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February 24, 2005

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 040156-TP

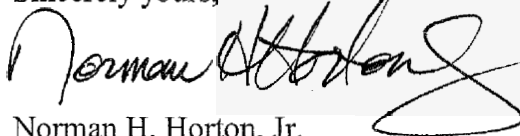
Dear Ms. Bayó:

Enclosed for filing on behalf of DIECA Communications Inc. d/b/a Covad Communications Company are an original and fifteen copies of DIECA Communications Inc. d/b/a Covad Communications Company's Petition to Intervene in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER-DATE

01929 FEB 24 03

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

DOCKET NO. 040156-TP

Filed: February 24, 2005

PETITION TO INTERVENE

Intervenor, DIECA Communications Inc. d/b/a Covad Communications Company, pursuant to Rules 25-22.039, F.A.C. and 28-106.205, F.A.C., hereby petitions the presiding officer for leave to intervene in this proceeding, and states:

1. The name and address of the agency affected by this Petition is the Florida Public Service Commission (the "Commission"). The PSC Docket number is 040156-TP.

2. The Intervenor is DIECA Communications Inc. d/b/a Covad Communications Company ("Covad" or "Intervenor").

3. Covad is a Virginia corporation authorized to do business in Florida. Covad's principle address is 110 Rio Robles, San Jose, California 95134, and its mailing address is 1230 Peachtree Street NE, Suite 1900, Atlanta Georgia 30309-3578. Covad is a telecommunications carrier, as defined by 47 U.S.C. §153(44). Covad operates pursuant to Commission certificate 5719 to provide competitive local exchange telecommunications services in the State of Florida.

4. The name, address, and telephone number of the Intervenor's representatives shall be those of the undersigned, which shall be the addresses for service purposes during the course of this proceeding.

5. **This** docket involves a Petition for Arbitration filed by Verizon, Florida, Inc. ("Verizon"). The petition seeks arbitration of the terms and conditions of an amendment to

Verizon's interconnection agreements with Florida competitive local exchange carriers ("CLECs") to implement the Federal Communications Commission's ("FCC's") *Triennial Review Order* ("TRO") and its *Triennial Review Remand Order* ("TRRO") regarding Verizon's ongoing obligation to provide unbundled network elements ("UNEs") pursuant to Sections 251 and 252 of the federal Telecommunications Act of 1996 ("Telecom Act").

6. The Intervenor's substantial interests will be affected by the Commission's action regarding the nature and scope of allowable amendments to Verizon interconnection agreements with CLECs doing business with Verizon in Florida. The Intervenor will lose any meaningful opportunity to exercise its rights under the current interconnection agreement with Verizon if the Commission does not permit intervention, and does not allow the Intervenor to submit testimony and briefs to the Commission regarding Verizon's decision to terminate the provision of UNEs under the auspices of the FCC's *TRO* and *TRRO* decisions.

7. The Intervenor was named as a party to Verizon's related February 20, 2004 arbitration petition in this docket. The Commission dismissed Verizon's original petition for failure to meet the procedural requirements established in Section 252 (b)(2) of the Telecommunications Act, and granted leave for Verizon to refile its Petition, including specified information concerning the parties, the issues in dispute and the relevant portion of the parties' interconnection agreements. (See Order No. PSC-04-0671-FOF-TP, p.6).

8. On September 9, 2004, Verizon filed a revised Petition for Arbitration. The Intervenor was not included as a party to Verizon's September 9, 2004 Petition. Verizon's expressed reason for its failure to include the Intervenor in its September 9, 2004 Petition was its position that it can unilaterally cease providing certain UNEs to CLECs because those UNEs are

no longer subject to the unbundling obligations under 47 U.S.C. §251(c)(3) and 47 C.F.R. Part 51. (See Verizon Petition at page 2). Verizon's belief is incorrect.

9. The interconnection agreement between Verizon and the Intervenor provides that Verizon and the Intervenor are to modify the Agreement to bring it into compliance with any subsequent statute, regulation, rule, ordinance, judicial decision or administrative ruling. If Verizon and the Intervenor fail to agree on the appropriate "change in law" modifications to their Agreement within sixty days of a change in law, either party may seek Commission resolution. Further, Section 252 of the Telecom Act and paragraph 233 of the *Triennial Review Remand Order* make it clear that the FCC intends the *Triennial Review Remand Order* to be implemented through the "change of law" process outlined in carriers' interconnection agreements. Thus, Verizon cannot unilaterally modify the UNE pricing, terms and conditions of its existing interconnection agreement with the Intervenor, which is precisely the effect of Verizon's decision to exclude the Intervenor from this arbitration.

10. Over the past several months, the Intervenor (through counsel) and Verizon have engaged in negotiations in an effort to incorporate the changes in UNE unbundling obligations adopted in the *TRO* and the *Triennial Review Remand Order* into their Agreements. Those discussions have not been successful. Although the Intervenor remains willing to negotiate in good faith with Verizon to address the issues affected by the *TRO* and the *Triennial Review Remand Order*, the expedited procedural schedule imposed by the Commission in this Docket (Order No. PSC-04-1236-PCO-TP) precludes the Intervenor from fully implementing that "change in law" process set forth in its Agreement without having its interests substantially affected by the outcome of this proceeding. As such, the Intervenor will lose any meaningful

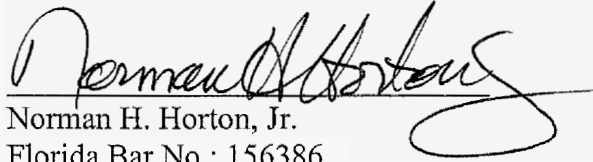
opportunity to exercise its rights under its Agreement with Verizon if the Commission does not permit immediate intervention in this docket.

11. The Intervenor's substantial interests will be affected by the Commission's decision on the issues in this docket because that decision will inevitably affect the manner in which Verizon will implement the *TRO* and *Triennial Review Remand Order* in its interconnection agreements with CLECs that are not parties to this proceeding. The Intervenor recognizes that it is entitled to file a separate action against Verizon to resolve these issues as between the Intervenor and Verizon. However, allowing the Intervenor to participate in this proceeding will advance the interests of administrative economy, and will eliminate the need for the Commission to review numerous individual arbitration petitions as to similar interconnection agreement issues. Thus, parties seeking *TRO* and *Triennial Review Remand Order* related amendments to their interconnection agreements with Verizon should be allowed to participate in the pending arbitration proceeding.

12. No other current party to this arbitration will adequately represent the Intervenor's rights and interests in this matter because, among other reasons, the Intervenor must be a party in order for its interconnection agreement to be amended.

WHEREFORE for the reasons set forth herein, DIECA Communications Inc. d/b/a Covad Communications Company petitions the Commission to allow it to intervene in this proceeding, and to participate as a full party of record in order to protect its interests under its interconnection agreements with Verizon.

Respectfully Submitted.



Norman H. Horton, Jr.

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Counsel for Intervenor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail on this 24th day of February, 2005.

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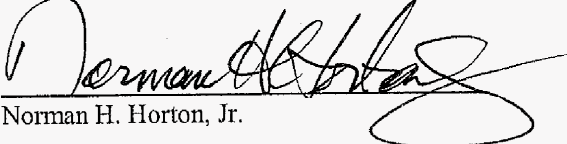
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