order types, however, Verizon has agreed to accept Covad service orders without regard to whether they have been prequalified. 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 set of orders, Covad seeks to reserve its right to contest any requirement that such orders must pass prequalification. Covad should not be forced to use this tool particularly when it often incorrectly precludes Covad from ordering loops.

Furthermore, there is no basis for Verizon to require that CLECs prequalify loops. In the *UNE Remand Order*, the FCC stated that:

> [w]e clarify that pursuant to our existing rules, an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install.[86]

In fact, the FCC appears to contemplate expressly that prequalification by the ILEC is not a prerequisite for ordering a loop. For instance, the FCC has determined that if a CLEC wanted to use raw data from an ILEC's databases to construct its own loop prequalification tool, the CLEC should be free to do so.[87] In addressing a request for arbitration of SBC's obligations under the SBC/Ameritech Merger Conditions, the Common Carrier Bureau of the FCC stated that "the question of implementing an enhancement to SBC's OSS that would allow CLECs to skip the loop qualification process for loops less than 12,000 feet in length appears to be a question of fact, *i.e.*,

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86 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-68, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, ¶ 427 (1999), *subsequent history omitted.* ("*UNE Remand Order*").

87 *In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization to Provide In-region, InterLATA Services in Florida and Tennessee,* WC Docket No. 02-307, Memorandum Opinion and Order, FCC 02-331, ¶ 84 (December 19, 2002).

whether SBC is capable of delivering such an enhancement across its 13-state region in response to CLEC requests during the collaborative sessions."[88] This suggests that if bypass of prequalification were technically feasible, the FCC would authorize it. The FCC gave no indication that prequalification of orders was mandated for CLECs. In fact, Verizon, when it implemented its mechanized loop qualification charge, waived the charge for CLECs that chose not to consult the database before placing their orders.[89] Verizon itself thus clearly recognized the optional nature of prequalification. The New York Commission noted that Verizon, then Bell Atlantic, agreed to provide loop qualification "using a pre-ordering query or a service order, ***at the CLEC's option***." [90] Thus, there is clearly no basis for Verizon to require that Covad prequalify orders, and there is no doubt that Covad should have the right to contest the prequalification requirement for an order, or set of orders, if Covad finds problems with Verizon's prequalification tool for that set of orders. Verizon already allows Covad to bypass the prequalification requirement for certain types of orders.[91] There is no reason then that Verizon should mandate prequalification for all orders.

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88 *Letter from Carol E. Mattey, Deputy Chief, Common Carrier Bureau to Ms. Cassandra Carr, Senior Executive Vice President – External Affairs, SBC Communications, Inc.*, DA 00-2346 (October 18, 2000).

89 *Re New York Telephone Company*, New York Public Service Commission Case No. 98-C-1357, Opinion No. 99-12, 1999 WL 1427420, *3 (1999).

90 *Re Inter-Carrier Service Quality Guidelines*, New York Public Service Commission Case No. 97-C-0139, Order, 1999 WL 358649 (February 16, 2000) (emphasis added).

91 The Parties agree that Covad may bypass the loop prequalification requirement for loops that are in the same binder group with a known disturber such as a T1 facility.

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

Covad's Position ** When provisioning 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. **

A Line and Station transfer ("LST") done in conjunction with a line sharing arrangement involves the reassignment and relocation of an existing Verizon end user voice service from a Digital Loop Carrier ("DLC") facility that is not qualified for line sharing to a spare or freed-up qualified non-loaded copper facility. Such a swap or transfer would be done to support the requested service transmission parameters.[92] Consistent with the nondiscrimination provisions of the Act, when provisioning 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 a LST. 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.

As an initial matter, Verizon should first obtain Covad's approval before conducting a LST, particularly if the Commission allows Verizon to impose a charge for the LST. Covad should be given the choice of whether it wants the LST conducted.

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92 *Re Provision of Digital Subscriber Line Services*, New York Public Service Commission Case No. 00-C-0127, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, Opinion No. 00-12, 2000 WL 33158570, *12 (2000).

Such a provision would allow Covad to control its costs and make appropriate determinations as to whether to utilize the service.

LSTs should be provided at no charge as they are a longstanding component of ILEC operations and have been used for a variety of purposes, such as moving customers off defective pairs or moving customers onto a pair that is able to support a specific service. For instance, an ILEC may perform a LST to provide a retail ISDN service. It is Covad's understanding that Verizon's retail customers are not charged for the LST.

Assessing a line and station transfer charge is also inconsistent with TELRIC forward-looking cost principles. In a forward-looking network, loops would be capable of carrying both traditional voice and DSL-based traffic, thereby eliminating the need for line and station transfers. Therefore, if Verizon charges CLECs for recovery of its costs in providing a forward-looking network capable of supporting voice and DSL service, assessment of charges for LSTs will be double charging for the same functionality.

These factors recently led the Pennsylvania Public Utility Commission to reconsider its initial determination that a line station transfer charge was appropriate. The Pennsylvania PUC noted:

> We are not convinced that the costs proposed for line station transfer are not duplicative of costs already recovered on a recurring cost basis. Further, this function does not appear to be compatible with a forward-looking network assumption. Thus, we have the added concern that such charge could be discriminatory in that it imposes an additional cost on customer migration.[93]

The Commission should likewise preclude Verizon from assessing a charge for LST. Verizon performs "Line and Station Transfers" as a routine business matter and would

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[93] *Re Verizon Pennsylvania, Inc.*, PA PUC Rulemaking Proceeding 00016683, Tentative Order, 2002 WL 31664693, *89 (Nov. 4, 2002).

likely book the cost of performing these activities to its loop maintenance accounts. Verizon almost certainly has not eliminated the costs for these activities from its recurring cost study because Verizon does not normally charge retail customers for performing line and station transfers. To conform with section 252(d)(1)(A)(ii)'s requirement that UNE rates be nondiscriminatory and the FCC's requirement of forward-looking network assumptions,[94] the Commission should require that Verizon provide LSTs at no additional charge.

It is also Covad's understanding that Verizon's retail provisioning intervals do not vary depending on whether a LST needs to be conducted for its retail end user. Since Verizon routinely conducts LSTs, it should have no problem performing LSTs such that the CLEC order is provided within standard provisioning intervals. Covad understands, however, that the installation interval for line-shared loops may prove to be too short for Verizon to conduct the LST. Therefore, for line-shared loops, Covad proposes that the interval for stand-alone loops apply to line-shared loops needing a LST. Since LSTs may become more prevalent, it is vital that Verizon conduct LSTs in a nondiscriminatory manner, and this entails providing the loop within standard stand-alone loop provisioning intervals regardless of the need for a LST.

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

> **Covad's Position** ** Yes. Verizon should be obligated to offer a form of line sharing, called Line Partitioning, where end users receive voice services from a Verizon reseller. 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. **

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94 47 U.S.C. § 252(d)(1)(A)(ii); *Local Competition Order*, FCC 96-325 at ¶ 685; see also 47 C.F.R. § 51.505(b)(1).

Line Partitioning is physically identical to Line Sharing. The only difference is who the customer interfaces with for voice service, Verizon or a reseller. Verizon is discriminating against voice resellers by not allowing CLECs to place DSL on resold loops. (TR. 40-41).

Verizon's refusal to provide resold voice while allowing Covad to provide DSL on the high frequency portion of the loop is patently unreasonable and discriminatory, which is in violation of the Act and the FCC rules. To be abundantly clear, Covad is not asking that Verizon make the high frequency/xDSL portion of the loop available for resale. Rather, Covad is asking that Verizon make the *voice services* it provides over the voice grade portion of the loop available on a resale basis at the same time that it makes the high frequency/xDSL portion of the loop available to Covad as a network element similar to Line Sharing.[95]

Pursuant to section 251(c)(4) of the Telecommunications Act, Verizon is required to make available for resale any retail telecommunications service. Section 251(c)(4) mandates that ILECs have "the duty –

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers;
>
> (B) not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service...[96]

The FCC enacted similar rules, 47 C.F.R. §§ 51.603 & 51.613 and has also made it clear

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95 Unlike AT&T's request in the AT&T Arbitration, Covad is not asking Verizon to resell the high frequency portion of the loop. Although the *AT&T NY Arbitration Award* states that AT&T requested that line sharing be available in instances where it resells Verizon's voice service, the Order does not reflect the nature of AT&T's request and the issue in dispute. *See AT&T NY Arbitration Award* at 68.

96 47 U.S.C. § 251(c)(4)(A)&(B).

that ILECs such as Verizon are prohibited from imposing discriminatory conditions on the resale of retail services, finding that "resale restrictions are presumptively unreasonable."[97]

The voice services offered by Verizon under its retail tariff are, without question, "telecommunications services" within the meaning of the Telecommunications Act, and thus properly subject to general resale obligations imposed by the Act. This is confirmed by the well known fact that Verizon provides voice grade services pursuant to tariffs for telecommunications services. Verizon thus bears the burden under the Act and the FCC's implementing regulations of demonstrating that the restriction it seeks to impose on the resale of voice services when another carrier provisions xDSL over the high frequency portion of the loop is both reasonable and nondiscriminatory, which is not the case for a number of reasons.

First, Verizon discriminates against resale competitors that provide voice services by refusing to provision voice services on a resale basis when another carrier is providing DSL on the high frequency portion of the loop via line sharing. When Covad submits orders for UNE line shared loops for customers served by resellers of Verizon's voice service, Verizon refuses to provision the loop, returning a rejection notice indicating "third party voice." Verizon rejects Covad's request notwithstanding the fact that Verizon continues to function as the voice service provider for the customer, and notwithstanding the FCC's rule that clearly requires Verizon to unbundle the high

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97 *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket. No. 96-98, CC Docket No. 95-185, 11 FCC Record 15499, ¶ 939 (1996) ("*Local Competition Order*") (subsequent history omitted).

frequency portion of the loop where Verizon is providing the customer's voice service. Verizon could easily offer voice service on a resale basis when Covad is accessing the high frequency portion of the loop, but refuses to do so. Second, Covad has lost orders because of Verizon's unreasonable, discriminatory, and anti-competitive policy. (TR. 40). Verizon's policy has been to the detriment of Floridians seeking competitive alternatives and is blatantly anti-competitive because it has done its job of significantly impeding competition, both in the voice and in the DSL markets. (TR. 40).

Second, by allowing UNE-P providers, but not pure resellers, to obtain voice services with Line Splitting, Verizon is discriminating against voice resellers and preferentially treating UNE-P providers. It makes no sense that Verizon's policy is effectively forcing CLECs that are content in serving their customers through resold voice to convert their resold lines to UNE-P so that they can engage in line splitting with a data CLEC. Alternatively, customers must get voice services from Verizon. Either position is discriminatory. Given this, Verizon's refusal to offer resale voice services in these instances defies logic and demonstrates that its behavior is purely meant to be anti-competitive. The hard facts reveal that if Verizon is permitted to continue such conduct, competition will continue to be eliminated. In addition, customers who obtain voice service from resellers that wish to get xDSL services over the high frequency portion of their loops will continue to remain without any competitive alternatives to Verizon's retail voice and xDSL offering. Such a known outcome is a slap in the face to the public interest.

Covad is only requesting that Verizon make voice service available for resale when Covad provides its DSL over the high frequency portion of the loop. Furthermore,

technical feasibility is not a concern because Line Partitioning is physically identical to Line Sharing and Verizon is already provisioning voice services with its Line Sharing and Line Splitting offerings. (TR. 40-41).

For these reasons, the Commission must reverse Verizon's discriminatory policy that does not permit voice services to be resold if Covad provides xDSL over the high frequency portion of the loop. The Commission should accordingly order Verizon to make its voice services available for resale, as requested, and adopt Covad's contract language.

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

> **Covad's Position** ** Verizon should provision such augmentation in 45 calendar days. This interval is reasonable and would ensure that Covad is provided reasonable and nondiscriminatory access to UNEs. **

Verizon should provision collocation augmentations where new splitters are installed within forty-five (45) calendar days. Covad seeks a forty-five day (45) interval for collocation augmentations where new splitters are to be installed. In Florida, the collocation augment interval is already forty-five (45) calendar days.[98]

A collocation augmentation, as the name implies, refers to a collocation request that expands upon an existing collocation, and therefore requires less time and effort for Verizon to complete. Verizon already performs augmentation of physical and cageless collocation within forty-five (45) days of receiving a completed collocation application. Verizon does not disagree with a forty-five (45) day interval for physical and cageless collocation augments, provided the terms and conditions are specified by tariff, rather

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[98] Order No. PSC-00-0941-FOF-TP, Docket Nos. 981834-TP, 990321-TP, Florida Public Service Commission (May 11, 2000) at 58.

than by interconnection agreement terms. (TR. 42). This stance is consistent with Verizon's position on numerous issues in this proceeding wherein it does not quarrel with the merits of Covad's position, but raises the issue of its preference for addressing these issues in a tariff approval proceeding. However, if an interval is not identified in a tariff, Verizon's position is that seventy-six (76) business days should apply contrary to the Commission's findings.

Verizon should not be allowed to use this arbitration for another bite at the apple on the collocation augment interval. This case has been heard and a ruling establishing a forty-five (45) calendar day augment interval has already been issued by this Commission. Covad simply asks that the forty-five (45) day collocation augmentation interval for new splitter installation should be formalized as a term of Verizon's agreement with Covad.

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's Position ** 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. (TR. 41).

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 CLECs.

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 CLECs as a UNE. (TR. 41). 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 CLECs. 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 CLECs as UNEs. (TR. 41). Such fiber may readily be made usable by Verizon, and should be considered usable by CLECs. Unless Verizon is required to terminate dark fiber for CLECs, 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 CLECs.

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.[99] More specifically, the DC PSC rejected Verizon's argument that such unattached dark fiber is under construction and therefore should not be part of Verizon's dark fiber UNE inventory.[100] The DC PSC concluded that "it is clear that unattached dark fiber is *already installed in the network before it is attached* to termination equipment, and easily called into service by the attachment of termination equipment."[101] The DC PSC expressly rejected Verizon's argument that requiring it to attach termination equipment to unattached dark fiber for CLECs would result in the creation of a superior network. The DC PSC concluded that:

> The *UNE Remand Order* includes unattached dark fiber in its definition of dark fiber, since it is deployed in Verizon's network and is easily called into service. It is also analogous to 'dead count' or 'vacant' copper, which the FCC required to be unbundled. The Commission chooses to follow the Indiana Commission's decision in permitting [CLECs] to have access to unattached dark fiber. Approval of [the CLEC's] position *does not require Verizon to create a superior quality network, since it merely permits [the CLEC] to have the same access to dark fiber that Verizon provides to itself.*[102]

In sum, by attempting to exclude unterminated dark fiber from the inventory of dark fiber that is available to CLECs, Verizon hopes to evade its obligation to provide unbundled dark fiber. The Commission should preclude this unlawful conduct by

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99 *TAC 12 – Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington, DC, Inc.*, Order No. 12396, Order on Reconsideration, at ¶¶ 45, 48, 50, 53 (DC PSC May 6, 2002) ("unattached dark fiber is installed in Verizon DC's network and is easily called into service").

100 *TAC 12 – Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington, DC, Inc.*, Order No. 12286, Order on Reconsideration, at ¶¶ 26, 33 (DC PSC Jan. 4, 2002) ("*D.C. Dark Fiber Order*").

101 *D.C. Dark Fiber Order*, at ¶ 26 (emphasis added).

102 *D.C. Dark Fiber Order*, at ¶ 33 (emphasis added).

adopting the position of other state commissions[103] that have addressed the issue and clarifying that the definition of unbundled loop, subloop, and transport dark fiber includes fiber that is deployed in the network but not yet terminated. Verizon should be required to terminate unterminated dark fiber for requesting 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's Position ** Covad should be able to access dark fiber at any technically feasible point. 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*

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[103] *See e.g., Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, California Public Utilities Commission, A.01-01-010, Final Arbitrator's Report Cal. PUC, July 16, 2001 at 139 (rejecting SBC's contention that because un-terminated fiber is not connected to equipment at the customer location at the termination point it need not be unbundled as "an attempt to define away its legal obligations"); *Petition of El Paso Networks, LLC For Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Co.*, PUC Docket No. 25188, Revised Arbitration Award, at 139 (Texas PUC 2002) (ruling that "unterminated and unspliced fibers should be made available to [the CLEC] for use as UNE dark fiber," and that "[SBC] has an obligation to provide that unspliced UNE dark fiber to [the CLEC] and splice it upon request.").

feasible point" on terms and conditions that just, reasonable, and nondiscriminatory."[104] 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."[105]

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.* In its Order, the FCC noted numerous times that contract language that references access to UNEs or interconnection at any technical feasible point is lawful.[106] Moreover, Covad's reference to "Applicable Law" is consistent with the FCC conclusion that such a reference is appropriate and properly protects rights and obligations of the parties.[107]

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104 47 U.S.C. § 251(c)(3).

105 47 C.F.R. § 51.5

106 *See, e.g., Virginia Arbitration Award* at ¶ 57 & n.141 (emphasizing that "[t]echnical feasible interconnection is the right of every carrier."), ¶ 231 (adopting WorldCom's proposed language and finding that is consistent with Commission precedent that "any requesting carrier may choose any method of technically feasible interconnection ...at a particular point"), ¶ 338 (noting that "Verizon has contractual obligation to provide AT&T with nondiscriminatory access to UNEs, including combinations of UNEs, at any technically feasible point and including all other UNE's features, functions and capabilities."), ¶ 353 (rejecting Verizon's requirement that ALEC be collocated to access UNEs because such a provision is not consistent with Verizon's statutory obligation to provide access to UNEs "at any technically feasible point.").

107 *Virginia Arbitration Award*, ¶ 477.

Verizon attempts to avoid its overarching statutory duty to provide dark fiber access at any technical feasible point by arguing that "dark fiber" is not a separate, stand-alone UNE under the FCC's rules and that it is available to a CLEC *only* to the extent that it falls within the definition of specifically designated UNEs set forth in 47 C.F.R. § 51.319(a) and (d) — in particular, the loop network element, subloop network element, or interoffice facilities ("IOF"). Verizon speciously claims that Covad's proposed § 8.1.5 purports to expand Covad's right to dark fiber beyond the loop, subloop, or IOF network elements is inconsistent with the FCC's rules implementing § 251(c)(3) of the Act.

Verizon's assertions are incorrect. In fact, Verizon defies FCC rule 51.309(a)[108] by seeking to limit Covad's legal right to access to dark fiber and the FCC has rejected similar arguments made by Verizon where Verizon has sought to escape its statutory obligations. For instance, the FCC has concluded with respect to number of similar issues that Verizon's proposed contract language that serves to limit CLEC options to interconnect or access UNEs and enable Verizon to refuse a CLECs request to do so is improper.[109] The same holds true here and Verizon seeks to limit Covad's access to dark

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108 47 C.F.R. § 51.309(a) ("An incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends.")

109 *Virginia Arbitration Award*, ¶ 147 (rejecting Verizon's proposed language that permits Verizon to refuse a request for technically feasible interconnection on the grounds that such terms violate the Act and the Commission's implementing rules), ¶ 231 (rejecting Verizon's proposed language because it did not reflect a carriers right to choose any method of technically feasible interconnection and it would improperly give Verizon the discretion to decide whether to permit technically feasible interconnections), ¶ 237 (rejecting Verizon's proposal that would limit interconnection options available to CLECs and enable Verizon to refuse a request for technically feasible interconnection), ¶ 353 (rejecting Verizon's language that requires a competitor to collocate at Verizon's facilities in

fiber UNEs through its definition of dark fiber UNEs rather than allowing Covad to access the UNEs at any technically feasible point as permitted by Applicable Law. Clearly, how dark fiber is defined in the Agreement should in no way diminish Covad's legal right to access such dark fiber at any technically feasible point in Verizon's network in accordance with Applicable Law. For these reasons, the Commission should reject Verizon's efforts to dodge its legal obligations and should accordingly adopt Covad's proposed language.

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's Position ** The Agreement should clarify that Verizon's obligation to provide UNE dark fiber or combination 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. **

Covad respectfully requests that the Commission adopt Covad's proposed contract language for sections 8.1.4 (proposed), 8.2.1, 8.2.2, 8.2.3, and 8.2.9. Specifically, the Commission should affirm that ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for requesting CLECs on a time and materials basis in order to provide a continuous fiber strand. Consistent with *the Virginia Arbitration Award* and Verizon's most recent proposed contract language, 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

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order to gain access to UNEs because such a provision is not consistent with Verizon's statutory obligation to provide access to UNEs "at any technically feasible point.").

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 and to allow UNE combinations.

As directed by the FCC's in the *Virginia Arbitration Award,*[110] Verizon has proposed contract language that requires Verizon to route dark fiber transport through two or more intermediate central offices for Covad. Verizon's language, however, would unduly restrict Covad's access to combinations in accordance with Applicable Law by requiring Covad to access dark fiber loops and IOF via a collocation arrangement in that Verizon premise where that loop of IOF terminates. An additional disputed item in Issue 43 is whether or not Verizon should be required to permit access to existing splice points and splice dark fiber on behalf of Covad, on a time and materials basis in order to provide a continuous dark fiber strand on a route requested by Covad.

The *UNE Remand Order* describes its connection standard as meaning that the fiber is "in place."[111] Even if a strand is not spliced, it is still "in place." Fibers that have been deployed in cables but not yet spliced are within the FCC's definition of unbundled dark fiber. Moreover, when the issue has been raised, many state commissions have recognized that the ILEC's refusal to splice dark fiber for CLECs violates their unbundling obligations and unreasonably limits the amount of unbundled dark fiber

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110 *Virginia Arbitration Award*, at ¶ 457 (July 17, 2002) ("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.").

111 *Implementation of the Local Competition Provisions of the Telecommunications Act of* 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 15 FCC Rcd. 3696, at ¶ 174 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

available to CLECs. For example, the Texas PUC recently ruled that "unterminated and unspliced fibers should be made available to [the CLEC] for use as UNE dark fiber," and that "[SBC] has an obligation to provide that unspliced UNE dark fiber to [the CLEC] and splice it upon request."[112] The Texas PUC explained its decision by noting that it found "no reason to distinguish between fiber that is deployed and spliced and fiber that is deployed and un-spliced; doing so would limit [the CLEC's] ability to request UNE dark fiber."[113] In addition to the Texas PUC, Several other state commissions, including those in the District of Columbia,[114] Indiana,[115] Massachusetts,[116] New Hampshire[117] and Rhode Island[118] have examined the issue and have ordered ILECs to splice dark fiber for requesting CLECs. The Pennsylvania Commission also determined that "creation of an

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112 *Petition of El Paso Networks, LLC For Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Co.*, PUC Docket No. 25188, Revised Arbitration Award, at 139 (Texas PUC 2002) ("*Texas Revised Arbitration Award*").

113 *Texas Revised Arbitration Award*, at 139.

114 *D.C. Dark Fiber Order*, at ¶ 62, 87.

115 *Re: AT&T Communications of Indiana, Inc.*, Cause No. 40571-INT-03, Slip Opinion, at 79, 129-130 (Nov. 20, 2000) ("Indiana Order").

116 *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts,* Decision D.P.U./D.T.E. 96-83, 96-94-Phase 4-N, at 33 (Mass. DTE Dec. 13, 1999).

117 Re: Deliberations in DT 01-206 Regarding Rates, Terms and Conditions for the UNE Remand Unbundled Network Elements, Policy Letter, at 2 (N.H. PUC, March 1, 2002).

118 *In re: Verizon-Rhode Island's TELRIC Studies - UNE Remand,* Docket No. 2681, Report and Order, at 19, 22-23 (Rhode Island PUC, Dec. 3, 2001) *("RI Dark Fiber Order")* ("Verizon is required to splice dark fiber at any technically feasible point on a time and materials basis, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC to be collocated at any such offices.").

accessible terminal is a technically feasible means to access dark fiber at existing splice points."[119]

In light of the best practices adopted by these state commissions, the Commission should seize this opportunity to clarify its rules and affirm that ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for requesting CLECs on a time and materials basis in order to provide a continuous fiber strand.

In addition, Covad should be allowed to test the dark fiber to determine the actual transmission characteristics after a dark fiber circuit has been provisioned, but prior to completion of the order. If the dark fiber Verizon provisions is not suitable or does not meet the fiber specifications described in Verizon's filed survey response, Covad should be allowed to cancel the dark fiber circuit.

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

> **Covad's Position** ** Verizon must provide Covad detailed dark fiber inventory information, including field surveys, maps of routes by LATA, and availability of dark fiber between two points in a LATA without regard to the number of arrangements that must be spliced or cross connected together for Covad's desired route. **

Covad requests that the Commission adopt its proposed contract language for section 8.2.20.1. Specifically, the Commission should specify that Verizon is required to afford CLECs nondiscriminatory, parity access to fiber maps, including fiber transport maps, TIRKS data, field survey test data, baseline fiber test data from engineering

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119 *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Verizon Pennsylvania, Inc.*, Docket No. A-310964, Opinion and Order, at 8 (Order adopted April 11, 2002).

records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber.

The FCC concluded that "a requesting carrier that lacks access to the incumbent's OSS 'will be severely disadvantaged, if not precluded altogether, from fairly competing.'"[120] In addition, in its *UNE Remand Order*, the Commission clarified that "OSS includes the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems."[121] Accordingly, the FCC determined that ILECs must provide nondiscriminatory or parity access to the same detailed, up-to-date information about unbundled dark fiber and other UNEs that is available to the ILEC, and concluded that, "*at a minimum*, incumbent LECs must provide requesting carriers with *the same underlying information* that the incumbent LEC has *in any* of its own databases or other internal records."[122] In other words, Verizon is required to provide access to requesting CLECs 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 CLECs 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

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120 *UNE Remand Order*, at ¶ 421, *quoting*, First Local Competition Order, at ¶¶ 516-516.

121 *UNE Remand Order*, at ¶ 425.

122 *UNE Remand Order*, at ¶ 427 (emphasis added).

within Verizon's records, databases and other sources. (TR. 78-81). 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. The limited information offered by Verizon in its latest proposal to Covad, among other items, does not provide sufficient information regarding the availability of spare fiber strands along direct and indirect routes transport routes in its responses to a dark fiber inquiry. Further, Verizon should be required to provide dark fiber transport maps for requested routes can plan their network design. Verizon admitted that such maps exist and offered to provide dark fiber maps during the Virginia section 271 hearing before the Virginia State Corporation Commission, however, Verizon later rescinded this offer.

In addition to the FCC, several state commissions have recognized the importance to CLECs of nondiscriminatory, parity access to information regarding the location, quality, and availability of dark fiber. The New Hampshire Commission, for example, concluded[123] that where Verizon determines that "no facilities are available," the information provided within 15 business days must "identify for the CLEC the route triggering the 'no facilities available' response, indicate what alternate routes have been investigated, and show the first blocked segment on each route as well as all of those

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123 *Order Approving in Part and Denying in Part Statement of Generally Available Terms and Conditions Additional Unbundled Network Elements*, Docket DT 01-206, Order No. 23,948, at 7 (NH PUC April 12, 2002) ("Order No. 23,948").

segments which are not blocked."[124] In addition, the New Hampshire Commission requires that if Verizon determines that dark fiber is unavailable, unless the CLEC affirmatively declines by checking a box on the dark fiber inquiry form, Verizon shall provide a written response within thirty (30) days of the CLEC's dark fiber inquiry that sets forth specific reasons why dark fiber cannot be provided and must include, at a minimum, the following information:[125]

> 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.[126]

In addition, the Maine Public Utilities Commission ("ME PUC") has determined that if Verizon believes that dark fiber is unavailable, then within thirty (30) days of a separate request from a CLEC, Verizon must provide the CLEC with "written documentation and a fiber map."[127] The written documentation must, at a minimum include, the following detailed information:

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124 Order No. 23,948, at 7.

125 *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 8-9 (May 19, 1998) ("*NH Dark Fiber Order*").

126 *NH Dark Fiber Order*, at 8 (emphasis added); Order No. 23,948, at 7.

127 *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) ("*Maine Section 271 Order*").

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

In sum, the Commission should adopt the best practices of these state commissions and should specify that its requires Verizon to afford CLECs nondiscriminatory, parity access to fiber transport maps, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other data regarding the location, availability and characteristics of dark fiber.

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? [128]

Covad's Position ** The charges for a service should be the Commission or FCC approved charges. 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. **

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

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[128] Issues 51 and 52 are discussed together.

Covad's Position ** Verizon should provide Covad advanced written notice of any non-tariff revisions that serve to establish new rates or change existing rates in Appendix A and update the Appendix on an informational basis when the Commission orders new rates. **

Covad objects to Verizon's proposed contract language because it enables Verizon, by simply making a tariff filing, to change the rates that Covad pays for services to rates that have not been approved or are pending approval by the Commission or the FCC. Unless Verizon has such approval, Verizon should not be free to make unilateral changes to the rates it charges Covad for services.

Basically, any charges Verizon assess for services under the Agreement should be 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 and when such rates are approved, Verizon should be required to apply them retroactively starting at the effective date of the Agreement and Verizon should provide a refund to Covad of over-charged rates if necessary.

Verizon's proposed language would also give it the ability, through a mere proposed tariff filing, to negate the established and effective Commission approved rates contained or referenced in the Interconnection Agreement. Covad finds this language inappropriate because Covad must be able to rely on the rates specifically established by this Commission and contained or referenced in the Agreement. Otherwise, the Commission's rates and the rates contained or referenced in the Agreement are little more than placeholders, until Verizon determines to propose and thereby impose rates that are different from Commission approved rates. Significantly, in the Virginia Arbitration Award, the FCC's Wireline Bureau stated that "a carrier cannot use tariffs to circumvent

the Commission's determinations under section 252."[129] With its proposed contract language, Verizon seeks to do just that, and therefore, the Commission should reject Verizon's proposed language.

With the language Covad has proposed, the Agreement is clear that Verizon can only assess Commission or FCC approved charges that are set-forth in the tariff and nothing else. For the foregoing reasons, the Commission should adopt Covad's proposed contract language.

Issue 52 has evolved from whether Verizon should provide notice of tariff revisions and rate changes, and based on efforts to settle this issue, the question now is 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 obligations 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.[130]

This language is needed in the Agreement 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. Often, these charges are not supported by Commission decisions and have not been mutually agreed to by the Parties. Section 1.8

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129 *Virginia Arbitration Award* ¶ 602 .

130 Attachment A, Revised Proposed Language Matrix, Issue 52, page 20.

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."[131] 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.

As mentioned above, 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.[132] 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.[133] 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.[134]

During the New York Technical Conference, Covad made this point abundantly clear with its example of Verizon's assessment of Line and Station Transfer charges.[135] Out of nowhere, Covad received a backbill in February 2002 from Verizon for approximately $19,000 and did not know what it was for.[136] Subsequently, after numerous requests, Verizon provided a spreadsheet itemizing only 60% of the charges

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131 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 274:12-275:21.

132 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 262.

133 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 262:22-24.

134 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 266:15.

135 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 262:11- 265:12.

136 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 263:23-264:1.

and Covad has had continuous discussions with Verizon attempting to identify the source of Verizon's charges. (TR 43-44). After ten months of discussions, Verizon provided a chart identifying that the charges were based on an internal cost study that were submitted in tariff proceedings but were not Commission approved.[137] After Covad researched what Commission approved rate should apply, it discovered there was no tariffed rate or an otherwise Commission approved rate for the service in New York.[138]

During the Technical Conference, Verizon explained that in the case of Line and Station Transfers, "it was the result of settlement that the parties negotiated, Covad being a party to that."[139] Verizon further stated that the settlement was set forth in the Commission's October 2000 order in the DSL case and that it was part of the settlement.[140] However, contrary to Verizon's contentions, no rate was ever established in the settlement and the New York Commission never approved any rate.[141]

Nevertheless, the fact still remains that up until December 2002, Verizon incorrectly maintained that its charges were effective Commission-approved rates. (TR. 44). However, had Verizon provided Covad with an updated Pricing Appendix, this

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137 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 264: 22-24; *see also* (TR 43-44).

138 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 271:16-272:15.

139 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 271:23-272:2.

140 Exhibit 2, 2/4/03 New York Technical Conference, Tr. at 272:3-8.

141 *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case No. 00-C-0127, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, at 25 n.1 & Attachment 2 (N.Y. P.S.C. Oct. 31, 2000); *see also Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case No. 98-C 1357, Order on Unbundled Network Element Rates (N.Y. P.S.C. Jan. 28, 2002) (not addressing or ordering rates for Line and Station Transfers).

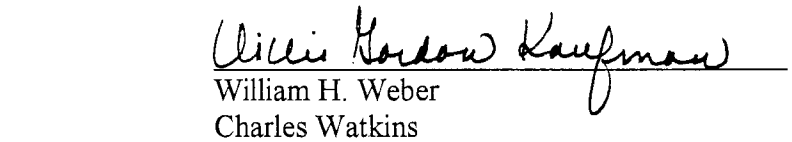
problem could have been easily rectified because Covad would have known beforehand that it was Verizon's intent to assess these non-commission approved charges and could have taken the issue up with Verizon at that time rather than after discovering the problem during a prolong, resource draining billing dispute. (TR. 43-45). When all is said and done, Verizon should attempt to inform and negotiate a non-tariffed rate with Covad rather than having such charges suddenly and inappropriately appear on Covad's bill.

At bottom, such billing disputes result from the unacceptable nature by which Verizon imposes rates and charges for services that are not *tariffed or otherwise Commission approved.* Given the above, it is evident that one of the major reasons there are billing problems between the Parties stems from Verizon's failure to properly inform Covad that it intends to start billing Covad for such services. By providing Covad and possibly Verizon's own billing group with a revised Appendix A that reflects the non-tariffed rates that will be assessed, Verizon would be putting a precautionary measure in place that would potentially serve to correct many of billing problems Covad faces with Verizon or at a minimum ease the potential for billing inaccuracies and prolong billing disputes. For these above reasons, the Commission should adopt Covad's proposed section 1.9

Covad respectfully requests that the Commission grant Covad's requested contract language on the aforementioned issues.

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY



William H. Weber
Charles Watkins
Covad Communications Co.
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

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

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications Company

EXHIBIT A

Revised Proposed Language Matrix

Revised Proposed Language Matrix – Florida

Section	Covad Position	Verizon Position	Associated Issue(s)
AGREEMENT			
4. Applicable Law			
4.7	~~Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to Covad hereunder, then Verizon may discontinue immediately the provision of any arrangement for such Service, payment or benefit, except that existing arrangements for such Services that are already provided to Covad shall be provided for a transition period of up to forty-five (45) days, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.~~ During the pendency of any renegotiation or dispute resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, unless the Commission, the FCC, or a court of competent jurisdiction determines that modifications to this Agreement are required to bring it into compliance with the Act, in which case the Parties shall perform their obligations in accordance with such determination or ruling.	Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to Covad hereunder, then Verizon may discontinue immediately the provision of any arrangement for such Service, payment or benefit, except that existing arrangements for such Services that are already provided to Covad shall be provided for a transition period of up to forty-five (45) days, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.	**Issue 1**
9. Billing			
9.1.1	Neither Party will bill the other Party for previously unbilled charges that are for services rendered more than one year prior to the current billing date.		**Issue 2**
9.3	If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute	If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute	**Issue 4**

Section	Covad Position	Verizon Position	Associated Issue(s)
	prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid. The billing Party shall use the claim number, if any, that the billed Party specifies in the notice of the dispute when referencing the Disputed Amounts with the billed Party. The billing Party shall acknowledge receiving notices of Dispute Amounts within 2 business days. In responding to notices of Disputed Amounts, the billing Party shall provide an explanation for its position within 30 days of receiving the notice. A Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution. If the billing Party determines that the disputed amounts are not owed to it, it must provide to the billed Party information identifying the bill and Bill Account Number (BAN) to which an appropriate credit will be applied. Where the billing Party's billing systems permit, the billing Party will provide the claim number specified by the billed Party on the bill to which the adjustment is applied. If the billed Party's claim number cannot be provided on the bill, then where the billing Party's billing systems permit, the billing Party will provide its claim number on the bill to which the adjustment is applied.	prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid. The billing Party shall use the claim number, if any, that the billed Party specifies in the notice of the dispute when referencing the Disputed Amounts with the billed Party. A Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution. If the billing Party determines that the disputed amounts are not owed to it, it must provide to the billed Party information identifying the bill and Bill Account Number (BAN) to which an appropriate credit will be applied. Where the billing Party's billing systems permit, the billing Party will provide the claim number specified by the billed Party on the bill to which the adjustment is applied. If the billed Party's claim number cannot be provided on the bill, then where the billing Party's billing systems permit, the billing Party will provide its claim number on the bill to which the adjustment is applied.	
9.4	If the billing Party fails to receive payment for outstanding charges by the Due Date, it is entitled to assess a late payment charge to the billed Party for all such charges except past late payment charges. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount ~~(including any unpaid previously billed late payment charges)~~ per month. Late payment charges shall be tolled during any period in which Verizon is analyzing the validity of a bill disputed by Covad	If the billing Party fails to receive payment for outstanding charges by the Due Date, it is entitled to assess a late payment charge to the billed Party. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount (including any unpaid previously billed late payment charges) per month.	**Issue 5**

Section	Covad Position	Verizon Position	Associated Issue(s)
	and Verizon takes longer than 30 days to provide a substantive response to Covad.		
9.5	Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, subject to Section 9.1.1 above, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.	Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.	**Issue 2**
14. Dispute Resolution			
14.3	If the issue to be resolved through the negotiations referenced in Section 14 directly and materially affects service to either Party's end user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).		**Issue 7**
43.2 Termination/ Assignment Upon Sale	Notwithstanding any other provision of this Agreement, Verizon may assign ~~terminate~~ this Agreement to the purchaser of ~~as to~~ a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such assignment~~termination~~, which shall be effective upon the date specified in the notice.	Notwithstanding any other provision of this Agreement, Verizon may terminate this Agreement as to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such termination, which shall be effective upon the date specified in the notice.	**Issue 8**
48. Waiver	Except as provided in Section 9.1.1, a ~~A~~ failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this	A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to	**Issue 9 Issue 10**

Section	Covad Position	Verizon Position	Associated Issue(s)
	Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options. The Parties agree that Covad may seek in the future to negotiate and potentially arbitrate (pursuant to 47 U.S.C. §§ 251 and 252) rates, terms, and conditions regarding unbundled switching and interconnection of their networks for the purpose of exchanging voice traffic. Such negotiated and/or arbitrated interconnection and switching provisions would be added to this Principal Document as an amendment. No portion of this Principle Document or the parties' Agreement was entered into "without regard to the standards set forth in the subsections (b) and (c) of section 251," 47 U.S.C §§ 251 (b) & (c), and therefore nothing in this Principal Document or the Parties' Agreement waives either Party's rights or remedies available under Applicable Law, including 47 U.S.C. §§ 206 & 207.	require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options. The Parties agree that Covad may seek in the future to negotiate and potentially arbitrate (pursuant to 47 U.S.C. §§ 251 and 252) rates, terms, and conditions regarding unbundled switching and interconnection of their networks for the purpose of exchanging voice traffic. Such negotiated and/or arbitrated interconnection and switching provisions would be added to this Principal Document as an amendment.	
Glossary			
2.11	All effective federal and state laws, government regulations and orders (*including orders related to merger* commitments), applicable to each Party's performance of its obligations under this agreement. References to Applicable Law in this Principal Document are meant to incorporate verbatim the text of that Applicable Law as if set forth fully herein.	All effective federal and state laws, government regulations and orders (including orders related to merger commitments), applicable to each Party's performance of its obligations under this agreement.	**Issue 10**
ADDITIONAL SERVICES ATTACHMENT			
8.0 (OSS)			
8.1.4	Verizon OSS Information: Any information accessed by, or disclosed or provided to, Covad through or as a part of Verizon OSS Services, including all information set forth in the definition "Pre-ordering and ordering" in 47 CFR 51.5, to the extent that the rule remains Applicable Law. The term "Verizon OSS Information" includes, but is not limited to: (a) any Customer Information related to a Verizon Customer or a Covad Customer accessed by, or disclosed	Verizon OSS Information: Any information accessed by, or disclosed or provided to, Covad through or as a part of Verizon OSS Services, including all information set forth in the definition "Pre-ordering and ordering" in 47 CFR 51.5, to the extent that the rule remains Applicable Law. The term "Verizon OSS Information" includes, but is not limited to: (a) any Customer Information related to a Verizon Customer or a Covad Customer accessed by, or disclosed	**Issue 12**

Section	Covad Position	Verizon Position	Associated Issue(s)
	or provided to, Covad through or as a part of Verizon OSS Services; and, (b) any Covad Usage Information (as defined in Section 8.1.6 below) accessed by, or disclosed or provided to, Covad. 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.	or provided to, Covad through or as a part of Verizon OSS Services; (b) any Covad Usage Information (as defined in Section 8.1.6 below) accessed by, or disclosed or provided to, Covad.	
8.2 Verizon OSS Services			
8.2.3	Verizon, as part of its duty to provide access to the pre-ordering function, must ~~will~~ provide Covad with nondiscriminatory access to the same detailed information about the loop at ~~within~~ the same time and manner that ~~as~~ is available to Verizon and/or its affiliate.	Verizon, as part of its duty to provide access to the pre-ordering function, will provide Covad with nondiscriminatory access to the same detailed information about the loop within the same time interval as is available to Verizon and/or its affiliate.	**Issue 12**
8.2.4	For stand-alone loops, Verizon shall return 95% of firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically. Verizon shall return 95% of firm order commitments for UNE DS1 loops within twenty-four (24) clock hours, and 90% of firm order commitments for UNE DS3 loops within forty-eight (48) clock hours.		**Issue 13**
UNE ATTACHMENT			
1.2 Combination of UNEs	Verizon shall be obligated to combine UNEs that are not already combined in Verizon's network only to the extent required by Applicable Law. Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to this Agreement only to the extent ~~such UNE or Combination, and the equipment and~~ that the facilities necessary to provide such UNE or Combination, are available in Verizon's network (even if they do not have telecommunications services currently transmitted over them or are not currently being utilized by Verizon); and (b) Verizon shall have no obligation to construct or deploy new facilities ~~or equipment~~ to offer any UNE or Combination except to the extent that such UNE or Combination would be constructed or deployed, upon request of a Verizon end user.	Verizon shall be obligated to combine UNEs that are not already combined in Verizon's network only to the extent required by Applicable Law. Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to this Agreement only to the extent such UNE or Combination, and the equipment and facilities necessary to provide such UNE or Combination, are available in Verizon's network (even if they do not have telecommunications services currently transmitted over them or are not currently transmitted over them or are not currently being utilized by Verizon); and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination.	**Issue 19 (includes Issue 24 and Issue 25)**
1.5	~~Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its~~	Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its	**Issue 1**

Section	Covad Position	Verizon Position	Associated Issue(s)
	~~Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to Covad, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNEs or Combination,~~ Verizon may terminate its provision of such UNE or Combination to Covad subject to Sections 4.6 and 4.7 of the General Terms and Conditions of this Agreement. If Verizon terminates its provision of a UNE or a Combination to Covad pursuant to this Section 1.5 and Covad elects to purchase other Services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with Covad to coordinate the termination of such UNE or Combination and the installation of such Services to minimize the interruption of service to Customers of Covad; and, (b) Covad shall pay all applicable charges for such Services, including, but not limited to, any applicable transition charges.	Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to Covad, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNEs or Combination, Verizon may terminate its provision of such UNE or Combination to Covad. If Verizon terminates its provision of a UNE or a Combination to Covad pursuant to this Section 1.5 and Covad elects to purchase other Services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with Covad to coordinate the termination of such UNE or Combination and the installation of such Services to minimize the interruption of service to Customers of Covad; and, (b) Covad shall pay all applicable charges for such Services, including, but not limited to, any applicable transition charges.	
1.9	In provisioning loops that require Verizon to dispatch a technician to an end user's premises, Covad may request an appointment window during business hours on the day of the dispatch pursuant to the ordering processes set forth in Verizon's business rules. Any changes to those rules shall be implemented in accordance with the Verizon Change Management process. Verizon shall make good faith efforts to meet that appointment window, but does not guarantee that it will do so and failure to meet an appointment window shall not constitute a missed appointment for purposes of any performance measurements adopted by the state commission. On the day of the dispatch, the Verizon technician shall make good faith efforts to contact the end user upon arriving at the premises. Covad shall not be required to pay the non-recurring dispatch charge for dispatches that do not occur. However, Covad will be required to pay this charge when the Customer contact as designated by Covad is not available on the day of the dispatch, so long as Verizon did not cause the Customer contact to be unavailable. If a dispatch does not occur (other than if the Covad end	In provisioning loops that require Verizon to dispatch a technician to an end user's premises, Covad may request an appointment window during business hours on the day of the dispatch pursuant to the ordering processes set forth in Verizon's business rules. Any changes to those rules shall be implemented in accordance with the Verizon Change Management process. Verizon shall make good faith efforts to meet that appointment window, but does not guarantee that it will do so and failure to meet an appointment window shall not constitute a missed appointment for purposes of any performance measurements adopted by the state commission. On the day of the dispatch, the Verizon technician shall make good faith efforts to contact the end user upon arriving at the premises. Covad shall not be required to pay the non-recurring dispatch charge for dispatches that do not occur. However, Covad will be required to pay this charge when the Customer contact as designated by Covad is not available on the day of the dispatch, so long as Verizon did not cause the Customer contact to be unavailable.	**Issue 22**

Section	Covad Position	Verizon Position	Associated Issue(s)
	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.		
3. Loop Transmission Types			
3.1	"2-Wire ISDN Digital Grade Loop" or "BRI ISDN" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 kbps digital services using the ISDN/IDSL 2B1Q line code, as described in ANSI T1.601.1998 ~~and Verizon TR 72575 (as TR 72575 is revised from time to time)~~. In some cases loop extension equipment may be necessary to bring the line loss within acceptable levels. Verizon will provide loop extension equipment only upon request. ~~A separate charge will apply for loop extension equipment.~~ Verizon will relieve capacity constraints in the loop network to provide ISDN loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers. Covad connecting equipment should conform to the limits for SM1 in T1-417-2001,as revised from time to time.	"2-Wire ISDN Digital Grade Loop" or "BRI ISDN" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 kbps digital services using the ISDN/IDSL 2B1Q line code, as described in ANSI T1.601.1998 and Verizon TR 72575 (as TR 72575 is revised from time to time). In some cases loop extension equipment may be necessary to bring the line loss within acceptable levels. Verizon will provide loop extension equipment only upon request. A separate charge will apply for loop extension equipment. Covad connecting equipment should conform to the limits for SM1 in T1-417-2001, as revised from time to time.	**Issue 19 (includes Issue 24 and Issue 25) Issue 23**
3.2 ADSL	"2-Wire ADSL-Compatible Loop" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer. ADSL-Compatible Loops will be available only where existing copper facilities are available and meet applicable specifications. Verizon will not build new copper facilities except to the extent that it does so for its own customers. ~~The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met, or alternatively, c~~Connecting equipment should conform to	"2-Wire ADSL-Compatible Loop" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer. ADSL-Compatible Loops will be available only where existing copper facilities are available and meet applicable specifications. Verizon will not build new copper facilities. The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met, or alternatively, connecting equipment should conform to the limits for SMC5 or SMC9 in T1-417-2001, as revised	**Issue 19 (includes Issue 24 and Issue 25) Issue 23**

Section	Covad Position	Verizon Position	Associated Issue(s)
	the limits for SMC5 or SMC9 in T1-417-2001, as revised from time to time.	from time to time.	
3.3 **HDSL**	"2-Wire HDSL-Compatible Loop" or "HDSL 2W" consists of a single 2-wire interfaces at each end that is generally suitable for the transport of digital signals simultaneously in both directions. ~~The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met or alternatively,~~ cConnecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001, as revised from time to time. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities except to the extent that it does so for its own customers. The 2-wire HDSL-compatible loop is only available in Bell Atlantic service areas. Covad may order a GTE Designed Digital Loop to provide similar capability in the GTE service area.	"2-Wire HDSL-Compatible Loop" or "HDSL 2W" consists of a single 2-wire interfaces at each end that is generally suitable for the transport of digital signals simultaneously in both directions. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001, as revised from time to time. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities. The 2-wire HDSL-compatible loop is only available in Bell Atlantic service areas. Covad may order a GTE Designed Digital Loop to provide similar capability in the GTE service area.	**Issue 19 (includes Issue 24 and Issue 25)** **Issue 23**
3.4 **4 wire HDSL**	"4-Wire HDSL-Compatible Loop" or "HDSL 4W" consists of a channel with 4 wire interfaces at each end that is generally suitable for the transport of digital signals simultaneously in both directions. ~~The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, as revised from time-to-time, must be met or alternatively,~~ cConnecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001. 4-Wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities except to the extent that it does so for its own customers. The 4-Wire HDSL compatible loop is available in former Bell Atlantic service areas. Covad may order a GTE 4-Wire Designed Digital Loop to provide similar capability in the former GTE service area.	"4-Wire HDSL-Compatible Loop" or "HDSL 4W" consists of a channel with 4 wire interfaces at each end that is generally suitable for the transport of digital signals simultaneously in both directions. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, as revised from time-to-time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001. 4-Wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities. The 4-Wire HDSL compatible loop is available in former Bell Atlantic service areas. Covad may order a GTE 4-Wire Designed Digital Loop to provide similar capability in the former GTE service area.	**Issue 19 (includes Issue 24 and Issue 25)** **Issue 23**
3.5 **DS-1**	"4-Wire DS1-compatible Loop" provides a channel with 4-wire interfaces at each end. Each 4-wire channel is suitable for the transport of 1.544 Mbps digital signals simultaneously in both directions using PCM line code. DS-1-compatible Loops will be available only where existing facilities can meet the specifications, unless	"4-Wire DS1-compatible Loop" provides a channel with 4-wire interfaces at each end. Each 4-wire channel is suitable for the transport of 1.544 Mbps digital signals simultaneously in both directions using PCM line code. DS-1-compatible Loops will be available only where existing facilities can meet the specifications. In some	**Issue 19 (includes Issue 24 and Issue 25)**

Section	Covad Position	Verizon Position	Associated Issue(s)
	Verizon upgrades existing facilities for its own end users. In some cases loop extension equipment may be necessary to bring the line loss within acceptable levels, Verizon will provide loop extension equipment upon request. ~~A separate charge will apply for such equipment.~~	cases loop extension equipment may be necessary to bring the line loss within acceptable levels, Verizon will provide loop extension equipment upon request. A separate charge will apply for such equipment.	
3.6 **IDSL**	"2-Wire IDSL-Compatible Metallic Loop" consists of a single 2-wire non-loaded, twisted copper pair that meets revised resistance design criteria. This UNE loop is intended to be used with very-low band symmetric DSL systems that meet the Class 1 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3) and are not compatible with 2B1Q 160 kbps ISDN transport systems. The actual data rate achieved depends upon the performance of Covad-provided modems with the electrical characteristics associated with the loop. This loop cannot be provided via IDLC or UDLC. Verizon will not build new copper facilities except to the extent that it does so for its own customers. Verizon will relieve capacity constraints in the loop network to provide DSL loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers.	"2-Wire IDSL-Compatible Metallic Loop" consists of a single 2-wire non-loaded, twisted copper pair that meets revised resistance design criteria. This UNE loop is intended to be used with very-low band symmetric DSL systems that meet the Class 1 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3) and are not compatible with 2B1Q 160 kbps ISDN transport systems. The actual data rate achieved depends upon the performance of Covad-provided modems with the electrical characteristics associated with the loop. This loop cannot be provided via IDLC or UDLC. Verizon will not build new copper facilities.	**Issue 19 (includes Issue 24 and Issue 25)**
3.11	Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services. 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	Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services. 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	**Issue 27**

Section	Covad Position	Verizon Position	Associated Issue(s)
	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, 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.	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 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.	
3.13.4	Covad may submit an order for a loop not withstanding having received notice from Verizon during the pre-qualification process that the loop is "loop not qualified – T1 in the binder group" or in the same binder group as a "known disturber" as defined under FCC rules. Upon receipt of a valid LSR for such loop, Verizon will process the order in accordance with standard procedures. If Verizon needs to use manual procedures to process this LSR, it will do so at no charge to Covad. If necessary, ~~and~~ as available, and after obtaining Covad's approval, Verizon will perform a line & station transfer (LST) ~~subject to applicable charges~~ at no additional charge if Verizon does not charge its own customers for performing LSTs during the process of provisioning service. Upon the request of Covad, Verizon will provide Digital Designed Loop products for the loop in accordance with the Pricing Attachment or other forms of loop conditioning to be agreed upon by the Parties, subject to applicable charges.	Covad may submit an order for a loop not withstanding having received notice from Verizon during the pre-qualification process that the loop is "loop not qualified – T1 in the binder group" or in the same binder group as a "known disturber" as defined under FCC rules. Upon receipt of a valid LSR for such loop, Verizon will process the order in accordance with standard procedures. If Verizon needs to use manual procedures to process this LSR, it will do so at no charge to Covad. If necessary and as available, Verizon will perform a line & station transfer (LST) subject to applicable charges. Upon the request of Covad, Verizon will provide Digital Designed Loop products for the loop in accordance with the Pricing Attachment or other forms of loop conditioning to be agreed upon by the Parties, subject to applicable charges.	**Issue 35**
3.13.5	~~In the former GTE Service Areas only, in those cases where Verizon does not have the ability to provide electronic prequalification information for a particular loop (or group of loops) to itself or to a Verizon affiliate, Covad may request loop makeup information for that loop (or those loops) through a manual process, by submitting a query form, prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, or IDSL Loop. Verizon will complete such a request within the same intervals that Verizon completes such requests for itself or a Verizon affiliate in the former GTE Service Area. In general, Verizon will provide the requested loop qualification~~	In the former GTE Service Areas only, in those cases where Verizon does not have the ability to provide electronic prequalification information for a particular loop (or group of loops) to itself or to a Verizon affiliate, Covad may request loop makeup information for that loop (or those loops) through a manual process, by submitting a query form, prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, or IDSL Loop. Verizon will complete such a request within the same intervals that Verizon completes such requests for itself or a Verizon affiliate in the former GTE Service Area. In general, Verizon will provide the requested loop qualification	**Issue 32**

Section	Covad Position	Verizon Position	Associated Issue(s)
	~~information within five (5) business days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.~~ If the Loop is not listed in the mechanized database available from Verizon Florida or the listing is defective, Covad may request a manual loop qualification at no additional charge prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. Verizon will complete a manual loop qualification request within one business day.	information within five (5) business days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.	
3.13.7	If Covad submits a service order for an ADSL, HDSL, SDSL, or IDSL Loop that has not been prequalified, Verizon will query the service order back to Covad for qualification and will not accept such service order until the Loop has been prequalified on a mechanized or manual basis. Verizon will accept service orders for BRI ISDN Loops without regard to whether they have been prequalified. The Parties agree that Covad may contest the prequalification ~~finding~~requirement for an order or set of orders. At Covad's option, and where available facilities exist, Verizon will provision any such contested order or set of orders as Digital Designed Loops, pending negotiations between the Parties and ultimately Covad's decision to seek resolution of the dispute from either the Commission or the FCC.	If Covad submits a service order for an ADSL, HDSL, SDSL, or IDSL Loop that has not been prequalified, Verizon will query the service order back to Covad for qualification and will not accept such service order until the Loop has been prequalified on a mechanized or manual basis. Verizon will accept service orders for BRI ISDN Loops without regard to whether they have been prequalified. The Parties agree that Covad may contest the prequalification finding for an order or set of orders. At Covad's option, and where available facilities exist, Verizon will provision any such contested order or set of orders as Digital Designed Loops, pending negotiations between the Parties and ultimately Covad's decision to seek resolution of the dispute from either the Commission or the FCC.	**Issue 33**
3.13.10	The Parties will make reasonable efforts to coordinate their respective roles in order to minimize provisioning problems. In general, where conditioning or loop extensions are requested by Covad, the shortest of the following intervals applies for conditioning and~~/or extending loops~~ provisioning of loops: (1) the interval that Verizon provides to itself, or third parties or; (2) the Commission-adopted interval; or (3) ten business days. ~~After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.~~	The Parties will make reasonable efforts to coordinate their respective roles in order to minimize provisioning problems. Where conditioning or loop extensions are requested by Covad, the shortest of the following intervals applies for conditioning and/or extending loops: (1) the interval that Verizon provides to itself, or third parties or (2) the Commission-adopted interval. After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.	**Issue 34**
3.13.12	If Covad orders a loop that is determined to be xDSL Compatible, but the Loop serving the service address is	If Covad orders a loop that is determined to be xDSL Compatible, but the Loop serving the service address is	**Issue 35**

Section	Covad Position	Verizon Position	Associated Issue(s)
	Compatible, but the Loop serving the service address is unusable or unavailable to be assigned as an xDSL Compatible Loop, Verizon will search the Customer's serving terminal for a suitable spare facility. If an xDSL Compatible Loop is found within the serving terminal, Verizon will perform, upon request of Covad, a Line and Station Transfer (or "pair swap") whereby the Verizon technician will transfer the Customer's existing service from one existing Loop facility onto an alternate existing xDSL Compatible Loop facility serving the same location. Verizon performs Line and Station Transfers in accordance with the procedures developed in the DSL Collaborative in the State of New York, NY PSC Case 00-C-0127. Standard intervals do not apply when Verizon performs a Line and Station Transfer for line sharing loops, ~~and additional charges shall apply as set forth in the Pricing Attachment~~.	Compatible, but the Loop serving the service address is unusable or unavailable to be assigned as an xDSL Compatible Loop, Verizon will search the Customer's serving terminal for a suitable spare facility. If an xDSL Compatible Loop is found within the serving terminal, Verizon will perform a Line and Station Transfer (or "pair swap") whereby the Verizon technician will transfer the Customer's existing service from one existing Loop facility onto an alternate existing xDSL Compatible Loop facility serving the same location. Verizon performs Line and Station Transfers in accordance with the procedures developed in the DSL Collaborative in the State of New York, NY PSC Case 00-C-0127. Standard intervals do not apply when Verizon performs a Line and Station Transfer, and additional charges shall apply as set forth in the Pricing Attachment.	
3.13.13	~~In the former Bell Atlantic Service Areas only, Covad may request Cooperative Testing in conjunction with its request for an xDSL Compatible Loop or Digital Designed Loop. "Cooperative Testing" is a procedure whereby a Verizon technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order. When the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge that the Loop is operational.~~ Verizon will cooperatively test jointly with a Covad technician (i) all stand alone loops ordered by Covad and provide demarcation information during the cooperative test and (ii) any loop on which Covad has opened a maintenance ticket to close out any loop troubles. Cooperative testing is a procedure whereby a Verizon technician and a Covad technician jointly perform the following tests: (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing. At the conclusion of such testing, Covad will either accept or reject the loop. If Covad rejects the loop, then Verizon	In the former Bell Atlantic Service Areas only, Covad may request Cooperative Testing in conjunction with its request for an xDSL Compatible Loop or Digital Designed Loop. "Cooperative Testing" is a procedure whereby a Verizon technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order. When the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge that the Loop is operational. If the Parties mutually agree to modify the existing procedures, such procedures shall be effective notwithstanding anything in this section. Charges for Cooperative Testing are as set forth in the Pricing Attachment. Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon	**Issue 30**

Section	Covad Position	Verizon Position	Associated Issue(s)
	shall correctly provision the loop and re-contact the Covad representative to repeat the cooperative test. Verizon shall deliver loops that perform according to the characteristics of the described loop types set forth in Sections 3.1-3.7, above. Covad will make its automated testing equipment ("IVR") available for Verizon technicians to utilize to sectionalize troubles on loops connected to Covad's network, either during provisioning or maintenance activities. If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Agreement or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards. ~~modify the existing procedures, such procedures shall be effective notwithstanding anything in this section. Any charges for Cooperative Testing are in accordance with Applicable Law and as set forth in Verizon's PSC NY No. 10 Tariff, Section 5.5.2 (under Installation Dispatch).~~ Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned. Verizon will not bill Covad for loop repairs when the repair resulted from a Verizon problem.	method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned.	
3.14	The provisioning interval for all stand-alone loops not requiring conditioning shall be the shortest of the following:	The provisioning interval for all loops not requiring conditioning shall be the shortest of the following: (a) the	**Issue 34**

Section	Covad Position	Verizon Position	Associated Issue(s)
	(a) the interval Verizon provides to itself or an affiliate; or (b) the Commission-ordered interval; or (c) five business days.	interval Verizon provides to itself or an affiliate; or (b) the Commission-ordered interval.	
4. Line Sharing			
New 4.2.1 **Line Partitioning**	Verizon will also offer Line Partitioning, which is identical to Line Sharing except that the analog voice service on the loop is provided by a 3rd party carrier reselling Verizon's voice services. In order for a Loop to be eligible for Line Partitioning, the following conditions must be satisfied for the duration of the Line Partitioning arrangement: (i) the Loop must consist of a copper loop compatible with an xDSL service that is presumed to be acceptable for shared-line deployment in accordance with FCC rules; (ii) a reseller must be using Verizon's services to provide simultaneous circuit-switched analog voice grade service to the Customer served by the Loop in question; (iii) the reseller's Customer's dial tone must originate from a Verizon End Office Switch in the Wire Center where the Line Partitioning arrangement is being requested; and (iv) the xDSL technology to be deployed by Covad on that Loop must not significantly degrade the performance of other services provided on that Loop. Line Partitioning is otherwise subject to all terms and conditions applicable to Line Sharing.		**Issue 36**
4.4.3	If the Loop is prequalified by Covad using Verizon's loop prequalification tools, and if a positive response is received and followed by receipt of Covad's valid, accurate and pre-qualified service order for Line Sharing, Verizon will return an LSR confirmation ~~in accordance with applicable industry-wide performance standards.~~within two (2) business hours (weekends and holidays excluded).	If the Loop is prequalified by Covad using Verizon's loop prequalification tools, and if a positive response is received and followed by receipt of Covad's valid, accurate and pre-qualified service order for Line Sharing, Verizon will return an LSR confirmation in accordance with applicable industry-wide performance standards.	**Issue 37**
4.4.6	The standard Loop provisioning and installation process will be initiated for the Line Sharing arrangement only once the requested engineering and conditioning tasks have been completed on the Loop. Scheduling changes and charges associated with order cancellations after conditioning work has been initiated are addressed in the terms pertaining to Digital Designed Loops, as referenced	The standard Loop provisioning and installation process will be initiated for the Line Sharing arrangement only once the requested engineering and conditioning tasks have been completed on the Loop. Scheduling changes and charges associated with order cancellations after conditioning work has been initiated are addressed in the terms pertaining to Digital Designed Loops, as referenced	**Issue 34**

Section	Covad Position	Verizon Position	Associated Issue(s)
	in Section 3.9, above. The standard provisioning interval for the Line Sharing arrangement shall be as set out in the Verizon Product Interval Guide; provided that the standard provisioning interval for the Line Sharing arrangement shall not exceed the shortest of the following intervals: (a) ~~six (6)~~ two (2) business days; (b) the standard provisioning interval for the Line Sharing arrangement that is stated in an applicable Verizon Tariff; or, (c) the standard provisioning interval for the Line Sharing arrangement that is required by Applicable Law. The standard provisioning interval for ~~the~~ Line Sharing when Covad purchases Digital Designed Loop products shall be consistent with Section 3.13.10 ~~arrangement shall commence only once any requested engineering and conditioning tasks have been completed.~~ Line Sharing arrangements that require pair swaps or line and station transfers in order to free-up facilities may have a provisioning interval that is longer than the standard provisioning interval for the Line Sharing arrangement. In no event shall the Line Sharing interval offered to Covad be longer than the interval offered to any ~~similarly situated~~ aAffiliate of Verizon.	in Section 3.9, above. The standard provisioning interval for the Line Sharing arrangement shall be as set out in the Verizon Product Interval Guide; provided that the standard provisioning interval for the Line Sharing arrangement shall not exceed the shortest of the following intervals: (a) six (6) business days; (b) the standard provisioning interval for the Line Sharing arrangement that is stated in an applicable Verizon Tariff; or, (c) the standard provisioning interval for the Line Sharing arrangement that is required by Applicable Law. The standard provisioning interval for the Line Sharing arrangement shall commence only once any requested engineering and conditioning tasks have been completed. Line Sharing arrangements that require pair swaps or line and station transfers in order to free-up facilities may have a provisioning interval that is longer than the standard provisioning interval for the Line Sharing arrangement. In no event shall the Line Sharing interval offered to Covad be longer than the interval offered to any similarly situated Affiliate of Verizon.	
4.7.2	Where a new splitter is to be installed as part of an existing Collocation arrangement, or where the existing Collocation arrangement is to be augmented (e.g., with additional terminations at the POT Bay or Covad's collocation arrangement to support Line Sharing), the splitter installation or augment may be ordered via an application for Collocation augment. Associated Collocation charges (application and engineering fees) apply. Covad must submit the application for Collocation augment, with the application fee, to Verizon. ~~Unless a different interval is stated in Verizon's applicable Tariff, a~~An interval of ~~seventy-six (76)~~ no greater than forty-five (45) calendar ~~business~~ days shall apply.	Where a new splitter is to be installed as part of an existing Collocation arrangement, or where the existing Collocation arrangement is to be augmented (e.g., with additional terminations at the POT Bay or Covad's collocation arrangement to support Line Sharing), the splitter installation or augment may be ordered via an application for Collocation augment. Associated Collocation charges (application and engineering fees) apply. Covad must submit the application for Collocation augment, with the application fee, to Verizon. Unless a different interval is stated in Verizon's applicable Tariff, an interval of seventy-six (76) business days shall apply.	**Issue 38**
8. Dark Fiber			
New Section 8.1.4	Verizon will splice strands of Dark Fiber IOF together wherever necessary, including in the outside plant network, to create a continuous Dark Fiber IOF strand between two Accessible Terminals (as described above). Where splicing is required, Verizon will use the fusion ~~splicing method.~~		**Issue 43**

Section	Covad Position	Verizon Position	Associated Issue(s)
	splicing method.		
8.1.5	Verizon shall provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law. The description herein of three dark fiber products, specifically the Dark Fiber Loop, Dark Fiber Sub-loop, and Dark Fiber IOF products, does not limit Covad's rights to access dark fiber in other technically-feasible configurations consistent with Applicable Law.	Verizon shall provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law.	**Issue 42**
8.2.1	~~Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment,~~ Verizon shall be required to provide a Dark Fiber Loop ~~only~~ where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Wire Center of Central Office ~~that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office~~ and the other end terminates at the Customer premise. ~~Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment,~~ Verizon shall be required to provide a Dark Fiber Sub-Loop ~~only~~ where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Wire Center or Central Office ~~that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office~~ and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure ~~that can be cross-connected to Covad's collocation arrangement or adjacent structure~~, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure ~~that can be cross-connected to Covad's collocation arrangement or adjacent structure~~, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure ~~that can be cross-connected to Covad's collocation arrangement or adjacent structure~~ and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure ~~that can be cross-connected to Covad's collocation arrangement or adjacent structure~~.	Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure. A Covad demarcation point at a Customer premise shall be	**Issue 41** **Issue 43**

Section	Covad Position	Verizon Position	Associated Issue(s)
	It is Verizon's standard practice that when a fiber optic cable is run into a building or remote terminal that all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. Should a situation occur in which a fiber optic cable that is run into a building or a remote terminal is found to not have all of its fibers terminated, then Verizon agrees to complete the termination of all fibers in conformance with its standard practices, and to do so as soon as reasonably practicable at the request of Covad. Notwithstanding anything in this section, Verizon shall also be required to combine dark fiber UNEs to the extent required by Applicable Law. A Covad demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be reasonably determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).	established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be reasonably determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).	
8.2.2	Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF ~~only~~ at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF. ~~and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault,~~	Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF, and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault,	**Issue 41** **Issue 43**

Section	Covad Position	Verizon Position	Associated Issue(s)
	~~manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad~~	manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad	
8.2.3	~~Except if and, to the extent required by, Applicable Law,~~ Verizon will ~~not~~ perform splicing ~~(e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request~~ or permit Covad to contract a Verizon approved vendor to perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.	Except if and, to the extent required by, Applicable Law, Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.	**Issue 43**
8.2.9	~~Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be accomplished in a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.~~	Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be accomplished in a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.	**Issue 43**
8.2.19	Acceptance Testing: After a dark fiber circuit is provisioned, but prior to completion, Verizon will notify Covad that the dark fiber is available for testing and Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing (as set forth in the Pricing Attachment). If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to cancel ~~disconnect~~ the dark fiber circuit.	Acceptance Testing: After a dark fiber circuit is provisioned, Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing (as set forth in the Pricing Attachment). If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to disconnect the dark fiber circuit.	**Verizon: None** **Covad: Issue 43**
8.2.20.1	Verizon shall provide Covad nondiscriminatory and parity access to fiber maps at the same time and manner that is available to Verizon and/or its affiliate, including any fiber transport maps showing a portion of and/or the entire dark direct and indirect dark fiber routes between any two points specified by the CLEC, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber. Further, within 30 days of Covad's request Verizon shall provide, at a minimum, the following	A fiber layout map that shows the streets within a Verizon Wire Center where there are existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.	**Issue 46**

Section	Covad Position	Verizon Position	Associated Issue(s)
	information for any two points comprising a dark fiber route specified by Covad: a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates; the total number of fiber sheaths and strands in between points on the requested routes; the number of strands currently in use or assigned to a pending service order; the number of strands in use by other carriers; the number of strands assigned to maintenance; the number of spare strands; and the number of defective strands. ~~A fiber layout map that shows the streets within a Verizon Wire Center where there are existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.~~		
PRICING ATTACHMENT			
1.3	1.3 The Charges for a Service shall be the Commission or FCC approved Charges for the Service. Verizon represents and warrants that the charges set forth in Appendix A (attached to this Principal Document) are the Commission or FCC approved charges for Services, to the extent that such rates are available. To the extent that the Commission or the FCC has not approved certain charges in Appendix A, Verizon agrees to charge Covad such approved rates when they become available and on a retroactive basis starting with the effective date of the Agreement.~~stated in the Providing Party's applicable Tariff.~~	The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff	**Issue 51**
1.4	~~In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.~~	In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	**Issue 51**
1.5	~~The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by Charges~~	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any	**Issue 51**

Section	Covad Position	Verizon Position	Associated Issue(s)
	~~applicable Tariff Charges~~. The Charges stated in Appendix A of this Pricing Attachment ~~also~~ shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.	applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.	
1.9	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.		**Issue 52**

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 Post Hearing Brief has been provided by (*) hand delivery (**) electronic mail or (***) U.S. Mail this 16th day of June 2003, to the following:

(*) (**) Lee Fordham
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

(*) (**) David Christian
Verizon Florida, Inc.
106 East College Avenue, Suite 810
Tallahassee, Florida 32301

(**) (***) Kimberly Caswell
Vice President and General Counsel
Verizon Communications
201 North Franklin Street
Tampa, Florida 33601-0100

(**) (***) Steven H. Hartmann
Verizon Communications, Inc.
1320 House Road, 8th Floor
Arlington, Virginia 22201

(**) (***) Kellogg Huber Law Firm
Aaron Panner/Scott Angstreich
1615 M Street, NW, Suite 400
Washington, DC 20036

Vicki Gordon Kaufman