

VOTE SHEET

SEPTEMBER 16, 2003

RE: Docket No. 020960-TP - Petition for arbitration of open issues resulting from interconnection negotiations with Verizon Florida Inc. by DIECA Communications, Inc. d/b/a Covad Communications Company.

ISSUE 1: If a change of law, subject to appeal, eliminates one or more of Verizon's obligations to provide unbundled network elements or other services required under the Act and the Agreement resulting from this proceeding, when should that change of law provision be triggered?

RECOMMENDATION: A change in law should be implemented when the law takes effect, unless it is stayed by a court or commission having jurisdiction.

APPROVED

COMMISSIONERS ASSIGNED: Deason, Baez, Bradley

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures of majority commissioners: Deason, Baez, Bradley]

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REMARKS/DISSENTING COMMENTS:

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

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

RECOMMENDATION:

ISSUE 2: The five-year statute of limitations in Florida Statutes § 95.11(2)(b) should apply to the Parties' rights to assess previously unbilled charges for services rendered.

APPROVED

ISSUE 9: In light of the resolution of Issue 2, the anti-waiver provisions of the Agreement should not be altered.

APPROVED

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?

RECOMMENDATION: Staff believes this issue addresses a performance metric and should not be incorporated as part of the interconnection agreement between the parties. The appropriate venue for modifying Verizon's performance metrics is Docket No. 000121C-TP.

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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?

RECOMMENDATION: As discussed in Issue 4, staff believes setting time limits relating to billing disputes addresses a performance metric and should not be incorporated as part of the interconnection agreement between the parties. Therefore, as no measure has been established, there cannot be a remedy, i.e., placing limits on Verizon's ability to assess late payment charges. Any such remedy or penalty should be established under industry-wide performance measurements and performance assurance plans in Docket No. 000121C-TP.

APPROVED

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?

RECOMMENDATION: No. An arbitration provision in an agreement is an option to which the parties may agree, but it may not be imposed against the wishes of any party.

APPROVED

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

RECOMMENDATION: Yes. Verizon should be permitted to terminate this Agreement as to any exchanges or territory that it sells to another party.

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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?

RECOMMENDATION: No. The Agreement should not include language addressing whether Covad can bring a future action against Verizon for violation of section 251 of the Act.

APPROVED

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?

RECOMMENDATION: No additional language regarding this issue should be ordered to be included in the parties' interconnection agreement.

APPROVED

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?

RECOMMENDATION: Verizon should be required to provide Local Service Confirmations (LSCs) to Covad based on the requirements of the Commission's order in Docket No. 000121C-TP. Furthermore, those intervals should not be required to be inserted as part of the interconnection agreement between Covad and Verizon. Staff notes that if Covad believes that the intervals set in Order No. PSC-03-0761-PAA-TP are inappropriate, Covad is encouraged to participate in future performance measure reviews. The appropriate venue for modifying Verizon's performance metrics is Docket No. 000121C-TP.

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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?

ISSUE 24: Should Verizon relieve loop capacity constraints for Covad to the same extent as it does so for its own customers? (Subsumed within Issue 19.)

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? (Subsumed within Issue 19.)

RECOMMENDATION: Verizon is required to perform the same routine network modifications for CLECs that it regularly performs for its retail customers; however, this does not include constructing new cables for a specific CLEC.

APPROVED

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?

RECOMMENDATION: Covad should be offered the same appointment window for the installation of loops as Verizon provides for itself. Verizon should not be ordered to pay a penalty to Covad for missed appointment windows. Any such penalty should be established under industry-wide performance measurements and performance assurance plans in Docket No. 000121C-TP. Staff notes that if Covad believes that the intervals set in Order No. PSC-03-0761-PAA-TP are inappropriate, Covad is encouraged to participate in future performance measure reviews. The appropriate venue for modifying Verizon's performance metrics is Docket No. 000121C-TP.

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

RECOMMENDATION: The agreement should reference Verizon's Technical Reference 72575.

APPROVED

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

RECOMMENDATION: Staff recommends that Verizon should be allowed to charge Covad for the loop conversions that it performs for Covad.

APPROVED

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?

RECOMMENDATION: Verizon Florida should perform for a reasonable fee and at Covad's request, cooperative testing for the loops Covad orders. Specific procedures for cooperative testing should not be detailed within the interconnection agreement.

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

RECOMMENDATION: No. The terms, conditions and intervals that apply to Verizon's manual loop qualification process with Covad should be governed by Verizon Florida's current loop qualification processes, and by the intervals contained in Commission Order No. PSC-03-0761-PAA-TP. Staff notes that if Covad believes that the intervals set in Order No. PSC-03-0761-PAA-TP are inappropriate, Covad is encouraged to participate in future performance measure reviews. The appropriate venue for modifying Verizon's performance metrics is in Docket No. 000121C-TP.

APPROVED

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

RECOMMENDATION: No. Staff agrees with Verizon that it is essential that orders for advanced services be provisioned on loops that possess the appropriate technical capabilities. Staff also notes that Verizon has given Covad the right to challenge a ruling of disqualification made by Verizon. Staff sees no compelling reason to recommend a change in the wording of the agreement.

APPROVED

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)?

RECOMMENDATION: No. Intervals for the provisioning of loops should be those set forth in Commission Order No. PSC-03-0761-PAA-TP establishing the metrics contained in the settlement agreement as Verizon's permanent performance measures applicable to all of Verizon's CLEC customers in

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Docket No. 000121C-TP. These intervals should not be contained within the parties' interconnection agreement. Staff notes that if Covad believes that the intervals set in Order No. PSC-03-0761-PAA-TP are inappropriate, Covad is encouraged to participate in future performance measure reviews. The appropriate venue for modifying Verizon's performance metrics is Docket No. 000121C-TP.

APPROVED

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

RECOMMENDATION: Verizon Florida, for a reasonable fee, should perform line and station transfers (LSTs) following Covad's approval.

APPROVED

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

RECOMMENDATION: No. Verizon is not obligated to provide line sharing where an end-user customer receives voice services from a reseller.

APPROVED

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

RECOMMENDATION: The intervals that should apply for Covad's line sharing Local Service Requests should be those Covad agreed to in the settlement agreement made with Verizon regarding Verizon's performance metrics in

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Docket No. 000121C-TP, and which the Commission ordered in Order No. PSC-03-0761-PAA-TP. Staff notes that if Covad believes that the intervals set in Order No. PSC-03-0761-PAA-TP are inappropriate, Covad is encouraged to participate in future performance measure reviews. The appropriate venue for modifying Verizon's performance metrics is Docket No. 000121C-TP.

APPROVED

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?

RECOMMENDATION: No. Verizon is under no obligation to provide Covad access to unterminated, unlit fiber as a UNE, nor should the dark fiber UNE include unlit fiber optic cable that has not been terminated on a patch panel at a pre-existing Verizon Accessible Terminal.

APPROVED

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?

RECOMMENDATION: No. Staff recommends that Covad's access to dark fiber in technically feasible configurations be limited to dark fiber that falls within the definition of a Dark Fiber Loop, Dark Fiber Sub-Loop, or Dark Fiber IOF, as specified in the Agreement.

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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?

RECOMMENDATION: No. Verizon should not be required to splice dark fiber in order to provide Covad a continuous dark fiber strand on a requested route.

APPROVED

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

RECOMMENDATION: Staff recommends that Verizon should provide Covad with dark fiber maps to the extent that the maps can be provided as part of the dark fiber inquiry and field survey process.

APPROVED

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?

RECOMMENDATION: As the current rates in Appendix A are binding on the parties, Covad should not be entitled to retroactive application of the effective FCC or FPSC rate. A subsequently filed original tariff or non-tariffed rate (including an FCC or FPSC approved rate), when effective,

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should not supersede the UNE rates in Appendix A to the Pricing Attachment. However, an amendment (i.e., revision) to a tariff referenced in the parties' agreement should supersede the UNE rates in Appendix A.

APPROVED

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

RECOMMENDATION: No. Verizon should not be required to provide Covad individualized notice of tariff revisions and rate changes. Notice of tariff revisions and rate changes are publicly available and non-tariffed revisions are negotiated between the parties, making the issue moot.

APPROVED

ISSUE 56: Should this docket be closed?

RECOMMENDATION: No. This Docket should remain open pending submission and final approval of the parties' Interconnection Agreement.

APPROVED