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October 7, 2002

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VIA OVERNIGHT MAIL

OCT 07 2002

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

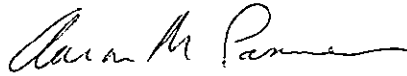
**Re: Docket No. A. 310696F7000
Petition for Arbitration of DIECA Communications, Inc. d/b/a Covad
Communications Company with Verizon Pennsylvania Inc. and
Verizon North Inc. Pursuant to Section 252(b) of the Communications
Act of 1934**

Dear Mr. McNulty:

Please find enclosed an original and three copies of the Response of Verizon Pennsylvania Inc. and Verizon North Inc. to Covad's Petition for Arbitration for filing in the above matter. Service has been made as indicated on the Certificate of Service. Please date stamp the extra copy and return it to me in the enclosed, self-addressed stamped envelope.

If there are any questions regarding this matter, please contact me at (202) 326-7921.

Sincerely,



Aaron M. Panner

**DOCUMENT
FOLDER**

Enclosures

DOCUMENT
FOLDER

ORIGIN
BEFORE THE
PENNSYLVANIA PUBLIC SERVICE COMMISSION

RECEIVED

OCT 07 2002

DIECA Communications, Inc. d/b/a Covad)
Communications Company Petition for Arbitration)
of Interconnection Rates, Terms and Conditions)
and Related Arrangements with Verizon)
Pennsylvania Inc. and Verizon North Inc. Pursuant)
to Section 252(b) of the Communications Act)
of 1934)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Case No. _____
A-310696F7000

DOCKETED
OCT 16 2002

**RESPONSE OF VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC.
TO COVAD'S PETITION FOR ARBITRATION**

Verizon Pennsylvania Inc. ("Verizon PA") and Verizon North Inc. ("Verizon North"), collectively "Verizon," by counsel and pursuant to 47 U.S.C. § 252(b)(3), submit this Response to the Petition for Arbitration ("Petition") filed by DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") on September 10, 2002.

PARTIES

1. *Covad is a corporation organized and formed under the laws of the state of Virginia. Covad is a telecommunications carrier authorized to provide telecommunications services in the Commonwealth of Pennsylvania. Covad is a wholly owned subsidiary of Covad Communications Group, Inc. a publicly traded corporation formed under the laws of the state of Delaware.*

1. Verizon admits the allegations in Paragraph 1 on information and belief.

2. *Verizon-PA and Verizon North are corporations organized and formed under the laws of the Commonwealth of Pennsylvania. Both Verizon entities are subsidiaries of Verizon Communications Group Inc., a Delaware corporation. Verizon-PA is a "Bell Operating Company," or BOC as that term is defined by Section 3(35) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("Act"). 47 U.S.C. § 153(35). Verizon is a local exchange and interexchange carrier that currently provides local service, interexchange service and other services within its certificated areas in Pennsylvania. Verizon is an incumbent local exchange carrier ("ILEC") in Pennsylvania as defined by Section 251(h) of the Act. 47 U.S.C. § 251(h).*

Within its operating territory, Verizon has been the incumbent local exchange provider of telephone exchange services at all relevant times.

2. Verizon admits the first sentence of Paragraph 2 with respect to Verizon Pennsylvania, but denies it with respect to Verizon North, which was formed under the laws of Wisconsin. Verizon denies the second sentence of the paragraph. Verizon North is a subsidiary of GTE Corporation, a New York corporation, which is a subsidiary of Verizon Communications Inc., a Delaware corporation. Verizon PA is a subsidiary of Verizon Communications Inc. Verizon admits the rest of the allegations in the paragraph.

JURISDICTION

3. This Commission has jurisdiction over Covad's Petition pursuant to Section 252(b)(1) of the Act. 47 U.S.C. § 252(b)(1). Under the Act, parties to a negotiation for interconnection, access to unbundled network elements ("UNEs"), or resale of services within a particular state have a right to petition the state commission for arbitration of any open issues when negotiations between them fail to yield an agreement. 47 U.S.C. § 252(b). Under Section 252(b)(1) of the Act, the request for arbitration by the state commission may be made at any time during the period from the 135th to the 160th day (inclusive) after the date on which the ILEC receives a request for negotiations under Section 251 of the Act. The open issues must be resolved not later than nine months after the request for negotiations. 47 U.S.C. § 252(b)(4)(C).

3. Verizon admits the allegations in Paragraph 3 and agrees that the Commission has jurisdiction over this arbitration pursuant to 47 U.S.C. § 252.

4. Pursuant to the Act, Covad formally requested negotiations with Verizon, pursuant to stipulation between the Parties, on April 3, 2002. Covad now files this timely Petition for resolution of disputed issues. Pursuant to Section 252(b)(4)(C) of the Act, this Commission is to resolve each issue set forth in the Petition and any Response on or before January 3, 2003.

4. Verizon admits the first two sentences of Paragraph 4 and agrees that the Petition was timely filed. Verizon denies the allegation in the third sentence of Paragraph 4. The parties have agreed to waive the statutory deadline of January 3, 2003.

STANDARD OF REVIEW

5. *This arbitration must be resolved by the standards established in Sections 251 and 252 of the Act and the effective rules adopted by the Federal Communications Commission ("FCC"). Section 252(c) of the Act requires a state commission resolving open issues through arbitration to:*

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) [of Section 252].

47 U.S.C. § 252(c).

5. Verizon admits the allegations in Paragraph 5.

6. *The Commission may also impose additional requirements pursuant to section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC's regulations. 47 U.S.C. § 252(e). In addition, the Commission is free to impose additional requirements pursuant to its own state authority.*

6. The allegations in Paragraph 6 are legal arguments to which no response is required. To the extent a response is required, Verizon denies that Covad has accurately stated federal law. Section 252(e)(3) preserves the Commission's authority to establish or enforce other requirements of state law, but only insofar as any such additional requirements are not inconsistent with federal law.

7. *The Commission is required to make an affirmative determination that the rates, terms, and conditions that it prescribes in this arbitration proceeding for interconnection are consistent with the requirements of Sections 251(b) and (c) and Section 252(d) of the Act. 47 U.S.C. § 252(d).*

7. Verizon admits the allegations in Paragraph 7, insofar as they are limited to describing the standards that this Commission must apply if it arbitrates the open issues related to pricing in this proceeding.

8. *Section 251 of the Act provides the minimum standards for Verizon in negotiating and providing interconnection and unbundled network elements to competitive local exchange carriers ("CLECs"), including Covad. Those standards include unbundled access to the local exchange carriers' facilities and information and to the network's*

functions and services on a nondiscriminatory basis. This Section further requires that Verizon provide nondiscriminatory access to UNEs at any technically feasible point individually and in combinations at cost-based rates. (Section 251(c)(3)). Similarly, this Section requires that Verizon provide, rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at Verizon's premises (except that Verizon may provide for virtual collocation if it can demonstrate to the Commission that physical location is not practical for technical reasons or because of space limitations). (Section 251(c)(6)).

8. The allegations in Paragraph 8 are legal arguments to which no response is required. To the extent a response is required, Verizon denies that Covad has accurately stated federal law. Section 252(a) permits carriers to negotiate agreements "without regard" to the standards set forth in § 251, 47 U.S.C. § 252(a)(1); accordingly, § 251 does not provide "minimum standards for Verizon in negotiating" such agreements. Insofar as this Commission arbitrates open issues with respect to specific subsections of § 251(c), Verizon avers that the Commission must resolve those issues consistent with the 1996 Act and the FCC's implementing regulations. *See id.* § 252(e).

9. Covad and Verizon entered into an Initial Interconnection Agreement (subsequently amended on several occasions). The Initial Interconnection Agreement between Covad and Verizon has expired. Pursuant to the terms of the Initial Interconnection Agreement, and by additional tolling agreements of the Parties, Covad and Verizon have continued operating under the Initial Interconnection Agreement during negotiations for a successor agreement.

9. Verizon denies the allegations in Paragraph 9. Both Verizon Pennsylvania and Covad, on the one hand, and Verizon North and Covad, on the other, entered into Initial Interconnection Agreements. Both of those Initial Interconnection Agreements have expired. Pursuant to the terms of the Initial Interconnection Agreements and to additional tolling agreements between the parties, Covad, Verizon Pennsylvania, and Verizon North have continued operating under the Initial Interconnection Agreements during negotiations for successor agreements.

10. *Covad and Verizon have stipulated and agreed that the date of request for negotiations for the purposes of Sections 251 and 252 of the Act shall be deemed to be April 3, 2002.*

10. Verizon admits the allegations in Paragraph 10.

ISSUES IN DISPUTE

11. *Covad and Verizon have reached agreement on a substantial number of issues. Attached as Attachments E and F are agreements that include all agreed-upon language between the Parties. Covad and Verizon intend to execute these agreements and submit them to the Commission for approval pursuant to 47 U.S.C. § 252(e)(2). Nevertheless, numerous issues remain open and in dispute. Those issues are set forth in Attachments C and D to this Petition. Covad and Verizon have agreed to submit those issues to arbitration before this Commission and, upon receiving the Commission's decision in this case, the Parties will amend their Agreements in Attachments E and F to reflect the resolution of the issues. Covad notes that there is language in Attachments E and F that it is disputing in this arbitration. Covad has accepted that language only on an interim basis in order to receive more immediately the benefits of a new interconnection agreement. Attachments C and D include a short description of each issue, assigns the issue a number, sets forth the positions of Covad and Verizon, and identifies the section(s) of the Interconnection Agreement which are affected.*

11. Verizon admits the allegations in the first three sentences of Paragraph 11, as of the time of the filing of Covad's Petition. Attached hereto as Attachments E and F are updated agreements containing all currently agreed-upon language. Verizon denies the allegations in the final sentence of Paragraph 11, insofar as Covad claims to have accurately represented Verizon's position on the disputed issues. A short description of Verizon's actual position on each issue is presented in Attachments C and D. Verizon will also continue to negotiate in good faith with Covad to resolve disputed issues during the pendency of these proceedings.

13. *Attachments A and B to this Petition are the Proposed Language Matrix for each Verizon entity, which set forth Covad's proposed modifications to the agreed-upon contract language for each of the disputed issues.*

13. Verizon admits the allegations in Paragraph 13, insofar as it relates to the language proposed by Covad at the time it filed its Petition, but denies that Verizon's proposed

language was as set forth in those attachments. Updated versions of the proposed language matrices are contained in Attachments A and B.

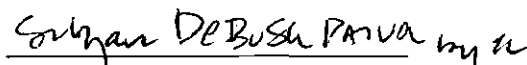
RELIEF REQUESTED

WHEREFORE, Covad respectfully requests that the Commission arbitrate the open issues identified in this Petition in accordance with Sections 251 and 252 of the Act, and adopt Covad's proposed contract language, which is set forth in the Proposed Language Matrix (Attachments A & B).

Covad further requests that the Commission order the Parties to file on a date certain an amendment to the Agreement in Attachments E and F (between Covad and each Verizon entity), incorporating the Commission's decision as described above, for approval by the Commission pursuant to Section 252(e) of the Act.

This paragraph contains a prayer for relief, to which no response is required. To the extent a response is required, Verizon denies that Covad is entitled to the relief requested.

Respectfully submitted,


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Attorneys for Verizon Pennsylvania Inc. and
Verizon North Inc.

October 7, 2002

Attachment A
Verizon Pennsylvania Proposed Language Matrix

Section	Covad Position	Verizon Position	
Agrmt			
4. App. Law			
4.7	Notwithstanding anything in this Agreement to the contrary, if, as a result of any <u>final and non-appealable</u> 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.	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.	
9. Billing			
Proposed 9.1.1	<u>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.</u>		
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 prospectively with a single notice a class of charges that it disputes.	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 prospectively with a single notice a class of charges that it disputes.	

Section	Covad Position	Verizon Position	
	<p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and. <u>The billing Party shall use a Claim Number specified 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.</u></p> <p>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.</p>	<p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and 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.</p>	
9.4	<p>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 <u>for all such charges except past late payment charges</u>. The late payment charge shall be in an amount <u>specified by the billing Party</u> 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. <u>Late payment charges shall be tolled during any period in which Verizon is analyzing the validity of a bill disputed by Covad and Verizon takes longer than 30 days to provide a substantive response to Covad.</u></p>	<p>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.</p>	
9.5	<p>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</p>	<p>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</p>	

Section	Covad Position	Verizon Position	
	this Agreement, <u>subject to Section 9.1.1 above</u> , 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.	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.	
12. Default	If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) <u>sixty (60)</u> days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.	If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.	
14. Dispute Resolution			
Proposed 14.3	<u>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).</u>		
43.2 Termination/	Notwithstanding any other provision of this Agreement, Verizon may <u>assign terminate</u> this Agreement to the	Notwithstanding any other provision of this Agreement, Verizon may terminate this Agreement as to a specific	

Section	Covad Position	Verizon Position	
Assignment Upon Sale	<p>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.</p>	<p>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.</p>	
48. Waiver	<p><u>Except as provided in Section 9.1.1, a</u> 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 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.</p> <p>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.</p> <p><u>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.</u></p>	<p>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 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.</p> <p>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.</p>	
Glossary, § 2.11 (definition of Applicable	<p>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</p>	<p>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.</p>	

Section	Covad Position	Verizon Position	
Law)	<u>Applicable Law in this Principal Document are meant to incorporate verbatim the text of that Applicable Law as if set forth fully herein.</u>		
Glossary §2.111 (definition of UDLC)	A form of Digital Loop carrier system consisting of a Central Office terminal and a remote terminal located in the outside plant or customer premises. The Central Office and the remote terminal units perform analog to digital conversions to allow the feeding facility to be digital. UDLC is deployed where the types of services to be provisioned by the systems cannot be integrated such as non-switched services and unbundled loops.	A form of Digital Loop carrier system consisting of a Central Office terminal and a remote terminal located in the outside plant or customer premises. The Central Office and the remote terminal units perform analog to digital conversions to allow the feeding facility to be digital. UDLC is deployed where the types of services to be provisioned by the systems cannot be integrated such as non-switched services and unbundled loops.	
ADD. SVCS.			
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 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. <u>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.</u>	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 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.	
8.2 Verizon OSS Services			
Proposed 8.2.3	Verizon, as part of its duty to provide access to the pre-ordering function, must provide Covad with <u>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.</u>		

Section	Covad Position	Verizon Position	
Proposed 8.2.4	<u>For stand-alone loops, Verizon shall return firm order commitments electronically within two (2) business hours after receiving an LSR that has been pre-qualified mechanically and within twenty-four (24) hours after receiving an LSR that is subject to manual pre-qualification.</u>		
8.5.4.1	Verizon and Covad shall have the right (but not the obligation) to audit <u>Covad the other party</u> to ascertain whether <u>Covad the other party</u> is complying with the requirements of Applicable Law and this Agreement with regard to Covad's access to, and use and disclosure of, Verizon OSS Information. Such audits shall not occur more frequently than once per year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit revealed violations of Applicable Law and/or this Agreement. Audits shall be pursued in a manner that minimizes disruption to <u>Covad the audited party</u> .	Verizon shall have the right (but not the obligation) to audit Covad to ascertain whether Covad is complying with the requirements of Applicable Law and this Agreement with regard to Covad's access to, and use and disclosure of, Verizon OSS Information. Such audits shall not occur more frequently than once per year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit revealed violations of Applicable Law and/or this Agreement. Audits shall be pursued in a manner that minimizes disruption to Covad.	
8.5.4.3	Information obtained by Verizon and Covad pursuant to this Section 8.5.4 shall be treated by Verizon and Covad as Confidential Information of <u>Verizon and Covad</u> pursuant to Section 10 of the Agreement; provided that, <u>Verizon and Covad</u> shall have the right (but not the obligation) to use and disclose information obtained by Verizon and Covad pursuant to this Section 8.5.4 to enforce Verizon's and <u>Covad's</u> rights under the Agreement or Applicable Law.	Information obtained by Verizon pursuant to this Section 8.5.4 shall be treated by Verizon as Confidential Information of Covad pursuant to Section 10 of the Agreement; provided that, Verizon shall have the right (but not the obligation) to use and disclose information obtained by Verizon pursuant to this Section 8.5.4 to enforce Verizon's rights under the Agreement or Applicable Law.	
8.6 Liabilities & Remedies			
8.6	If Covad, or Covad's employees, agents or contractors materially breach, at any time, any of the provisions of Sections 8.4 or 8.5 above, and such material breach continues for more than ten (10) days after receiving written notice thereof from Verizon, then Verizon shall have the right, <u>after giving Covad a reasonable opportunity to cure the breach upon one (1) day's notice to Covad, to seek relief from the appropriate regulatory body to suspend</u>	If Covad, or Covad's employees, agents or contractors materially breach, at any time, any of the provisions of Sections 8.4 or 8.5 above, and such material breach continues for more than ten (10) days after receiving written notice thereof from Verizon, then Verizon shall have the right, upon one (1) day's notice to Covad, to suspend the license to use Verizon OSS Information granted by Section 8.5.1 above and/or the provision of Verizon OSS	

Section	Covad Position	Verizon Position	
	<p>the license to use Verizon OSS Information granted by Section 8.5.1 above and/or the provision of Verizon OSS Services, in whole or in part.</p> <p>Such suspension of Covad's license shall not be deemed to be the exclusive remedy for any such breach by Covad, or Covad's employees, agents or contractors, but shall be in addition to any other remedies available under this Agreement or at law or in equity.</p>	<p>Services, in whole or in part.</p> <p>Such suspension of Covad's license shall not be deemed to be the exclusive remedy for any such breach by Covad, or Covad's employees, agents or contractors, but shall be in addition to any other remedies available under this Agreement or at law or in equity.</p>	
<p>8.9 VZ Access to Information Related to Covad Custs</p>			
<p>8.9.2 ▶</p>	<p>Upon request by Verizon, Covad shall negotiate in good faith to provide Verizon access to Covad's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Verizon to obtain information related to Covad Customers (as authorized by the applicable Covad Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law, <u>provided that such information is not already in Verizon's possession.</u></p>	<p>Upon request by Verizon, Covad shall negotiate in good faith to provide Verizon access to Covad's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Verizon to obtain information related to Covad Customers (as authorized by the applicable Covad Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law.</p>	
<p>Resale Attachment 5.3</p>	<p>Verizon shall provide Covad with notice of a Covad end user's change in local telecommunications service provider by providing electronic access to Verizon's line loss report. The line loss report is an electronic file made available to CLECs and resellers listing those lines serving their end user customers that have moved to another telecommunications service provider. If a Covad Customer requests that Verizon convert a Resold Verizon Telecommunications Service to a retail Service, Verizon shall provide written or electronic notification of that request to Covad as soon as practicable, and in no event less than</p>	<p>Verizon shall provide Covad with notice of a Covad end user's change in local telecommunications service provider by providing electronic access to Verizon's line loss report. The line loss report is an electronic file made available to CLECs and resellers listing those lines serving their end user customers that have moved to another telecommunications service provider.</p>	

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	<u>one (1) full business day before discontinuing the provision of the Service for resale.</u>		
UNE ATTACH.			
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, except to the extent that Verizon is permitted under Applicable Law to reserve unused UNEs or Combinations for its own use); and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination <u>except to the extent that such UNE or Combination would be constructed or deployed, upon request of a Verizon end user.</u>	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 being utilized by Verizon, except to the extent that Verizon is permitted under Applicable Law to reserve unused UNEs or Combinations for its own use); and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination.	
1.4.1	To the extent that Verizon is required by a change in Applicable Law to provide a UNE or Combination not offered under this Agreement to Covad as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Tariff of Verizon, or, in the absence of an applicable Verizon Tariff, as mutually agreed by the Parties.	To the extent that Verizon is required by a change in Applicable Law to provide a UNE or Combination not offered under this Agreement to Covad as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Tariff of Verizon, or, in the absence of an applicable Verizon Tariff, as mutually agreed by the Parties.	
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	

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	<p>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, <u>in a final, non-appealable order</u>, 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.</p>	<p>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.</p>	
1.7	<p>Except as otherwise expressly stated in this Agreement, Covad shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment at the Verizon Wire Center where those elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to Covad's Collocation node by means of a Cross Connection at any technically feasible point as required by 47 CFR§ 51.311 and 47 U.S.C. § 251 (c)(3).</p>	<p>Except as otherwise expressly stated in this Agreement, Covad shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment at the Verizon Wire Center where those elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to Covad's Collocation node by means of a Cross Connection.</p>	
Proposed 1.9	<p><u>In provisioning loops that require Verizon to dispatch a technician to the end user's premises, Verizon shall provide Covad's end user with a three-hour appointment window on the day of the dispatch. The Verizon technician shall be present at the premises of the Covad's end user during that window and shall make good faith efforts to contact the end user upon arriving at the premises. If the Verizon technician fails to meet the Covad's end user during the window, Verizon shall forego assessing the non-recurring dispatch charge to the Covad associated with the Service</u></p>		

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	<p><u>Order. 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.</u></p>		
<p>3. Loop Transmission Types ▶</p>			
<p>3.1</p>	<p>"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 SMC1 in T1-417-2001, as revised from time to time.</p>	<p>"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 SMC1 in T1-417-2001, as revised from time to time.</p>	
<p>3.2 ADSL</p>	<p>"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 <u>except to the extent that it does so for its own customers.</u> The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR</p>	<p>"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,</p>	

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	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 from time to time.	or alternatively, connecting equipment should conform to the limits for SMC5 or SMC9 in T1-417-2001, as revised 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, 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 <u>except to the extent that it does so for its own customers</u> . 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.	
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, 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 <u>except to the extent that it does so for its own customers</u> . 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.	
3.5 DS-1	"4-Wire DS1-compatible Loop" provides a channel with 4-wire interfaces at each end. Each 4-wire channel is	"4-Wire DS1-compatible Loop" provides a channel with 4-wire interfaces at each end. Each 4-wire channel is	

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	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, <u>unless Verizon upgrades existing facilities for its own end users.</u> 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.	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 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 <u>except to the extent that it does so for its own customers.</u>	"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.	
3.7 SDSL Loop Types	2-Wire SDSL-Compatible Loop", is intended to be used with low band symmetric DSL systems that meet the Class 2 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3). This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets Class 2 length limit in T1E1.4/2000-002R3 or alternately, connecting equipment should conform to the limits for SMC2, <u>SMC7, or SMC8</u> in T1-417-2001. The data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop. SDSL-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u>	2-Wire SDSL-Compatible Loop", is intended to be used with low band symmetric DSL systems that meet the Class 2 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3). This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets Class 2 length limit in T1E1.4/2000-002R3 or alternately, connecting equipment should conform to the limits for SMC2 in T1-417-2001. The data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop. SDSL-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities.	
Proposed 3.11	<u>The titles of the foregoing loop types are for purely illustrative purposes and do not control the specific services</u>		

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	<p>that Covad may offer over such loops. Verizon will maintain or repair such loops using standards that are at least as stringent as either (1) the standards it uses in maintaining or repairing the same or comparable loops for itself; or (2) applicable industry standards for maintaining or repairing such loops.</p>		
3.11	<p>Although Covad will, when leasing a loop, indicate on the Local Service Request ("LSR") which of the foregoing loop type categories the loop falls under, Covad may offer services over that loop that fall under any of the loop type categories enumerated in sections 3.1 to 3.7 above and in accordance with Applicable Law. Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.</p> <p>If Covad wishes to order a loop type or technology that has not yet been developed, a BFR should be submitted. Covad may deploy services that do not fall under the loop type categories enumerated in sections 3.1 to 3.7 above if it complies with 47 C.F.R. § 51.230, to the extent that that rule remains Applicable Law.</p>	<p>Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.</p> <p>If Covad wishes to order a loop type or technology that has not yet been developed, a BFR should be submitted.</p>	
3.13.4	<p>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) (as described below) 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</p>	<p>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) (as described below) 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.</p>	

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3.13.5	<p>Pricing Attachment or other forms of loop conditioning to be agreed upon by the Parties, subject to applicable charges.</p> <p>If the Loop is not listed in the mechanized database described in Section 3.11.2 or the listing is defective, (i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon affiliate), Covad may submit an Extended Query to Verizon at no additional charge. Covad may also must request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. The rates for manual loop qualification are set forth in the Pricing Attachment. Verizon will complete a manual loop qualification request within the same intervals that Verizon completes manual loop qualifications for itself or a Verizon affiliate. In general, Verizon will complete the manual loop qualification within three one business days although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</p>	<p>If the Loop is not listed in the mechanized database described in Section 3.11.2, (i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon affiliate), Covad must request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. The rates for manual loop qualification are set forth in the Pricing Attachment. Verizon will complete a manual loop qualification request within the same intervals that Verizon completes manual loop qualifications for itself or a Verizon affiliate. In general, Verizon will complete the manual loop qualification within (3) business days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</p>	
3.13.7	<p>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 <u>prequalification finding requirement</u> 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.</p>	<p>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.</p>	

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3.13.10	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>	
3.13.12	<p>If Covad orders a loop that is determined to be xDSL 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.</p>	<p>If Covad orders a loop that is determined to be xDSL 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.</p>	
3.13.13	<p>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 and an Covad technician jointly verify that an xDSL Compatible Loop or Digital Designed Loop is properly installed and operational prior to Verizon's</p>	<p>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 and an Covad technician jointly verify that an xDSL Compatible Loop or Digital Designed Loop is properly installed and operational prior to Verizon's</p>	

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	<p>completion of the order. Covad may request, at its option, Cooperative Testing by entering a toll-free (e.g. 800) number in the Remarks field of the LSR of an xDSL Compatible or Digital Designed Loop Service Order, and the Verizon technician will call the toll-free number to perform the Cooperative Test. When both the Verizon and Covad technicians agree that 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. Charges for Cooperative Testing are as set forth in the Pricing Attachment.</p> <p><u>Cooperative Acceptance Testing is acknowledged by both Verizon and Covad to assist in the timely and efficient provisioning of functioning loops. If both parties agree in writing that this testing is no longer necessary, it can be suspended at any time.</u></p> <p><u>Verizon will dispatch a technician to provide normal acceptance testing where Verizon determines a dispatch is required to provision the loop. Normal acceptance testing includes: Placing a short on the tip conductor and then the ring conductor, while Covad runs loop tests from its equipment located in the serving collocation arrangement. Verizon will call Covad with the technician on the line to perform the above mentioned tests and Covad will within 15 minutes begin testing with the technician. The Verizon technician will test with Covad for a period not to exceed 15 minutes. Verizon shall deliver loops that perform according to the characteristics of described in the loop types set forth in Sections 3.1 – 3.7, above.</u></p> <p><u>Where a technician is dispatched to provision a loop, the Verizon technician shall tag a circuit for identification purposes. Where a technician is not dispatched by Verizon, Verizon will provide sufficient information to Covad to enable Covad to locate the circuit being provisioned. Upon delivery of the loop Verizon will contact Covad via a toll free number to provide notification of the completion of</u></p>	<p>completion of the order. Covad may request, at its option, Cooperative Testing by entering a toll-free (e.g. 800) number in the Remarks field of the LSR of an xDSL Compatible or Digital Designed Loop Service Order, and the Verizon technician will call the toll-free number to perform the Cooperative Test. When both the Verizon and Covad technicians agree that 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. Charges for Cooperative Testing are as set forth in the Pricing Attachment.</p>	

Section	Covad Position	Verizon Position	
	<p><u>the loop and where required, provide acceptance testing as provided for in this agreement.</u></p> <p><u>If the Verizon technician at the premises is unable to contact a Covad employee to perform acceptance testing at the time of loop turn up (placed on hold for more than 15 minutes, reaches voice mail or other recording, no answer or repeated busy conditions), the technician will test the loop to ensure the loop is provisioned according to requirements of the loop type requested by Covad, as set forth in Sections 3.1 – 3.7, above. The Verizon technician may then leave the premises. On any such orders, Verizon must provide the reason for which it was unable to contact Covad. In addition, Verizon will later engage in a joint “one way” test with Covad. During such a “one way” test, personnel from Verizon’s loop provisioning centers will call Covad’s testing center and will stay on the line while Covad tests the loop remotely using its test equipment to which the loop is connected. At the conclusion of “one way” testing, Covad will either accept or reject the loop.</u></p> <p><u>If at any time Covad feels that the process described in this paragraph is not being appropriately executed by Verizon, Covad may escalate to the appropriate Verizon Manager for immediate resolution. Such resolution shall include but not be limited to: an immediate review of the processes described above by Verizon personnel, joint meetings of the parties to mutually resolve issues and any other such action which both parties agree may need to be implemented to correct the process failure.</u></p> <p><u>If the Acceptance Test fails loop Continuity Test parameters, as defined by loop types set forth in Sections 3.1 – 3.7, above for the loop being provisioned, the Verizon technician will take any or all reasonable steps, if possible, to immediately resolve the problem with Covad on the line including, but not limited to, calling the central office to perform work or troubleshooting for physical faults. If the problem cannot be resolved in an expedient manner, the</u></p>		

Section	Covad Position	Verizon Position	
	<p><u>technician will release the Covad representative, and perform the work necessary to correct the situation. Once the loop is correctly provisioned, Verizon will re-contact the Covad representative to repeat the Acceptance Test.</u></p> <p><u>Both Parties declare they will work together, in good faith, to implement Acceptance Testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Appendix or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards.</u></p> <p><u>Verizon will not bill for loop repairs when the repair resulted from a Verizon problem.</u></p>		
3.14	<p>The provisioning interval for all <u>stand-alone</u> loops not requiring conditioning shall be the shortest of the following: (a) the interval Verizon provides to itself or an affiliate; or (b) the Commission-ordered interval; <u>or (c) five business days.</u></p>	<p>The provisioning interval for all loops not requiring conditioning shall be the shortest of the following: (a) the interval Verizon provides to itself or an affiliate; or (b) the Commission-ordered interval.</p>	
Proposed 3.18 DSL over Fiber	<p><u>Without regard to Applicable Law, Verizon will provide Covad access to the following facilities, which Verizon shall treat as if they were unbundled network elements under 47 U.S.C. § 251(c)(3): (1) Next Generation Digital Loop Carrier ("NGDLC") equipment needed for Covad to offer DSL services thereon (including but not limited to Alcatel Lightspan 2000 & 2012 equipment and all line cards required to offer DSL and/or voice services); (2) fiber loop facilities, consisting of fiber optic cable between the remote terminal ("RT") and the optical concentration device ("OCD") in the central office or other Verizon premises; (3) service management software that enables NGDLC equipment to provide DSL services; (4) OCDs in the central office and on other Verizon premises that are connected to NGDLC equipment either in the central office or the RT; and (5) copper distribution loops connecting: (i) the RT to the network interface device ("NID") at the customer</u></p>		

Section	Covad Position	Verizon Position	
	<p>premises; or (ii) the RT to the Serving Area Interface ("SAI"); and (iii) the SAI to the NID at the customer premises. At Covad's option, Verizon will provide all of these facilities either piece meal or as a single unbundled network element under 47 U.S.C. § 251(c)(3) that Covad may access via a Verizon-provided cross connection from an OCD port at the central office to Covad's collocation space therein. In doing so, Verizon will (a) provide all commercially available features, functions and capabilities of such facilities (including, but not limited to, all technically feasible qualities of service); and (b) allow Covad to connect any of its technically compatible equipment to such facilities.</p>		
<p>Proposed 4.1 Line Partitioning</p>	<p>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.</p>		
<p>Proposed 4.2</p>	<p>The standard provisioning interval in which Verizon should deliver Line Sharing loops shall not exceed the shortest of the following intervals: (a) three (3) business days; (b) the standard provisioning interval for the Line Sharing arrangement that is stated in an applicable Verizon Tariff;</p>		

Section	Covad Position	Verizon Position	
	<p>or, (c) the standard provisioning interval for the Line Sharing arrangement that is required by Applicable Law.</p>		
<p>Proposed 4.3</p>	<p>Verizon will provision Line Sharing collocation augments in an interval of no greater than forty-five (45) business days.</p>		
<p>Proposed 4.4 – 4.7</p>	<p><u>Under Splitter Option A (in which Covad places the splitter in its collocation arrangement), Covad may conduct its own physical tests of the shared Loop from Covad's collocation area. If it chooses to do so, Covad may supply and install a test head to facilitate such physical tests, provided that: (a) the test head satisfies the same NEBS requirements that Verizon imposes on its own test head equipment or the test head equipment of any Verizon Affiliate; and (b) the test head does not interrupt the voice circuit to any greater degree than a conventional MLT test. Specifically, the Covad-provided test equipment may not interrupt an in-progress voice connection and must automatically restore any circuits tested in intervals comparable to MLT. This optional Covad-provided test head would be installed between the "line" port of the splitter and the POT bay in order to conduct remote physical tests of the shared loop.</u></p> <p><u>Under Splitter Option C (in which Covad places the splitter in Verizon common space), upon request by Covad, either Verizon or, at Covad's election, a Verizon-approved vendor selected by Covad will install a Covad-provided test head to enable Covad to conduct remote physical tests of the shared Loop. This optional Covad-provided test head may be installed at a point between the "line" port of the splitter and the Verizon-provided test head that is used by Verizon to conduct its own Loop testing. The Covad-provided test head must satisfy the same NEBS requirements that Verizon imposes on its own test head equipment or the test head equipment of any Verizon Affiliate, and may not interrupt the voice circuit to any greater degree than a conventional MLT test. Specifically, the Covad-provided test equipment may not interrupt an in-progress voice connection and must automatically restore any circuits</u></p>		

Section	Covad Position	Verizon Position	
	<p><u>tested in intervals comparable to MLT. Verizon will inventory, control and maintain the Covad-provided test head, and will direct all required activity.</u></p> <p><u>Under either Splitter Option, if Verizon has installed its own test head, Verizon will conduct tests of the shared Loop using a Verizon-provided test head, and, upon request, 4. will provide these test results to Covad during normal trouble isolation procedures in accordance with reasonable procedures.</u></p> <p><u>Under either Splitter Option, upon request by Covad, Verizon will make MLT access available to Covad via RETAS after the service order has been completed. Covad will utilize the circuit number to initiate the test.</u></p>		
8.1.1	<p>A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center <u>or other Verizon premises in which Dark Fiber Loops terminate</u>, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.</p>	<p>A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.</p>	
8.1.2	<p>A "Dark Fiber Sub Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications</p>	<p>A "Dark Fiber Sub Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications</p>	

Section	Covad Position	Verizon Position	
	Services.	Services.	
8.1.3	A "Dark Fiber IOF" consists of continuous fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two or <u>more</u> Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a Covad Central Office, but, in either case, that has not been activated through connection to multiplexing, aggregation or other electronics that "light it" and thereby render it capable of carrying Telecommunications Services.	A "Dark Fiber IOF" consists of continuous fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a Covad Central Office, but, in either case, that has not been activated through connection to multiplexing, aggregation or other electronics that "light it" and thereby render it capable of carrying Telecommunications Services.	
Proposed Section 8.1.4	<u>Verizon will provide a cross connection between two strands of Dark Fiber IOF, Dark Fiber Loop or Dark Fiber Sub-Loop located in the same Verizon central office where requested by Covad or where necessary to create a continuous Dark Fiber IOF strand between two Accessible Terminals (as described above). 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.</u>		
Proposed 8.1.5	<u>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.</u>		
8.2.1	An "Eligible Cross-Connect Point" shall be defined as a Covad collocation arrangement located in either (a) <u>the same Verizon premises as the Verizon Accessible Terminal to which Dark Fiber Loops, IOF or Subloops terminate or</u> (b) <u>in another Verizon premises that is connected directly or indirectly to the Verizon Accessible Terminal to which Dark Fiber Loops, IOF or Subloops terminate by a dark fiber or a lit interoffice facility or set of facilities.</u> 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	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. 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	

Section	Covad Position	Verizon Position	
	<p>cross-connected to an <u>Eligible Cross-Connect Point Covad's collocation arrangement located in that same Verizon Central Office</u> and the other end terminates at the Customer premise. 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 an <u>Eligible Cross-Connect Point Covad's collocation arrangement located in that same Verizon Central Office</u> and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to an <u>Eligible Cross-Connect Point Covad's collocation arrangement or adjacent structure</u>, 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 an <u>Eligible Cross-Connect Point Covad's collocation arrangement or adjacent structure</u>, 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 an <u>Eligible Cross-Connect Point Covad's collocation arrangement or adjacent structure</u> 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 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 determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than 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</p>	<p>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 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 determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than 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 30 feet in length.</p>	

Section	Covad Position	Verizon Position	
	connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than 30 feet in length.		
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 or case. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF are not available Covad unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF already are terminated on a Verizon Accessible Terminal. Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points or cases to accommodate Covad's request. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to Covad.	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 or case. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF are not available Covad unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF already are terminated on a Verizon Accessible Terminal. Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points or cases to accommodate Covad's request. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to Covad.	
8.2.3	A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).	A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).	
8.2.4	Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to <u>either a Covad collocation arrangement or another Verizon Accessible Terminal</u> or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office.	Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to a Covad collocation arrangement or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office.	
8.2.5	For individual requests for dark fiber products, a A Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark	A Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available between the locations	

Section	Covad Position	Verizon Position	
	<p>Fiber IOF may be available between the locations and in the quantities specified. <u>Covad may request that Verizon indicate the availability of Dark Fiber IOF and Dark Fiber Loops between any two points in a LATA, without regard to the number of Dark Fiber Loops or IOF arrangements that must be spliced or cross connected together for Covad's desired route.</u> Verizon will respond within fifteen (15) Business Days from receipt of the Covad's request, indicating whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.</p>	<p>and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of the Covad's request, indicating whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.</p>	
<p>Proposed 8.2.5.1</p>	<p><u>At Covad's request, Verizon shall provide maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction.</u></p>		
<p>Proposed 8.2.8.1</p>	<p><u>Required Contents of Response to Field Survey Request:</u> Responses to field survey requests shall indicate whether: (1) the fiber is of a dual-window construction with the ability to transmit light at both 1310 nm and 1550 nm; (2) the numerical aperture of each fiber shall be at least 0.12; and (3) the maximum attenuation of each fiber is either 0.35 dB / km at 1310 nanometers (nm) and 0.25dB / km at 1550 nm.</p>		
<p>8.2.9</p>	<p>Access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premise, must be accomplished via a collocation arrangement in that premise. In circumstances where collocation cannot be accomplished in the premises, the Parties agree to negotiate for possible alternative arrangements.</p>	<p>Access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premise, must be accomplished via a collocation arrangement in that premise. In circumstances where collocation cannot be accomplished in the premises, the Parties agree to negotiate for possible alternative arrangements.</p>	
<p>8.2.15</p>	<p>In order to preserve the efficiency of its network, Verizon will limit Covad to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. In addition, eExcept as otherwise required by Applicable Law, Verizon may take any of the following</p>	<p>In order to preserve the efficiency of its network, Verizon will limit Covad to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. In addition, except as otherwise required by Applicable Law, Verizon may take any of the following</p>	

Section	Covad Position	Verizon Position	
	actions, notwithstanding anything to the contrary in this Agreement:	actions, notwithstanding anything to the contrary in this Agreement:	
8.2.15.1	Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Covad upon a showing of need to the Commission and twenty-four ^{twelve} (12) months' advance written notice to Covad; and	Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Covad upon a showing of need to the Commission and twelve (12) months' advance written notice to Covad; and	
16. UNE Combinations	Subject to the conditions set forth in Section 1 of this Attachment, Verizon shall be obligated to provide a Combination only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination to Covad, Verizon shall provide such Combination in accordance with the terms, conditions and prices for such Combination as provided in Verizon's PA PUC Tariff No. 216, as amended from time to time. <u>To the extent that Verizon's PUC Tariff No. 216 Tariff does not reflect the current state of Applicable Law, Verizon will provide combinations in whatever manner is necessary to comply with Applicable Law.</u>	Subject to the conditions set forth in Section 1 of this Attachment, Verizon shall be obligated to provide a Combination only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination to Covad, Verizon shall provide such Combination in accordance with the terms, conditions and prices for such Combination as provided in Verizon's PA PUC Tariff No. 216, as amended from time to time. 	
Collocation Attachment		
1	Verizon shall provide to Covad, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, <u>(as if such requirements were set forth fully herein)</u> , Collocation for the purpose of facilitating Covad's interconnection with facilities or services of Verizon or access to Unbundled Network Elements of Verizon; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Collocation to Covad only to the extent required by Applicable Law and may decline to provide Collocation to Covad to the extent that <u>a final and non-appealable judicial or regulatory decision makes the</u> provision of Collocation is ^{is} not no longer required by Applicable Law. Subject to the foregoing, Verizon shall provide Collocation to Covad in accordance with the rates, terms and conditions set forth in Verizon's effective Collocation tariff, titled P.U.C. No. 218 –	Verizon shall provide to Covad, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, Collocation for the purpose of facilitating Covad's interconnection with facilities or services of Verizon or access to Unbundled Network Elements of Verizon; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Collocation to Covad only to the extent required by Applicable Law and may decline to provide Collocation to Covad to the extent that provision of Collocation is not required by Applicable Law. Subject to the foregoing, Verizon shall provide Collocation to Covad in accordance with the rates, terms and conditions set forth in Verizon's effective Collocation tariff, titled P.U.C. No. 218 – "Network Interconnection Services," Section 2.	

Section	Covad Position	Verizon Position	
	"Network Interconnection Services," Section 2.		
2	Provision of Collocation: Upon request by Verizon, Covad shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of Covad. Covad shall provide collocation on a non-discriminatory basis in accordance with Covad's applicable Tariffs, or in the absence of applicable Covad Tariffs, in accordance with terms, conditions and prices to be negotiated by the Parties.	Provision of Collocation: Upon request by Verizon, Covad shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of Covad. Covad shall provide collocation on a non-discriminatory basis in accordance with Covad's applicable Tariffs, or in the absence of applicable Covad Tariffs, in accordance with terms, conditions and prices to be negotiated by the Parties.	
Proposed 3	<u>Verizon will permit Covad to purchase DC power arrangements that have a minimum of 2 amps (per A&B feed pair). Verizon will permit Covad to purchase additional DC power in increments of 1 ampere.</u>		
Pricing Attachment			
1.3	<u>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.</u>	The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff	
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.	
1.5	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any	

Section	Covad Position	Verizon Position	
	<p>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.</p>	<p>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.</p>	
<p>Proposed 1.9</p>	<p><u>Notwithstanding anything to the contrary in Sections 1.1 to 1.7 above, Verizon shall provide advance actual written notice to CLEC of any tariff revisions submitted by Verizon to a Commission or the FCC that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A. Whenever such tariff 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.</u></p>		

Attachment B
Verizon North Proposed Language Matrix

Section	Covad Position	Verizon Position	Comments
AGREEMENT			
4. Applicable Law			
4.7	Notwithstanding anything in this Agreement to the contrary, if, as a result of any <u>final and non-appealable</u> 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.	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.	
9. Billing			
Proposed 9.1.1	<u>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.</u>		
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 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,	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 prospectively with a single notice a class of charges that it disputes.	

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	<p>either before or after an amount is paid, and. <u>The billing Party shall use a Claim Number specified 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.</u></p> <p><u>A</u> 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.</p>	<p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and 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.</p>	
9.4	<p>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 <u>for all such charges except past late payment charges</u>. 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. <u>Late payment charges shall be tolled during any period in which Verizon is analyzing the validity of a bill disputed by Covad and Verizon takes longer than 30 days to provide a substantive response to Covad.</u></p>	<p>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.</p>	
9.5	<p>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, <u>subject to Section 9.1.1 above</u>, 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</p>	<p>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</p>	

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	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.	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.	
12. Default	If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) <u>sixty (60)</u> days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.	If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.	
14. Dispute Resolution			
Proposed 14.3	<u>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).</u>		
43.2 Termination/ Assignment Upon Sale	Notwithstanding any other provision of this Agreement, Verizon may <u>assign</u> terminate this Agreement to the <u>purchaser of</u> 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 <u>assignment</u> 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.	
48. Waiver	<u>Except as provided in Section 9.1.1, a</u> 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	

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	<p>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.</p> <p>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.</p> <p><u>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.</u></p>	<p>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.</p> <p>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.</p>	
Glossary			
<p>2.11 Definition of Applicable Law</p>	<p>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. <u>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.</u></p>	<p>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.</p>	
<p>2.111 Definition of UDLC</p>	<p>A form of Digital Loop carrier system consisting of a Central Office terminal and a remote terminal located in the outside plant or customer premises. The Central Office and the remote terminal units perform analog to digital conversions to allow the feeding facility to be digital. UDLC is deployed where the types of services to be provisioned by the systems cannot be integrated such as non-switched services and unbundled loops.</p>	<p>A form of Digital Loop carrier system consisting of a Central Office terminal and a remote terminal located in the outside plant or customer premises. The Central Office and the remote terminal units perform analog to digital conversions to allow the feeding facility to be digital. UDLC is deployed where the types of services to be provisioned by the systems cannot be integrated such as non-switched services and unbundled loops.</p>	

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ADDITIONAL SERVICES ATTACHMENT			
8.0 (OSS)			
8.1.4	<p><u>Verizon OSS Information</u>: 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 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. <u>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.</u></p>	<p><u>Verizon OSS Information</u>: 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 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.</p>	
8.2 Verizon OSS Services			
Proposed 8.2.3	<p><u>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.</u></p>		
Proposed 8.2.4	<p><u>For stand-alone loops, Verizon shall return firm order commitments electronically within two (2) business hours after receiving an LSR that has been pre-qualified mechanically and within twenty-four (24) hours after receiving an LSR that is subject to manual pre-qualification.</u></p>		
8.5.4.1	<p>Verizon <u>and Covad</u> shall have the right (but not the obligation) to audit Covad<u>the other party</u> to ascertain whether Covad<u>the other party</u> is complying with the requirements of Applicable Law and this Agreement with regard to Covad's access to, and use and disclosure of, Verizon OSS Information. Such audits shall not occur more frequently than once per year; provided, however, that audits may be conducted more frequently (but no</p>	<p>Verizon shall have the right (but not the obligation) to audit Covad to ascertain whether Covad is complying with the requirements of Applicable Law and this Agreement with regard to Covad's access to, and use and disclosure of, Verizon OSS Information. Such audits shall not occur more frequently than once per year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the</p>	

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	more frequently than once in each Calendar Quarter) if the immediately preceding audit revealed violations of Applicable Law and/or this Agreement. Audits shall be pursued in a manner that minimizes disruption to <u>Covad the audited party</u> .	immediately preceding audit revealed violations of Applicable Law and/or this Agreement. Audits shall be pursued in a manner that minimizes disruption to Covad.	
8.5.4.3	Information obtained by Verizon and Covad pursuant to this Section 8.5.4 shall be treated by Verizon and Covad as Confidential Information of Verizon and Covad pursuant to Section 10 of the Agreement; provided that, Verizon and Covad shall have the right (but not the obligation) to use and disclose information obtained by Verizon and Covad pursuant to this Section 8.5.4 to enforce Verizon's and Covad's rights under the Agreement or Applicable Law.	Information obtained by Verizon pursuant to this Section 8.5.4 shall be treated by Verizon as Confidential Information of Covad pursuant to Section 10 of the Agreement; provided that, Verizon shall have the right (but not the obligation) to use and disclose information obtained by Verizon pursuant to this Section 8.5.4 to enforce Verizon's rights under the Agreement or Applicable Law.	
8.6 Liabilities & Remedies			
8.6	<p>If Covad, or Covad's employees, agents or contractors materially breach, at any time, any of the provisions of Sections 8.4 or 8.5 above, and such material breach continues for more than ten (10) days after receiving written notice thereof from Verizon, then Verizon shall have the right, <u>after giving Covad a reasonable opportunity to cure the breach upon one (1) day's notice to Covad, to seek relief from the appropriate regulatory body to</u> suspend the license to use Verizon OSS Information granted by Section 8.5.1 above and/or the provision of Verizon OSS Services, in whole or in part.</p> <p>Such suspension of Covad's license shall not be deemed to be the exclusive remedy for any such breach by Covad, or Covad's employees, agents or contractors, but shall be in addition to any other remedies available under this Agreement or at law or in equity.</p>	<p>If Covad, or Covad's employees, agents or contractors materially breach, at any time, any of the provisions of Sections 8.4 or 8.5 above, and such material breach continues for more than ten (10) days after receiving written notice thereof from Verizon, then Verizon shall have the right, upon one (1) day's notice to Covad, to suspend the license to use Verizon OSS Information granted by Section 8.5.1 above and/or the provision of Verizon OSS Services, in whole or in part.</p> <p>Such suspension of Covad's license shall not be deemed to be the exclusive remedy for any such breach by Covad, or Covad's employees, agents or contractors, but shall be in addition to any other remedies available under this Agreement or at law or in equity.</p>	
8.9 VZ Access to Information Related to Covad Customers			

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8.9.2	Upon request by Verizon, Covad shall negotiate in good faith to provide Verizon access to Covad's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Verizon to obtain information related to Covad Customers (as authorized by the applicable Covad Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law, <u>provided that such information is not already in Verizon's possession.</u>	Upon request by Verizon, Covad shall negotiate in good faith to provide Verizon access to Covad's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Verizon to obtain information related to Covad Customers (as authorized by the applicable Covad Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law.	
RESALE ATTACHMENT			
5.3	Verizon shall provide Covad with notice of a Covad end user's change in local telecommunications service provider by providing electronic access to Verizon's line loss report. The line loss report is an electronic file made available to CLECs and resellers listing those lines serving their end user customers that have moved to another telecommunications service provider. If a Covad Customer requests that Verizon convert a Resold Verizon Telecommunications Service to a retail Service, Verizon shall provide written or electronic notification of that request to Covad as soon as practicable, and in no event less than one (1) full business day before discontinuing the provision of the Service for resale.	Verizon shall provide Covad with notice of a Covad end user's change in local telecommunications service provider by providing electronic access to Verizon's line loss report. The line loss report is an electronic file made available to CLECs and resellers listing those lines serving their end user customers that have moved to another telecommunications service provider.	
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 <u>that the</u> 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, except to the extent that Verizon is permitted under Applicable Law to reserve unused 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 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, except to the extent that Verizon is permitted under Applicable	

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	<p>or Combinations for its own use); and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination <u>except to the extent that such UNE or Combination would be constructed or deployed, upon request of a Verizon end user.</u></p>	<p>Law to reserve unused UNEs or Combinations for its own use); and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination.</p>	
1.4.1	<p>To the extent that Verizon is required by a change in Applicable Law to provide a UNE or Combination not offered under this Agreement to Covad as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Tariff of Verizon, or, in the absence of an applicable Verizon Tariff, as mutually agreed by the Parties.</p>	<p>To the extent that Verizon is required by a change in Applicable Law to provide a UNE or Combination not offered under this Agreement to Covad as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Tariff of Verizon, or, in the absence of an applicable Verizon Tariff, as mutually agreed by the Parties.</p>	
1.5	<p>Without limiting Verizon's rights pursuant to Applicable 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, <u>in a final, non-appealable order,</u> 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.</p>	<p>Without limiting Verizon's rights pursuant to Applicable 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.</p>	
1.7	<p>Except as otherwise expressly stated in this Agreement,</p>	<p>Except as otherwise expressly stated in this Agreement,</p>	

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	<p>Covad shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment at the Verizon Wire Center where these elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to Covad's Collocation node by means of a Cross Connection at any technically feasible point as required by 47 CFR§ 51.311 and 47 U.S.C. § 251 (c)(3).</p>	<p>Covad shall access Verizon's UNEs specifically identified in this Agreement via Collocation in accordance with the Collocation Attachment at the Verizon Wire Center where those elements exist, and each Loop or Port shall, in the case of Collocation, be delivered to Covad's Collocation node by means of a Cross Connection.</p>	
Proposed 1.9	<p><u>In provisioning loops that require Verizon to dispatch a technician to the end user's premises, Verizon shall provide Covad's end user with a three-hour appointment window on the day of the dispatch. The Verizon technician shall be present at the premises of the Covad's end user during that window and shall make good faith efforts to contact the end user upon arriving at the premises. If the Verizon technician fails to meet the Covad's end user during the window, Verizon shall forego assessing the non-recurring dispatch charge to the Covad associated with the Service Order. 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.</u></p>		
3. Loop Transmission Types			
3.1	<p>"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</p>	<p>"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 SMC1 in T1-417-2001, as revised from time to time.</p>	

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	SMC1 in T1-417-2001, as revised from time to time.		
3.2 ADSL	<p>"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 <u>except to the extent that it does so for its own customers.</u> 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 from time to time.</p>	<p>"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 from time to time.</p>	
3.3 HDSL	<p>"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 <u>except to the extent that it does so for its own customers.</u> 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.</p>	<p>"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.</p>	
3.4 4 wire HDSL	<p>"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-</p>	<p>"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-</p>	

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	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 <u>except to the extent that it does so for its own customers</u> . 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.	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.	
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, <u>unless Verizon upgrades existing facilities for its own end users</u> . 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.	"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 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 <u>except to the extent that it does so for its own customers</u> .	"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.	
3.7 SDSL Loop Type	2-Wire SDSL-Compatible Loop", is intended to be used with low band symmetric DSL systems that meet the Class 2 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3). This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets Class 2 length limit in T1E1.4/2000-002R3 or alternately, connecting	2-Wire SDSL-Compatible Loop", is intended to be used with low band symmetric DSL systems that meet the Class 2 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3). This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets Class 2 length limit in T1E1.4/2000-002R3 or alternately, connecting	

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	equipment should conform to the limits for SMC2, <u>SMC7</u> , or <u>SMC8</u> in T1-417-2001. The data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop. SDSL-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u>	equipment should conform to the limits for SMC2 in T1-417-2001. The data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop. SDSL-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities.	
Proposed 3.11	<u>The titles of the foregoing loop types are for purely illustrative purposes and do not control the specific services that Covad may offer over such loops. Verizon will maintain or repair such loops using standards that are at least as stringent as either (1) the standards it uses in maintaining or repairing the same or comparable loops for itself; or (2) applicable industry standards for maintaining or repairing such loops.</u>		
3.11	<u>Although Covad will, when leasing a loop, indicate on the Local Service Request ("LSR") which of the foregoing loop type categories the loop falls under, Covad may offer services over that loop that fall under any of the loop type categories enumerated in sections 3.1 to 3.7 above and in accordance with Applicable Law.</u> Covad and Verizon will follow Applicable Law governing spectrum management and provisioning xDSL services <u>If Covad wishes to order a loop type or technology that has not yet been developed, a BFR should be submitted. Covad may deploy services that do not fall under the loop type categories enumerated in sections 3.1 to 3.7 above if it complies with 47 C.F.R. § 51.230, to the extent that that rule remains Applicable Law.</u>	Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services. If Covad wishes to order a loop type or technology that has not yet been developed, a BFR should be submitted.	
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	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	

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	<p>as available, <u>and after obtaining Covad's approval</u>. Verizon will perform a line & station transfer (LST) (as described below) subject to applicable charges <u>at no additional charge if Verizon does not charge its own customers for performing LSTs during the process of provisioning service</u>. 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.</p>	<p>as available, Verizon will perform a line & station transfer (LST) (as described below) 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.</p>	
<p>3.13.5</p>	<p>If the Loop is not listed in the mechanized database described in Section 3.11.2 or the listing is defective, (i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon affiliate), <u>Covad may submit an Extended Query to Verizon at no additional charge</u>. Covad may also <u>must</u> request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. The rates for manual loop qualification are set forth in the Pricing Attachment. Verizon will complete a manual loop qualification request within the same intervals that Verizon completes manual loop qualifications for itself or a Verizon affiliate. In general, Verizon will complete the manual loop qualification within three <u>one business days</u> although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</p>	<p>If the Loop is not listed in the mechanized database described in Section 3.11.2, (i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon affiliate), Covad must request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. The rates for manual loop qualification are set forth in the Pricing Attachment. Verizon will complete a manual loop qualification request within the same intervals that Verizon completes manual loop qualifications for itself or a Verizon affiliate. In general, Verizon will complete the manual loop qualification within (3) business days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</p>	
<p>3.13.7</p>	<p>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 <u>requirement</u> 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</p>	<p>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</p>	

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	Commission or the FCC.	or the FCC.	
3.13.10	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>	
3.13.12	<p>If Covad orders a loop that is determined to be xDSL 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, <u>upon request of Covad</u>, 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 <u>for line sharing loops</u>, and additional charges shall apply as set forth in the Pricing Attachment.</p>	<p>If Covad orders a loop that is determined to be xDSL 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.</p>	
3.13.13	<p>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 and an Covad technician jointly verify that an xDSL Compatible Loop or Digital Designed Loop is properly installed and operational prior to Verizon's completion of the order. Covad may request, at its option, Cooperative Testing by entering a toll-free (e.g. 800)</p>	<p>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 and an Covad technician jointly verify that an xDSL Compatible Loop or Digital Designed Loop is properly installed and operational prior to Verizon's completion of the order. Covad may request, at its option,</p>	

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	<p>number in the Remarks field of the LSR of an xDSL Compatible or Digital Designed Loop Service Order, and the Verizon technician will call the toll-free number to perform the Cooperative Test. When both the Verizon and Covad technicians agree that 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. Charges for Cooperative Testing are as set forth in the Pricing Attachment.</p> <p><u>Cooperative Acceptance Testing is acknowledged by both Verizon and Covad to assist in the timely and efficient provisioning of functioning loops. If both parties agree in writing that this testing is no longer necessary, it can be suspended at any time.</u></p> <p><u>Verizon will dispatch a technician to provide normal acceptance testing where Verizon determines a dispatch is required to provision the loop. Normal acceptance testing includes: Placing a short on the tip conductor and then the ring conductor, while Covad runs loop tests from its equipment located in the serving collocation arrangement. Verizon will call Covad with the technician on the line to perform the above mentioned tests and Covad will within 15 minutes begin testing with the technician. The Verizon technician will test with Covad for a period not to exceed 15 minutes. Verizon shall deliver loops that perform according to the characteristics of described in the loop types set forth in Sections 3.1 – 3.7, above.</u></p> <p><u>Where a technician is dispatched to provision a loop, the Verizon technician shall tag a circuit for identification purposes. Where a technician is not dispatched by Verizon, Verizon will provide sufficient information to Covad to enable Covad to locate the circuit being provisioned. Upon delivery of the loop Verizon will contact Covad via a toll free number to provide notification of the completion of the loop and where required, provide acceptance testing as provided for in this agreement.</u></p> <p><u>If the Verizon technician at the premises is unable to contact a Covad employee to perform acceptance testing at the time of loop turn up (placed on hold for more than 15 minutes, reaches voice mail or other recording, no answer</u></p>	<p>Cooperative Testing by entering a toll-free (e.g. 800) number in the Remarks field of the LSR of an xDSL Compatible or Digital Designed Loop Service Order, and the Verizon technician will call the toll-free number to perform the Cooperative Test. When both the Verizon and Covad technicians agree that 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. Charges for Cooperative Testing are as set forth in the Pricing Attachment.</p>	

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	<p><u>or repeated busy conditions), the technician will test the loop to ensure the loop is provisioned according to requirements of the loop type requested by Covad, as set forth in Sections 3.1 – 3.7, above. The Verizon technician may then leave the premises. On any such orders, Verizon must provide the reason for which it was unable to contact Covad. In addition, Verizon will later engage in a joint "one way" test with Covad. During such a "one way" test, personnel from Verizon's loop provisioning centers will call Covad's testing center and will stay on the line while Covad tests the loop remotely using its test equipment to which the loop is connected. At the conclusion of "one way" testing, Covad will either accept or reject the loop.</u></p> <p><u>If at any time Covad feels that the process described in this paragraph is not being appropriately executed by Verizon, Covad may escalate to the appropriate Verizon Manager for immediate resolution. Such resolution shall include but not be limited to: an immediate review of the processes described above by Verizon personnel, joint meetings of the parties to mutually resolve issues and any other such action which both parties agree may need to be implemented to correct the process failure.</u></p> <p><u>If the Acceptance Test fails loop Continuity Test parameters, as defined by loop types set forth in Sections 3.1 – 3.7, above for the loop being provisioned, the Verizon technician will take any or all reasonable steps, if possible, to immediately resolve the problem with Covad on the line including, but not limited to, calling the central office to perform work or troubleshooting for physical faults. If the problem cannot be resolved in an expedient manner, the technician will release the Covad representative, and perform the work necessary to correct the situation. Once the loop is correctly provisioned, Verizon will re-contact the Covad representative to repeat the Acceptance Test.</u></p> <p><u>Both Parties declare they will work together, in good faith, to implement Acceptance Testing procedures that are efficient and effective. If the Parties mutually agree to</u></p>		

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	<p><u>additional testing, procedures and/or standards not covered by this Appendix or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards.</u></p> <p><u>Verizon will not bill for loop repairs when the repair resulted from a Verizon problem.</u></p>		
3.14	<p>The provisioning interval for all <u>stand-alone loops</u> not requiring conditioning shall be the shortest of the following: (a) the interval Verizon provides to itself or an affiliate; or (b) the Commission-ordered interval; or (c) <u>five business days.</u></p>	<p>The provisioning interval for all loops not requiring conditioning shall be the shortest of the following: (a) the interval Verizon provides to itself or an affiliate; or (b) the Commission-ordered interval.</p>	
<p>Proposed 3.18 DSL over Fiber</p>	<p><u>Without regard to Applicable Law, Verizon will provide Covad access to the following facilities, which Verizon shall treat as if they were unbundled network elements under 47 U.S.C. § 251(c)(3): (1) Next Generation Digital Loop Carrier ("NGDLC") equipment needed for Covad to offer DSL services thereon (including but not limited to Alcatel Lightspan 2000 & 2012 equipment and all line cards required to offer DSL and/or voice services); (2) fiber loop facilities, consisting of fiber optic cable between the remote terminal ("RT") and the optical concentration device ("OCD") in the central office or other Verizon premises; (3) service management software that enables NGDLC equipment to provide DSL services; (4) OCDs in the central office and on other Verizon premises that are connected to NGDLC equipment either in the central office or the RT; and (5) copper distribution loops connecting: (i) the RT to the network interface device ("NID") at the customer premises; or (ii) the RT to the Serving Area Interface ("SAI"); and (iii) the SAI to the NID at the customer premises. At Covad's option, Verizon will provide all of these facilities either piece meal or as a single unbundled network element under 47 U.S.C. § 251(c)(3) that Covad may access via a Verizon-provided cross connection from an OCD port at the central office to Covad's collocation space therein. In doing so, Verizon will (a) provide all commercially available features, functions and capabilities of such facilities (including, but not limited to, all technically feasible qualities of service);</u></p>		

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	<u>and (b) allow Covad to connect any of its technically compatible equipment to such facilities.</u>		
4. Line Sharing			
Proposed 4.2.1 Line Partitioning	<u>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.</u>		
4.4.3	If the Loop is prequalified by Covad through the Loop prequalification database, 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 within <u>two (2) business twenty-four (24)-hours (weekends and holidays excluded) for LSRs with less than six (6) loops and within 72 hours (weekends and holidays excluded) for LSRs with six (6) or more loops.</u>	If the Loop is prequalified by Covad through the Loop prequalification database, 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.	
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 in Section 3.9, above. The standard provisioning interval	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 in Section 3.9, above. The standard provisioning interval	

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	<p>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) <u>three (3)</u> 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 <u>when Covad purchases Digital Designed Loop products shall be consistent with Section 3.13.10</u> 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.</p>	<p>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.</p>	
4.5	<p>To the extent required by Applicable Law <u>and consistent with Section 3.10 of the UNE Attachment</u>, Covad shall provide Verizon with information regarding the type of xDSL technology that it deploys on each shared Loop. Where any proposed change in technology is planned on a shared Loop, Covad must provide this information to Verizon in order for Verizon to update Loop records and anticipate effects that the change may have on the voice grade service and other Loops in the same or adjacent binder groups.</p>	<p>To the extent required by Applicable Law Covad shall provide Verizon with information regarding the type of xDSL technology that it deploys on each shared Loop. Where any proposed change in technology is planned on a shared Loop, Covad must provide this information to Verizon in order for Verizon to update Loop records and anticipate effects that the change may have on the voice grade service and other Loops in the same or adjacent binder groups.</p>	
4.7.2	<p>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</p>	<p>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</p>	

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	<p>stated in Verizon's applicable Tariff, a An interval of seventy-six (76) no greater than forty-five (45) business days shall apply.</p>	<p>stated in Verizon's applicable Tariff, an interval of seventy-six (76) business days shall apply.</p>	
4.8.2	<p>In those serving End Offices where Verizon has not employed a POT Bay for interconnection of Covad's Collocation arrangement with Verizon's network, Covad will not be permitted to supply its own test head for <u>line shared loops</u>. Instead, Verizon will make a testing system available to Covad through use of the on-line computer interface test system at <u>www.verizon.com/wise</u> at no additional charge to Covad. <u>The parties recognize that the foregoing contract provision does not signify Covad's agreement that Verizon has met its obligations under 47 CFR § 51.319(h)(7) to provide Covad with a cross connect point for purposes of testing line shared loops.</u></p>	<p>In those serving End Offices where Verizon has not employed a POT Bay for interconnection of Covad's Collocation arrangement with Verizon's network, Covad will not be permitted to supply its own test head. Instead, Verizon will make a testing system available to Covad through use of the on-line computer interface test system at <u>www.verizon.com/wise</u>.</p>	
8. Dark Fiber			
8.1.1	<p>A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center <u>or other Verizon premises in which Dark Fiber Loops terminate</u>, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.</p>	<p>A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.</p>	
8.1.2	<p>A "Dark Fiber Sub Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to electronics that "light" it and render it capable of carrying</p>	<p>A "Dark Fiber Sub Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to electronics that "light" it and render it capable of carrying</p>	

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	Telecommunications Services.	Telecommunications Services.	
8.1.3	A "Dark Fiber IOF" consists of <u>continuous</u> fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two or more Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a Covad Central Office, but, in either case, that has not been activated through connection to multiplexing, aggregation or other electronics that "light it" and thereby render it capable of carrying Telecommunications Services.	A "Dark Fiber IOF" consists of continuous fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a Covad Central Office, but, in either case, that has not been activated through connection to multiplexing, aggregation or other electronics that "light it" and thereby render it capable of carrying Telecommunications Services.	
Proposed Section 8.1.4	<u>Verizon will provide a cross connection between two strands of Dark Fiber IOF, Dark Fiber Loop or Dark Fiber Sub-Loop located in the same Verizon central office where requested by Covad or where necessary to create a continuous Dark Fiber IOF strand between two Accessible Terminals (as described above). 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.</u>		
Proposed 8.1.5	<u>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.</u>		
8.2.1	An "Eligible Cross-Connect Point" shall be defined as a <u>Covad collocation arrangement located in either (a) the same Verizon premises as the Verizon Accessible Terminal to which Dark Fiber Loops, IOF or Subloops terminate or (b) in another Verizon premises that is connected directly or indirectly to the Verizon Accessible Terminal to which Dark Fiber Loops, IOF or Subloops terminate by a dark fiber or a lit interoffice facility or set of facilities.</u> 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 an <u>Eligible Cross-Connect Point Covad's collocation arrangement located in that same Verizon Central Office</u> and the other	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. 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	

Section	Covad Position	Verizon Position	Comments
	<p>end terminates at the Customer premise. 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 <u>an Eligible Cross-Connect Point</u> 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 <u>an Eligible Cross-Connect Point</u> 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 <u>an Eligible Cross-Connect Point</u> 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 <u>an Eligible Cross-Connect Point</u> 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 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 determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than 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 30 feet in length.</p>	<p>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 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 determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than 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 30 feet in length.</p>	
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	Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon	

Section	Covad Position	Verizon Position	Comments
	<p>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 or case. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF are not available Covad unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF already are terminated on a Verizon Accessible Terminal. Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points or cases to accommodate Covad's request. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to Covad.</p>	<p>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 or case. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF are not available Covad unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF already are terminated on a Verizon Accessible Terminal. Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points or cases to accommodate Covad's request. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to Covad.</p>	
8.2.3	<p>A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).</p>	<p>A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).</p>	
8.2.4	<p>Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to <u>either a Covad collocation arrangement or another Verizon Accessible Terminal</u> or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office.</p>	<p>Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to a Covad collocation arrangement or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office.</p>	
8.2.5	<p>For individual requests for dark fiber products, a Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available between the locations and in the quantities specified. <u>Covad may request that Verizon indicate the availability of Dark Fiber IOF and Dark Fiber Loops between any two points in a LATA, without regard to the number of Dark Fiber Loops or IOF arrangements that must be spliced or cross connected together for Covad's desired route.</u> Verizon will respond within fifteen (15) Business Days from receipt of the Covad's request, indicating whether Dark Fiber Loop, Dark</p>	<p>A Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of the Covad's request, indicating whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber</p>	

Section	Covad Position	Verizon Position	Comments
	Fiber Sub-Loop or Dark Fiber IOF may be available based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.	IOF.	
Proposed 8.2.5.1	<u>At Covad's request, Verizon shall provide maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction.</u>		
Proposed 8.2.8.1	<u>Required Contents of Response to Field Survey Request: Responses to field survey requests shall indicate whether: (1) the fiber is of a dual-window construction with the ability to transmit light at both 1310 nm and 1550 nm; (2) the numerical aperture of each fiber shall be at least 0.12; and (3) the maximum attenuation of each fiber is either 0.35 dB / km at 1310 nanometers (nm) and 0.25dB / km at 1550 nm.</u>		
8.2.9	Access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premise, must be accomplished via a collocation arrangement in that premise. In circumstances where collocation cannot be accomplished in the premises, the Parties agree to negotiate for possible alternative arrangements.	Access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premise, must be accomplished via a collocation arrangement in that premise. In circumstances where collocation cannot be accomplished in the premises, the Parties agree to negotiate for possible alternative arrangements.	
8.2.15	In order to preserve the efficiency of its network, Verizon will limit Covad to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. In addition, e Except as otherwise required by Applicable Law, Verizon may take any of the following actions, notwithstanding anything to the contrary in this Agreement:	In order to preserve the efficiency of its network, Verizon will limit Covad to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. In addition, except as otherwise required by Applicable Law, Verizon may take any of the following actions, notwithstanding anything to the contrary in this Agreement:	
8.2.15.1	Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Covad upon a showing of need to the Commission and <u>twenty-four twelve (1224) months'</u> advance written notice to Covad; and	Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Covad upon a showing of need to the Commission and twelve (12) months' advance written notice to Covad; and	
COLLOCATION ATTACHMENT			
1	Verizon shall provide to Covad, in accordance with this	Verizon shall provide to Covad, in accordance with this	

Section	Covad Position	Verizon Position	Comments
	<p>Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, <u>(as if such requirements were set forth fully herein)</u>, Collocation for the purpose of facilitating Covad's interconnection with facilities or services of Verizon or access to Unbundled Network Elements of Verizon; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Collocation to Covad only to the extent required by Applicable Law and may decline to provide Collocation to Covad to the extent that <u>a final and non-appealable judicial or regulatory decision makes the</u> provision of Collocation is not no longer required by Applicable Law. Subject to the foregoing, Verizon shall provide Collocation to Covad in accordance with the rates, terms and conditions set forth in Verizon's effective Collocation tariff, titled P.U.C. No.9 – "Facilities for Intrastate Access", Section 19.</p>	<p>Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, Collocation for the purpose of facilitating Covad's interconnection with facilities or services of Verizon or access to Unbundled Network Elements of Verizon; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Collocation to Covad only to the extent required by Applicable Law and may decline to provide Collocation to Covad to the extent that provision of Collocation is not required by Applicable Law. Subject to the foregoing, Verizon shall provide Collocation to Covad in accordance with the rates, terms and conditions set forth in Verizon's effective Collocation tariff, titled P.U.C. No.9 – "Facilities for Intrastate Access", Section 19.</p>	
2	<p>Provision of Collocation: Upon request by Verizon, Covad shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of Covad. Covad shall provide collocation on a non-discriminatory basis in accordance with Covad's applicable Tariffs, or in the absence of applicable Covad Tariffs, in accordance with terms, conditions and prices to be negotiated by the Parties.</p>	<p>Provision of Collocation: Upon request by Verizon, Covad shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of Covad. Covad shall provide collocation on a non-discriminatory basis in accordance with Covad's applicable Tariffs, or in the absence of applicable Covad Tariffs, in accordance with terms, conditions and prices to be negotiated by the Parties.</p>	
PRICING ATTACHMENT			
1.3	<p>1.3 The Charges for a Service shall be the <u>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.</u></p>	<p>The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.</p>	
1.4	<p>In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in</p>	<p>In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in</p>	

Section	Covad Position	Verizon Position	Comments
	Appendix A of this Pricing Attachment.	Appendix A of this Pricing Attachment.	
1.5	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any 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.	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any 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.	
Proposed 1.9	<u>Notwithstanding anything to the contrary in Sections 1.1 to 1.7 above, Verizon shall provide advance actual written notice to CLEC of any tariff revisions submitted by Verizon to a Commission or the FCC that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A. Whenever such tariff 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.</u>		

ATTACHMENT C -- VERIZON PENNSYLVANIA

Issues and Party Positions

APPLICABLE LAW

1. **Should Verizon continue to provide unbundled network elements and other services required under the Act and the Agreement until there is a final and non-appealable change in law eliminating any such requirements?**

Covad Position. Yes. As the Commission knows well, the telecommunications industry has been subject to numerous changes in law that later were reversed (e.g., the various 8th Circuit decisions on TELRIC). The Commission should not permit Verizon to disrupt Covad's business operations and the service it provides to end users in Pennsylvania, unless there is a final and non-appealable change in law that relieves Verizon of the obligation to provide unbundled network elements or other services under this Agreement.

Verizon Position. No. The parties should be bound by applicable law. With respect to FCC decisions, 47 U.S.C. § 405(a) specifically provides that FCC orders are enforceable when issued, notwithstanding requests for review; likewise, federal law governs the binding effect of federal court decisions. Nothing in the 1996 Act suggests that a state commission may relieve the parties of the obligation of complying with valid legal requirements simply because such requirements may be subject to challenge, and the Commission has recently refused a request for such relief.¹ Notably, when a change in law *expands* the list of services that Verizon PA is required to provide, Verizon PA provides such services before there is a final and non-appealable order upholding such a change in law. By the same token, Verizon PA is entitled to the benefit of a change in law that eliminates any of those services as soon as that change of law becomes effective. In addition, the agreed-upon contract language already provides for a transition period of up to 45 days, which would mitigate any disruption to Covad's business operations and would provide Covad with time in which to seek a stay of any change in law.

Contract Reference. General Terms and Conditions, § 4.7; UNE Attachment, § 1.5; Collocation Attachment, § 1

¹ See Opinion and Order at 12-14, *Petition of Verizon Pennsylvania, Inc. for Resolution of Dispute Pursuant to the Abbreviated Dispute Resolution Process*, Docket No. A-310752F7000 (Pa. PUC May 29, 2002); Opinion and Order, *Petition of Verizon Pennsylvania, Inc. for Resolution of Dispute Pursuant to the Abbreviated Dispute Resolution Process, Petition for Reconsideration of WorldCom, Inc.*, Docket No. A-310752F7000 (Pa. PUC Aug. 30, 2002).

BILLING

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

Covad Position. No. Backbilling should be limited to services rendered within one year of the current billing date in order to provide some measure of certainty in the billing relationship between the Parties.

Verizon Position. The parties' right to backbill should be governed by the applicable statute of limitations on contract actions. Backbilling is used when one party has received service and has paid either no charge for the service or a charge that is less than the correct charge specified in its agreement or in the other party's tariffs. Carrier-to-carrier billing is complicated and subject to regulatory changes that may make it difficult for carriers to bill for services promptly and completely. Accordingly, the general contractual statute of limitations provides appropriate protection for the parties' interest in collecting the established price for services that they provide under the agreement. Otherwise, a party might be able to provide service and collect fees from its customers while avoiding the appropriate payments for the inputs that it purchases from the other party. Moreover, Covad's proposal is one-sided and therefore unreasonable. The parties' right to backbill to recoup any undercharges should be symmetrical with the right to contest any previously billed overcharges. Despite its claims that a time limit on the right to backbill is necessary to provide "certainty in the billing relationship," Covad has proposed no similar limitation on the right to dispute past overcharges. But, just as a party's right to dispute overcharges should not be arbitrarily limited, so too a party's right to collect undercharges should not be limited.

Contract Reference. General Terms and Conditions, §§ 9.1.1 (proposed), 9.5

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

Covad Position. When a billed Party gives notice to the billing Party of a dispute regarding a billed amount, the billing Party should assign a Claim Number to the dispute for the purpose of allowing both Parties to reference the dispute quickly and accurately in correspondence and other communications.

Verizon Position. Verizon PA notes that Covad's description of its position — under which Verizon PA, as the billing party, would assign a claim number to claims submitted by Covad — differs from its proposed language, under which billing claims submitted by Covad would be identified by a claim number that Covad assigns. Verizon PA already provides Covad with a billing claim number for billing disputes that Covad raised. Verizon PA is not opposed to establishing a billing claim number system under which both Verizon PA's claim numbers and the CLEC's claim numbers are referenced, and it is in the process of implementing such a system. However, until this new system is in place, Verizon PA should be permitted to reference only the Verizon PA-assigned claim numbers, so that it may utilize a uniform claim number system for all CLECs with which

it does business in Pennsylvania. Covad's proposal, by contrast, could force Verizon PA to implement unique systems for each CLEC, which would be unnecessarily expensive and neither justified nor practical.

Contract Reference. General Terms and Conditions, § 9.3

4. **When the Billing Party disputes a claim filed by the Billed Party, how much time should the Billing Party have to provide a position and explanation thereof to the Billed Party?**

Covad Position. The Billing Party should provide its position and a supporting explanation regarding a disputed bill within thirty (30) days of receiving notice of the dispute.

Verizon Position. Standards governing when Verizon PA must respond to a billing dispute should be set on an industry-wide basis. Indeed, this Commission has recently tentatively approved the use of the New York performance measurements in Pennsylvania, which contain interim performance measurements to address the timeliness of billing dispute resolution, which are currently under development by the Carrier Working Group in New York, a collaborative body including Verizon PA and CLECs, which operates under the auspices of the New York Public Service Commission. If such standards were set on an interconnection-agreement-by-interconnection-agreement basis, the process for responding to such disputes would soon become unworkable as different standards may be established for different CLECs. In any event, Covad's proposed standard is unreasonable. Under Covad's proposal, there is no requirement that Covad's notice of the dispute contain sufficient information for Verizon PA to investigate the matter; nor is there any requirement that the billing dispute be sufficiently current so that Verizon PA has relatively easy access to the data necessary to investigate Covad's claim within 30 days. For example, the final billing dispute resolution performance measurements adopted in other Verizon states include both requirements, as well as others. Verizon PA would not object to the inclusion of language requiring the parties to use commercially reasonable efforts to resolve billing disputes in a timely manner.

Contract Reference. General Terms and Conditions, § 9.3

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 Position. No. Late payment charges should not accrue for the time that Verizon takes to address the dispute beyond thirty days. Any other outcome would mean that Verizon could profit from a failure to timely resolve billing disputes.

Verizon Position. Yes. Covad is not required to pay disputed amounts during the pendency of a dispute. As a result, if late payment fees do not accrue after 30 days from Verizon PA's receiving notice of a dispute, Covad would have the incentive to submit frivolous claims to earn interest on the "disputed" amounts. Moreover, for the reasons

noted above, the 30-day period, as Covad has it, is unreasonable. Verizon PA would not object to the inclusion of language requiring the parties to use commercially reasonable efforts to resolve billing disputes in a timely manner, but late payment charges, which compensate Verizon PA for Covad's use of disputed amounts that should have been paid when due, should accrue during the pendency of any dispute.

As reflected in Attachment A to this filing, Covad also proposes language that would prohibit a party from assessing late payment charges on previously assessed late charges that the other party failed to pay. Verizon PA contends that it is commercially reasonable for late payment charges to apply to any failure to pay amounts due under the agreement.

Contract Reference. General Terms and Conditions, § 9.4

DEFAULT

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

Covad Position. 60 days. Although making payments under the Agreement could be done sooner, inadvertent operational violations of the Agreement may not be so easily remedied. In a complex relationship involving tens of thousands of lines providing business and residential customers with technologically advanced services over the wide variety of networks that comprise Verizon's plant, a period of time shorter than 60 days to cure a breach is likely to prove insufficient even in those instances where the breach is undisputed and the breaching Party is working diligently to correct the breach.

Verizon Position. Thirty days following written notice is a commercially reasonable period in which Covad could make any required payments or cure any material breach of the agreement. In the event that Covad could not, through diligent efforts, cure a material breach during that time, 30 days following written notice provides Covad with more than sufficient time in which to petition this Commission to prevent Verizon PA from either suspending or terminating the provisioning of services under the agreement.

Contract Reference. General Terms and Conditions, § 12

DISPUTE RESOLUTION ISSUES

7. **For service-affecting disputes, should the Parties 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 Position. Yes and yes. Unlike situations subject to the standard dispute resolution provisions of the agreement in which the dispute involves only the relationship between Verizon and Covad, a service-affecting dispute harms either Covad's or Verizon's end users. The services that both Parties provide to their customers must be

protected to the greatest extent possible, and a dispute that affects those services should be resolved faster than other disputes. Accordingly, either party should be able to submit such a dispute to binding arbitration under the expedited procedures described in the Commercial Arbitration Rules of the American Arbitration Association (rules 53 through 57) in any circumstance where negotiations have failed to resolve the dispute within five (5) business days.

Verizon Position. As Covad recognizes, under the 1996 Act, all open issues must be resolved in accordance with the requirements of federal law. Although federal law protects parties' right to *choose* to resolve their disputes through binding arbitration, no provision of federal law authorizes this Commission to *require* Verizon PA to give up its right to seek resolution of any dispute before an appropriate forum.

Contract Reference. General Terms and Conditions, § 14.3 (proposed)

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

Covad 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 Position. Yes. Verizon PA cannot be required to condition any sale of its operations on the purchaser agreeing to an assignment of this agreement. Nor can the purchaser be forced to accept Verizon PA's obligations under this agreement. Not only does federal law provide no basis for such obligations, but any such requirement would likely reduce the price that Verizon PA could receive for a sale and could impose on any would-be purchaser obligations under the agreement greater than those that apply to it under federal law. *See, e.g.,* 47 U.S.C. § 251(f) (exempting rural carriers from certain requirements under the 1996 Act). Covad's proposed language, which states only that Verizon PA "may assign" its rights to the purchaser, adds little, if anything, to Verizon PA's rights in the absence of such language. Under the agreed-upon provision regarding contract assignment, each party can assign the agreement with prior written consent of the other party, "which consent shall not be unreasonably withheld, conditioned or delayed." Agreement, § 5. At the same time, nothing in the agreed-upon language *requires* Verizon PA and a purchaser to agree to an assignment — nor should it. In any event, if Verizon PA were to sell an exchange or territory in Pennsylvania, Covad can protect its rights and interests without the inclusion of the language that it seeks to add, by participating in the Commission's proceeding regarding the sale.

Contract Reference. General Terms and Conditions, § 43.2

WAIVER

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

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

Verizon Position. No. See Verizon PA's position with respect to Issue 2.

Contract Reference. General Terms and Conditions, §§ 9.1.1 (proposed), 48

10. **Should the Agreement preclude Covad from asserting future causes of action against Verizon for violation of Section 251 of the Act?**

Covad 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 deal with *Trinko v. Bell Atlantic Corp.*, 294 F.3d 307 (2d Cir. 2002), in which the court held that because Section 252 of the Act allows the parties to negotiate interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1), the act of entering an interconnection agreement can extinguish a CLEC's right to damages for violations of Section 251. The court held that such CLECs have the right to sue for only common law damages for breach of contract. Covad and Verizon, however, did not negotiate the instant Agreement "without regard to the standards set forth in subsections (b) and (c) of section 251." Indeed, the Parties negotiated this Agreement with regard to Section 251, as many of the provisions thereof are based either explicitly or implicitly upon that section of the Act. Accordingly, Covad wishes explicitly to preserve causes of action that arise from Sections 206 and 207 of the Act. And there is good reason for doing so. As the Commission can well imagine, the Parties are incapable of enumerating in the Agreement all potential causes of action that exist now or may exist in the future.

Verizon Position. Contrary to Covad's implication, there are no terms in the agreement that preclude Covad from asserting future causes of action against Verizon PA for violation of § 251 of the Act. Covad, however, seeks to insert language that would impede Verizon PA's ability to defend against such a cause of action should Covad ever assert one. The agreement should be silent on the question. Whether the execution of an interconnection agreement affects any other remedies is a question that is not presented here and that the Commission should not attempt to pre-judge in this proceeding. In particular, the question whether Covad could bring an action against Verizon PA based on an alleged violation of subsections (b) and (c) of § 251 is not presented in this

proceeding, and the Commission should not include any language in the parties' agreement purporting to address that issue. Instead, that question should be addressed by a court of competent jurisdiction if and when the question arises. In any event, uniform federal court authority holds that no action may be brought pursuant to §§ 206 and 207 for such alleged violations of § 251, and Verizon PA believes that uniform federal court authority is correct.

Contract Reference. General Terms and Conditions, § 48; Glossary, § 2.11; Collocation Attachment, § 1

GLOSSARY

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

Covad Position. No. The definition of UDLC should not prejudice the issue of whether loops provisioned over IDLC may be unbundled.

Verizon Position. Yes. Covad is wrong in asserting that there is an “issue” as to whether loops provisioned over IDLC may be unbundled. As a technical matter, a loop provisioned over IDLC is integrated with the switch and, therefore, cannot be provisioned on an unbundled basis. The FCC has recognized as much, most recently in approving BellSouth’s five-state § 271 application. *See BellSouth Five-State 271 Order*² ¶¶ 57, 62.

Contract Reference. Glossary, § 2.111

OPERATIONAL SUPPORT SERVICES

12. **Should Verizon 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 Position. Yes. Although Covad does not have to be granted access to the same systems that Verizon uses for pre-ordering and ordering OSS functions for its own customers, Verizon must ensure that Covad has access to the same information that Verizon accesses with those systems. Verizon also must make certain that this access is available in the *same* manner as Verizon makes the information available to third parties and in a functionally equivalent manner to the way it makes the information available to itself and its affiliates. The FCC has consistently found that such nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. *See, e.g., Bell Atlantic New York Order*, at 3990, ¶ 83; *BellSouth South Carolina Order*, 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653; *see also*

² *Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, Memorandum Opinion and Order, WC Docket No. 02-150, FCC 02-260 (rel. Sept. 18, 2002) (“*BellSouth Five-State 271 Order*”).

Telecommunications Act of 1996, § 271(c)(2)(B)(ii). Without such access, the FCC has determined that a competing carrier “will be severely disadvantaged, if not precluded altogether, from fairly competing.” *Bell Atlantic New York Order* at 3990, ¶ 83. In order to meet the standards set by the FCC, Verizon must provide nondiscriminatory access to the systems, information, documentation, and personnel that support its OSS. *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, ¶ 84. For OSS functions that are analogous to those that Verizon provides to itself, its customers or its affiliates, the nondiscrimination standard requires that it offer requesting carriers access that is ***equivalent in terms of quality, accuracy, and timeliness***. *Id.* at 3991, ¶ 85 (emphasis added).

Verizon Position. The dispute here is not over whether Verizon PA must provide Covad with nondiscriminatory access to loop qualification information. Instead, the issue is whether Covad’s proposed additional language is necessary. The agreement already provides that “[t]he pre-ordering function includes providing Covad nondiscriminatory access to the same detailed information about the loop that is available to Verizon and its affiliates.” Additional Services Attachment, § 8.1.1. The agreement also provides that Verizon PA “shall provide to Covad, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), Verizon OSS Services.” *Id.* § 8.2.1; *see also* UNE Attachment, § 3.13.3 (“Verizon shall provide access to loop qualification information in accordance with, but only to the extent required by, Applicable Law”). Accordingly, the agreed-upon provisions of the agreement already require Verizon PA to provide Covad with loop qualification information as required by federal law. Covad has shown no need for its additional language.

Contract Reference. Additional Services Attachment, §§ 8.1.4, 8.2.3 (proposed)

13. **In what interval should Verizon be required to return Firm Order Commitments to Covad for pre-qualified Local Service Requests submitted mechanically and for Local Service Requests submitted manually?**

Covad Position. Verizon should be required to return Firm Order Commitments to Covad for pre-qualified Local Service Requests submitted mechanically within two (2) hours and for Local Service Requests submitted manually within twenty-four (24) hours. These benchmarks are not unreasonable given that they represent the performance that Verizon is already providing to CLECs for these functions.

Verizon Position. Intervals for returning Local Service Confirmations (“LSCs”) — formerly referred to as Firm Order Confirmations (“FOCs”) — should not be established on an interconnection-agreement-by-interconnection-agreement basis. Instead, such intervals are currently established on an industry-wide basis, as part of the performance measurements that this Commission has adopted. There is no reason for Covad to have different intervals from those established in Verizon PA’s performance measurements. First, the processing of CLECs’ Local Service Requests (“LSRs”) would soon become unmanageable if a different timeliness standard applied to each CLEC’s LSRs. Second, including these intervals in interconnection agreements would mean that amendments to those agreements would be required to modify the intervals, when necessary.

Contract Reference. Additional Services Attachment, § 8.2.4 (proposed)

14. **Should auditing rights regarding access to, and use and disclosure of, OSS information be reciprocal or should Verizon only have the right to conduct such audits? How frequently should such audits be conducted?**

Covad Position. Auditing rights should be reciprocal and should occur no more frequently than once per year. The Parties are engaged in a complex relationship that is governed by the Agreement and by Applicable Law. Verizon seeks the right to audit Covad for compliance with the relevant bodies of law as they relate to access to, and use and disclosure of, OSS information, and Covad merely seeks the same rights.

Verizon Position. The provisions of the agreement at issue here enable Verizon PA to ensure that Covad is not using information that it obtains through its access to Verizon PA's OSS in ways that are contrary to the requirements of applicable law. Verizon PA does not understand how those rights could be made reciprocal. Verizon PA currently has no general right of access to Covad's OSS information (see Issue 18), but, if it did, Verizon PA would not object to a provision allowing Covad to audit Verizon PA's access to and use of that information. There is no reason, however, for Covad to audit *Verizon PA* "with regard to *Covad's* access to, and use and disclosure of, Verizon OSS information," which is what Covad is ostensibly seeking. Additional Services Attachment, § 8.5.4.1 (Covad's proposal) (emphasis added). Verizon PA does not object to limiting audit rights to once per year, as long as Verizon PA has the right to audit more frequently (but no more frequently than once in each calendar quarter) if the immediately preceding audit revealed violations of applicable law and/or this agreement.

Contract Reference. Additional Services Attachment, §§ 8.5.4.1, 8.5.4.3

15. **If auditing rights are made reciprocal as part of this arbitration, should confidential information obtained in such an audit also be treated in a reciprocal fashion?**

Covad Position. If reciprocal auditing rights are ordered pursuant to Issue 14, the Parties should treat any confidential information obtained in such an audit in accordance with § 8.5.4.3 of the Agreement.

Verizon Position. See Verizon PA's response to Issue 14. Verizon PA does not understand what confidential information Covad could obtain — that it does not already possess — if it conducted an audit "with regard to Covad's access to, and use and disclosure of, Verizon OSS information." Additional Services Attachment, § 8.5.4.1 (Covad's proposal).

Contract Reference. Additional Services Attachment, §§ 8.5.4.1, 8.5.4.3

LIABILITIES AND REMEDIES

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

Covad Position. If Covad breaches §§ 8.4 or 8.5 of the Agreement and does not cure the breach after being given notice of the breach and a reasonable opportunity to cure it, Verizon should have the right to seek permission from the appropriate regulatory body to suspend Covad's license to use Verizon OSS information. Regulatory oversight of Verizon's ability to suspend Covad's OSS license is absolutely critical given that (1) the "breach" described in the relevant part of the Agreement (§ 8.6) is a breach in Verizon's *opinion* that may or may not be supported by competent evidence and (2) the right to suspend the license is equivalent to the right suspend Covad's ability to serve new customers. Thus, a lack of regulatory oversight of Verizon's powers in this area could amount to a unilateral grant to Verizon of the right to cut off Covad's ability to compete.

Verizon Position. Verizon PA's proposed language requires Verizon PA to notify Covad in writing of a material breach related to the use of Verizon PA's OSS and prevents Verizon PA from taking further action until at least 10 days after Covad receives the written notice. However, if Covad does not cure the material breach, then Verizon PA should be permitted to suspend Covad's license. Verizon PA seeks this right because misuse of Verizon PA's OSS could damage these systems or impair their functionality, adversely affecting all of the carriers that rely on them. The 10-day period provides Covad with ample time in which to raise a dispute before this Commission as to Verizon PA's written notice of breach and/or to the suspension of Covad's license in the event it does not cure the breach.

Contract Reference. Additional Services Attachment, §§ 8.4, 8.5, 8.6

ACCESS TO INFORMATION RELATED TO COVAD'S CUSTOMERS

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

The parties have resolved this issue.

Contract Reference. Additional Services Attachment, § 8.9.1

18. **Should Covad be obligated to provide Verizon access to Covad's OSS systems for the purpose of accessing information about Covad's customers that Verizon already possesses?**

Covad Position. Although Covad agrees to negotiate in good faith with Verizon regarding access to Covad's OSS systems (for the purpose of obtaining relevant information about Covad's customers), Covad should not be required to provide Verizon access to Covad's OSS systems for any purpose other than to obtain information that Verizon does not already have in its possession.

Verizon Position. Verizon PA and Covad are in agreement that Covad need only negotiate in good faith with Verizon PA regarding access to Covad's OSS systems. The only dispute between the parties concerns Covad's proposed addition of the clause "provided that such information is not already in Verizon PA's possession" to § 8.9.2 of the Additional Services Attachment. As stated, that language would limit the scope of the negotiations. There is no reason to limit the scope of those negotiations before they begin, especially when Covad's use of Verizon PA's OSS is not limited to accessing information not already in the possession of Covad.

Contract Reference. Additional Services Attachment, § 8.9.2

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

Covad Position. Yes. Verizon should provide Covad UNEs and UNE combinations in instances when Verizon would provide such UNE or UNE combinations to itself. Pursuant to Section 251(c)(3) of the Act, and applicable FCC rules, Verizon is obligated to provide Covad access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory terms. As the FCC itself has found, Section 251(c)(3)'s requirement that incumbents provide 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 affirmed the fact that Section 251(c)(3) obligates incumbents to provide requesting carriers combinations that it provides to itself. *Verizon Communications v. F.C.C.*, 535 U.S. ___, ___ (2002) ("otherwise, an entrant would not enjoy true 'nondiscriminatory access'" pursuant to Section 251(c)(3)). As the FCC has found, the same reasoning requires that incumbents provide requesting carriers UNEs in situations where the incumbent would provide the UNE to a requesting retail customer as part of a retail service offering. Verizon's proposed language would unduly restrict Covad's access to network elements and combinations that Verizon ordinarily provides to itself when offering retail services. Verizon should provide Covad UNEs and UNE combinations in accordance with Applicable Law. Verizon cannot limit Covad to those UNEs combinations that are already set forth in Verizon tariffs.

Verizon Position. The dispute here is not over whether Verizon PA must provide Covad with nondiscriminatory access to UNEs and UNE combinations to the extent required by federal law. Instead, this issue pertains to Covad's attempt to expand Verizon PA's unbundling obligations under federal law, by requiring Verizon PA to build facilities in order to provision Covad's UNE orders. Under the Act, Verizon PA has no such obligation. See, e.g., *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Virginia Arbitration Order*³ ¶ 468. The FCC has already reviewed Verizon PA's

³ *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*, Memorandum Opinion and Order, CC Docket Nos. 00-218 & 00-249, DA 02-1731, 2002 WL

practices with respect to providing unbundled elements and has found that those policies satisfy the requirements of the 1996 Act. See *Pennsylvania 271 Order*⁴ ¶ 92. Finally, contrary to Covad's claim, Verizon PA does not seek to limit Covad to those UNEs and UNE combinations that are set forth in Verizon PA's tariffs.

Contract Reference. UNE Attachment, §§ 1.2, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.13.4, 16⁵

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

Covad Position. Yes. Consistent with the Act's good-faith negotiation obligations, Covad believes that the parties should be given the opportunity to negotiate and mutually agree upon terms, conditions, and pricing of UNE or UNE combinations resulting from a change in law. 47 U.S.C. §§ 251(c)(1), 252. While this might result in the parties eventually adopting the terms, conditions, and pricing in a Verizon tariff, Covad believes the parties should first be given the opportunity to negotiate.

Verizon Position. In those situations where Verizon PA is required to offer a new UNE or UNE combination and a valid tariff governs the terms and conditions for the provision of such UNE or UNE combination, those tariff conditions — which contain the legal rate for the service and are applied to all requesting carriers on nondiscriminatory terms — should govern. Both federal law and Pennsylvania law provide carriers like Covad ample procedural protection to ensure that any such filed tariffs are consistent with law.

Contract Reference. UNE Attachment, § 1.4.1.

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

Covad Position. Yes. Verizon is obligated to make access to UNEs available at any technically feasible point as required by 47 C.F.R. § 51.311 and 47 U.S.C. § 251(c)(3).

Verizon Position. Section 1.1 of the UNE Attachment already requires Verizon PA to provide UNEs as required by federal law. Accordingly, there is no need to make Covad's proposed changes to § 1.7 of that attachment, especially when, for practical reasons, CLECs must collocate to obtain most UNEs.

Contract Reference. UNE Attachment, § 1.7

1576912 (Chief, Wireline Competition Bureau rel. July 17, 2002) ("*Virginia Arbitration Order*").

⁴ *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) ("*Pennsylvania 271 Order*").

⁵ Attachment A to Covad's Petition does not contain a proposed § 16 to the UNE Attachment.

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

Covad Position. Yes. Like any vendor, Verizon should be obligated to provide its customer (Covad) a commercially reasonable three-hour 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.

Verizon Position. No. Verizon PA does not provide a 3-hour appointment window for its retail customers when it must dispatch a technician to the end user's premises to install loops comparable to those that Covad orders. Accordingly, Covad is requesting superior service, rather than the nondiscriminatory service to which it is entitled under the 1996 Act. In any event, because it is Covad's responsibility to ensure that its end user customer is available during any scheduled appointment window, if Verizon PA fails to meet an appointment window because Verizon PA's technician cannot obtain access to Covad's customer's premises, it should not be deemed a missed appointment and Verizon PA should face no penalty. Indeed, under the performance measurements that this Commission has adopted for Verizon PA, Verizon PA is permitted to exclude such "no access" situations from its missed appointments performance measurements.

Contract Reference. UNE Attachment, § 1.9 (proposed)

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

Covad Position. The agreement should refer to industry ANSI standards and not to Verizon's internal (and unilaterally changeable) technical references.

Verizon Position. Verizon PA agrees that these sections of the agreement should make reference to industry standards. However, because Covad is entitled to obtain unbundled access only to Verizon PA's existing network, the agreement should also reference the Verizon PA technical documents that define loop characteristics specific to Verizon PA's network. Verizon PA revises its technical documents from time to time to remain current with industry standards. The standards set forth in Verizon PA's technical documents apply to loops provided both to CLECs and to Verizon PA's retail customers.

Contract Reference. UNE Attachment, §§ 3.1, 3.2, 3.3, 3.4

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

Covad Position. 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 so for its own customers.

Verizon Position. Covad has combined two different issues here. First, Covad's proposed language would require Verizon PA to build facilities in order to provision Covad's UNE orders. As explained above in Verizon PA's response to Issue 19, Verizon PA has no such obligation under the 1996 Act. Second, Covad would apparently require Verizon PA to provide loop extension equipment for free, as Covad has struck the sentence in §§ 3.1 and 3.5 stating that a "separate charge will apply for loop extension equipment." Covad has no entitlement to obtain this service at no cost.

Contract Reference. UNE Attachment, §§ 3.1, 3.2, 3.3, 3.4, 3.6, 3.7

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?**

Covad Position. Yes. Verizon should provision Covad DS-1 loops with associated electronics for such loops to work, at no additional charge, in instances when such electronics are not already in place, if it does so for its own end users.

Verizon Position. As above, Covad's proposed language would require Verizon PA to build facilities in order to provision Covad's UNE orders, which Verizon PA is not obligated to do under federal law.

Contract Reference. UNE Attachment, § 3.5

26. **Should Covad be able to offer full-strength symmetric DSL services?**

Covad Position. Yes. Covad should be able to offer full-strength symmetric DSL services, which means providing services to end users with up to 1.544 Mbps of bandwidth. To do that, the definition of SDSL in the Agreement must permit Covad to offer services that meet Spectrum Management Classes ("SMC") 7 and 8.

Verizon Position. Verizon PA does not prevent Covad from offering full-strength symmetric DSL services. The agreed-upon language defines a 2-Wire SDSL Loop as one that, among other things, "meets Class 2 length limit in T1E1.4/2000-002R3," which enables the provision of full-strength symmetric DSL services. The language further states that, "alternately," a CLEC's "connecting equipment should conform to the limits for SMC2." Thus, the agreement does not prevent Covad from using equipment that conforms to the limits of SMC 7 and 8. Indeed, the language further provides that the "data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop."

Contract Reference. UNE Attachment, § 3.7

27. **Should the Agreement make clear that Covad has the right, under Applicable Law, to deploy services that either (1) fall under any of the loop type categories enumerated in the Agreement (albeit not the one ordered) or (2) do not fall under any of loop type categories?**

Covad Position. Yes. Covad's language is consistent with Applicable Law, namely 47 C.F.R. § 51.230. Covad anticipates that spectrum management law is likely to change during the term of the Agreement due to proposed industry proposals presently before the FCC, and agreed to by both Covad and Verizon. Covad believes the Agreement should generically reference Applicable Law in order to capture automatically the current and future state of the law.

Verizon Position. With respect to the first issue raised here, Covad's proposed changes to the agreement would substantially impair Verizon PA's ability to ensure that the various services provided over loops in a binder group, or in adjacent binder groups, do not interfere with each other. Verizon PA is legally required to know which services are provided over which loops in order to be better able to address any potential interference problems that arise. With respect to the second issue raised here, Verizon PA's proposed language in § 3.11 of the UNE Attachment provides that, for any "loop type or technology that has not yet been developed," Covad should submit a bona fide request if it wants to deploy such a brand new loop type or technology. This is entirely consistent with 47 C.F.R. § 51.230, which does not presume that as-yet undeveloped loop types and technologies are acceptable for deployment. Finally, the agreement already contains a change-of-law clause that would apply in the event that § 51.320 changes. *See* Agreement, § 4.

Contract Reference. UNE Attachment, §§ 3.10, 3.10 (proposed), 3.11

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

The parties have resolved this issue.

Contract Reference. UNE Attachment, § 3.10

29. **Should Verizon maintain or repair loops it provides to Covad in accordance with minimum standards that are at least as stringent as either its own retail standards or those of the telecommunications industry in general?**

Covad Position. Yes. Consistent with the nondiscrimination provisions of the Act, Verizon should be obligated to maintain or repair loops using standards that are at least as stringent as the standards it uses in maintaining or repairing the same or comparable loops for itself or, in the alternative, applicable industry standards for maintaining or repairing such loops.

Verizon Position. The agreement already provides that Verizon PA will maintain and repair loops in a nondiscriminatory fashion. *See* UNE Attachment, § 14. Furthermore, the 1996 Act does not require Verizon PA to perform maintenance and repair functions in

accordance with industry standards if those differ from the standards that Verizon PA applies in maintaining and repairing its retail customers' loops. Instead, the Act requires Verizon PA to perform those functions in a nondiscriminatory fashion. Accordingly, there is no need for the first half of Covad's proposed addition, and the second half is contrary to federal law. The Pennsylvania Commission already has established maintenance performance measurements.

Contract Reference. UNE Attachment, § 3.10 (proposed)

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

Covad Position. Yes. Cooperative testing assists in the timely and efficient provisioning of functioning loops. Verizon should conduct cooperative testing at no additional charge until it can demonstrate that it can consistently deliver working loops to Covad. Covad's proposed language provides specific terms and conditions concerning how the parties currently conduct cooperative testing and should continue to do so under the Agreement, including, but not limited to, the following:

- (i) When Verizon should conduct cooperative testing (*i.e.*, where Verizon determines a dispatch is required to provision a loop).
- (ii) What such testing should entail.
- (iii) How the parties should coordinate such testing. (Verizon will call Covad with the technician on the line to perform the test and Covad will within 15 minutes begin testing with the technician, while testing will take no longer than 15 minutes.)
- (iv) What happens if the Verizon technician performing testing is unable to contact a Covad employee. (The Verizon technician will test the loop to ensure it meets the requirements of the Agreement, provide the reason he/she was unable to contact Covad, and later engage in a joint "one way" test with Covad whereby a Verizon employee will call Covad and stay on the line while Covad tests the loop remotely using its equipment to which the loop is connected.)
- (v) Escalation procedures.
- (vi) Procedures if the acceptance test fails loop continuity testing.
- (vii) That Verizon should not bill Covad for loop repairs when the repair results from a Verizon problem.

Verizon Position. Verizon PA agrees that testing can identify service-affecting issues with loops before they are provisioned. Verizon PA's proposed language states that Covad may request (and Verizon PA will perform) cooperative testing and contains a general description of the procedures to be followed. However, as with other issues raised in this proceeding, detailed procedures for cooperative acceptance testing should not be established on an interconnection-agreement-by-interconnection-agreement basis. Instead, any procedures for testing should be worked out collaboratively with all CLECs, so that a uniform process may be employed.

Finally, Covad's obligation to pay for cooperative testing should not be contingent on Covad's proposed vague and undefined requirement that Verizon PA first "demonstrate"

that it consistently delivers working loops to Covad. In any event, Verizon PA's performance reports in Pennsylvania, pursuant to the performance measurements adopted by this Commission, consistently show high installation quality rates and low rates of trouble reports, thus meeting any such burden of proof.

Contract Reference. UNE Attachment, § 3.13.13

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

Covad Position. Yes. Verizon should be obligated to tell Covad where it has provisioned a loop. For large office buildings, Verizon will usually provision a loop in the termination room, in which all the loops serving that building are terminated. CLECs should not be forced to blindly search large office buildings for the terminal room. In situations where Verizon sends a technician to provision a loop, Verizon must "tag" the provisioned loop to allow Covad to find the newly provisioned loop, as opposed to having to search through a virtual bird's nest of wires. In cases in which Verizon provisions a loop without sending a technician, Verizon must provide Covad sufficient information to allow Covad to locate the circuit being provisioned.

Verizon Position. As with other issues raised in this proceeding, the procedures for enabling a CLEC to locate the loops that Verizon PA provisions should not be established on an interconnection-agreement-by-interconnection-agreement basis. Instead, any such procedures should be worked out collaboratively with all CLECs, so that a uniform process may be employed. In any event, Verizon PA already tags loops that it provisions if it dispatches a technician and offers Covad the opportunity to request that Verizon PA tag a loop on a no-dispatch order (in which case, Verizon PA will dispatch a technician to tag the loop and Covad will be charged for the dispatch). In the event that Covad does not request Verizon PA to tag a loop on a no-dispatch order, the FCC has recently reaffirmed that Verizon PA is required only to provide a CLEC "with the same general information regarding the location of demarcation points that is available to [the ILEC's] own employees and in the same timeframe." *BellSouth Five-State 271 Order* ¶ 143. Verizon PA already provides Covad with this information and therefore satisfies its obligations under federal law.

Contract Reference. UNE Attachment, § 3.13.13

32. What terms, conditions and intervals should apply to Verizon's manual loop qualification process?

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

Verizon Position. The performance measurements adopted by the PUC for Verizon PA provide for a two-business-day standard for responding to a manual loop qualification request submitted as a pre-order query. Covad's proposal to receive loop qualification information beyond that standard is contrary to law — the FCC has recently reaffirmed that an ILEC's obligation with respect to loop qualification information is to provide CLECs with nondiscriminatory access to the information that the ILEC has compiled. The FCC "has never required incumbent LECs to ensure the accuracy of their loop qualification databases." *BellSouth Five-State Order* ¶ 142. Accordingly, there is no basis to Covad's asserted right to be able to obtain loop qualification information at no cost in cases where the information that Verizon PA returns through the mechanized transaction is "defective."

Contract Reference. UNE Attachment, § 3.13.5

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

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

Verizon Position. It is essential that orders for advanced services be provisioned on loops that possess the appropriate technical capabilities. Accordingly, xDSL orders must be prequalified, whether through use of electronic prequalification information or manual investigation. If Covad seeks to dispute Verizon PA's determination that a particular loop or set of loops does not meet the necessary technical specifications to handle the advanced services that Covad seeks to provide, then Covad may challenge those findings. But Covad should not be permitted to eliminate entirely the prequalification requirement for a particular class of loops.

Contract Reference. UNE Attachment, § 3.13.7

34. In what interval should Verizon provision loops?

Covad 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 three business days for line shared loops not needing conditioning. These intervals are reasonable and ensure that Covad receives reasonable and nondiscriminatory access to UNE loops.

Verizon Position. There is no dispute among the parties with respect to the requirement that Verizon PA provision loops within the shorter of the interval that Verizon PA

provides to itself or the Commission-adopted interval. The dispute between the parties centers around whether the Commission should adopt intervals for loops that are unique to Covad's orders. There is no basis in federal law for Covad to obtain an interval that is shorter than the interval that Verizon PA provides to itself (for products with retail analogs) or the interval that this Commission establishes for all CLECs (for products with no retail analog). Instead, Covad should obtain the same nondiscriminatory intervals available to all other CLECs.

Covad's proposed change to § 3.13.10 also eliminates language that is not discussed in Covad's summary of the issues. Specifically, Covad has proposed the deletion of language stating that the applicable interval for provisioning a loop does not include any time necessary for engineering and conditioning. Although Verizon PA will perform such engineering and conditioning work to enable a loop to handle the service that Covad has ordered, that work is not part of the normal provisioning process and Verizon PA should have additional time in which to complete that work.

Contract Reference. UNE Attachment, §§ 3.13.10, 3.14, 4.2

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

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

Verizon Position. Verizon PA will conduct an LST if the loop currently serving an end user cannot handle the service that Covad has ordered and there is a spare loop that meets the necessary technical specifications for that service. The LST enables Verizon PA to complete Covad's order by rearranging the loops. Verizon PA began performing LSTs as a matter of course when provisioning CLECs' orders because CLECs, including Covad, requested that Verizon PA take the steps necessary to provision their orders successfully. Verizon PA is developing a uniform process by which CLECs would indicate, on an order-by-order basis, whether they wish to have an LST performed. However, Covad and other CLECs should be required to pay for any LSTs performed, as such activity constitutes additional work that Verizon PA is not required to perform in order to provide unbundled access to its network. Whether Verizon PA may impose this charge is currently before the Commission in the UNE pricing proceedings (Docket No. R-00016683). Finally, because performing an LST can add additional time to the provisioning process, Verizon PA should have additional time to perform an LST when it is required to provision a CLEC's order.

Contract Reference. UNE Attachment, §§ 3.13.4, 3.13.12

36. **Should Verizon provide Covad Access to PARTS loop network architecture as an end-to-end UNE and provide Covad access to such UNE at the Central Office via port on the Verizon Optical Concentration Device?**

Covad Position. Yes. Verizon's PARTS architecture is nothing more than a loop, as it provides a transmission path from the Central Office to the customer premise. 47 C.F.R. § 51.319(a)(1). Like any other loop, Covad should be provided access to it via collocation space at the Central Office. In the alternative, were PARTS to be considered "packet switching," the FCC's packet switching criteria are met. 47 C.F.R. § [51.]319(c)(4). Finally, PARTS should be unbundled as a UNE because Covad would be impaired without access to PARTS loops. 47 U.S.C. § 251(d)(2)(B); *see also* 47 C.F.R. § [51.]317. Verizon should also allow Covad to use all commercially available features, functions, and capabilities of such facilities and allow Covad to connect any of its technically compatible equipment to such facilities. Verizon should also provide Covad access to the piece-parts of PARTS as separate UNEs.

Verizon Position. No. Covad seeks to impose obligations that, as Covad's own proposed language expressly states, are "[w]ithout regard to Applicable Law." UNE Attachment, § 3.18 (Covad proposal). Yet this Commission must resolve open issues in this arbitration *with regard* to governing law. Under governing law, Verizon PA is not required to provide the unbundled access that Covad seeks.

PARTS — Verizon PA's Packet At the Remote Terminal Service offering — is an end-to-end packet switching service that will facilitate DSL access service at the remote terminals by using next generation digital loop carrier equipment. In the *UNE Remand Order*,⁶ the FCC expressly refused to require the unbundling of packet switching, except in extremely limited circumstances. *See UNE Remand Order* ¶¶ 306-313. Under the FCC rules, packet switching must be unbundled only if each of four criteria is satisfied — and they are not. *See* 47 C.F.R. § 51.319(c)(5). Finally, Covad incorrectly claims that PARTS is simply a loop. In fact, PARTS is a loop plus complex advanced services equipment, operations support systems, and an OCD (similar to an ATM switch). The FCC's regulations expressly state that Verizon's obligation to unbundled loops does not include "those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers." *Id.* § 51.319(a)(1). Because PARTS utilizes DSLAM capabilities at the remote terminal, it does not fall within the Commission's definition of the loop unbundled element. If CLECs wish to utilize PARTS, they may do so through Verizon's access tariff filed with the FCC.

Contract Reference. UNE Attachment, § 3.18 (proposed)

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted*, *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

37. **Should Verizon be obligated to provide “Line Partitioning” (i.e., line sharing where the customer receives voice services from a reseller of Verizon’s services)?**

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

Verizon Position. No. Federal law on this point is clear. Verizon PA has no obligation to provide line sharing — or “line partitioning,” to use Covad’s terminology — where another carrier provides voice service on a loop. *See Line Sharing Order*⁷ ¶ 72; *Texas 271 Order*⁸ ¶ 330. CLECs may resell Verizon PA’s retail DSL service over resold lines, so end users that purchase their voice service from a reseller are able to obtain DSL services on a competitive basis.

Contract Reference. UNE Attachment, § 4.1 (proposed)

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

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

Verizon Position. Verizon PA would not disagree with a 45-day interval for augmentation of physical and cageless collocation to the extent it is accompanied by the related detailed terms and conditions contained in the New York tariff. But Verizon PA believes that this interval should be set by tariff rather than in the interconnection agreements, in order to avoid interconnection-agreement-by-interconnection-agreement obligations. Such a tariff would ensure “reasonable and nondiscriminatory access to UNEs.”

Contract Reference. UNE Attachment, § 4.3

39. **What options should Covad have for testing line shared loops?**

Covad Position. Consistent with 47 C.F.R. § 51.319(h)(7)(i), Covad should be able to place test heads on line shared loops that are either in Covad’s primary collocation space or in common space leased from Verizon. Covad also should have access to the results

⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (“*Line Sharing Order*”), *vacated and remanded*, *United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

⁸ *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000).

of any testing that Verizon performs on such loops, either through a Verizon test head or through a mechanized loop testing function made available through Verizon's RETAS interface.

Verizon Position. As Covad acknowledges, Verizon PA already provides Covad with the very testing functions that Covad requests. Such testing options are consistent with applicable law, which requires ILECs to provide "test access points . . . at the splitter . . . or through a standardized interface, such as . . . a test access server." 47 C.F.R. § 51.319(h)(7)(i) (emphasis added). Covad's proposed language, however, goes beyond those requirements, as it would enable Covad (rather than Verizon PA) to choose whether a test head or a testing interface will be provided.

Contract Reference. UNE Attachment, §§ 4.4 (proposed), 4.5 (proposed), 4.6 (proposed), 4.7 (proposed)

40. Should Verizon provide line sharing and line splitting to Covad pursuant to Commission-approved tariffs?

The parties have resolved this issue.

Contract Reference. UNE Attachment, §§ 4, 5

DARK FIBER ISSUES

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

The parties have resolved this issue.

Contract Reference. UNE Attachment, § 8.1

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

Verizon's termination requirement would allow it unilaterally to protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility.

Verizon Position. Covad is simply wrong in claiming that the FCC’s definition of dark fiber includes both terminated and unterminated dark fiber. The *UNE Remand Order* defines dark fiber as “unused loop capacity that *is physically connected to facilities* that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by competitive LECs *without installation by the incumbent.*” *UNE Remand Order* ¶ 174 n.323 (emphases added). Moreover, as described above, the law is clear that Verizon PA is not required to construct new UNEs for a CLEC. *See, e.g., Virginia Arbitration Order* ¶ 468 (“Verizon is also correct that the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for . . . other carriers.”).

As noted above, the FCC’s definition of the “dark fiber” unbundled network element fully reflects this “no-build” rule. Fiber that has not been installed between two terminals (for example, between two end offices or between an end office and a customer premises) does not meet the FCC’s definition because it is *not* physically connected to facilities used to provide service and *cannot* be used *by anyone* without installation by Verizon PA. The FCC expressly held that dark fiber must “connect[] two points within the incumbent LEC’s network” to be fully installed and available as a UNE. *UNE Remand Order* ¶ 325. Fiber that does not extend from one terminal to another does not *connect* any point in the network to any other point in the network (and thus is physically incapable of carrying traffic). Such fiber, therefore, does not fall within the FCC’s definition: it is not “an uninterrupted pathway between locations in Verizon’s network,” as Covad claims. In fact, the FCC stated that “dark fiber” is a “network element” within the meaning of § 153(29) of the Act *only* if it is both “physically connected to the incumbent’s network and is *easily called into service.*” *Id.* ¶ 328 (emphasis added). If additional construction is required to complete an end-to-end route and make fiber ready for use, that fiber is not yet a network element under the FCC’s definition.

Covad claims that terminating fiber at an accessible terminal is “an inherently simple and speedy task” and that Verizon PA supposedly would “protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility.” Covad’s claim, however, does not reflect the manner in which Verizon PA actually constructs fiber facilities in its network. Verizon PA does not construct new fiber optic facilities to the point where the *only* remaining work item required to make them available and attached end-to-end to Verizon PA’s network is to terminate the fibers onto fiber distributing frame connections at the customer premises.

Contract Reference. UNE Attachment, § 8.2.2

43. **Should Covad be permitted to access dark fiber in any technically feasible configuration consistent with Applicable Law?**

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

Verizon Position. Covad's description of this issue is inconsistent with its proposed contract language in § 8.1.5 of the UNE Attachment. "Dark fiber" is not a separate, stand-alone UNE under the FCC's rules. To the contrary, dark fiber 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 PA's proposed contract language allows Covad to obtain access to dark fiber loops, subloops, and IOF, as those network elements are specifically defined by the FCC. That is all that applicable law requires. Covad's proposed § 8.1.5, which 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.

In addition, Covad's proposed modification to the definition of dark fiber loops in § 8.1.1 of the UNE Attachment is inaccurate and confusing. Section 51.319(a)(1) of the FCC's rules defines the loop network element as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC." 47 C.F.R. § 51.319(a)(1). Verizon PA's proposed contract language in § 8.1.1 follows this definition, describing a dark fiber loop as unlit fiber optic strands "between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center [*i.e.*, a "central office"], and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise." Covad, however, expands this definition to include unlit fiber optic strands at a "Verizon Wire Center or other Verizon premises in which Dark Fiber Loops terminate." In other words, Covad would define a dark fiber "loop" as any dark fiber that extends between a terminal located somewhere other than the central office (*i.e.*, a "remote terminal") and the customer premises. What Covad is describing, however, is not a "loop" at all, but a "subloop," which is already covered under § 8.1.2 of the UNE Attachment. In particular, § 8.1.2(b) defines a dark fiber subloop to include dark fiber strands "between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise." Therefore, Covad's proposed modification to Verizon PA's proposed contract language is unnecessary to provide Covad with access to dark fiber at accessible terminals outside a Verizon PA central office.

Contract Reference. UNE Attachment, §§ 8.1.1, 8.1.5 (proposed)

44. **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 Position. The Agreement should clarify that Verizon's obligation to provide UNE dark fiber includes the duty to provide any and all of the fibers on any route requested by Covad regardless of whether individual segments of fiber must be spliced or cross connected to provide continuity end to end. This provision is consistent with the FCC's rules governing nondiscriminatory access to UNEs. Verizon should be required to

splice because Verizon splices fiber for itself when provisioning service for its own customers and affiliates. In addition, according to usual engineering practices for carriers, two dark fiber strands in a central office can be completed by cross-connecting two dark fiber strands with a jumper. The FCC, acting as the arbitrator for the state of Virginia, has determined that Verizon may not decline to cross connect fiber to complete a route. *Virginia Arbitration Order*, at ¶ 457. It is Covad's position, and the FCC agreed, that Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of fiber, and thus conflicts with FCC rules 51.307 and 51.311. *Virginia Arbitration Order*, at ¶ 457.

Verizon Position. Covad's description of this issue improperly conflates two separate issues: (1) whether Verizon PA is required to splice fiber together to create new continuous routes for Covad, and (2) whether Verizon PA will cross-connect two existing, fully terminated dark fiber IOF strands for a CLEC at an intermediate central office without requiring Covad to collocate at the intermediate central office.

With respect to the first issue, Covad's claim has been squarely rejected in the order that Covad cites. See *Virginia Arbitration Order* ¶¶ 451-453. If fiber optic strands must be spliced together end-to-end to create a continuous, uninterrupted transmission path, that fiber route is not yet fully constructed and does not meet the definition of dark fiber. As explained above, the law is clear that Verizon PA is not required to construct new UNEs for a CLEC; nor is an ILEC required to splice new fiber routes for a CLEC.

With respect to the second issue, however, Verizon PA will propose new contract language that would allow Covad to order dark fiber on an indirect route basis, without having to collocate at intermediate central offices. Verizon PA would provide fiber optic cross-connects to join two terminated dark fiber IOF strands at the intermediate central offices.

Contract Reference. UNE Attachment, §§ 8.1.1, 8.1.2, 8.1.3, 8.1.4, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.9

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

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

Verizon Position. Verizon PA's proposed § 8.1.1 of the UNE Attachment provides that Covad may access dark fiber loops at an accessible terminal in a Verizon PA Wire Center. "Wire Center" is defined in § 2.115 of the Glossary Attachment as "[a] building or portion thereof which serves as a Routing Point for Switched Exchange Access Service. The Wire Center serves as the premises for one or more Central Offices." Furthermore, the definition of "Central Office" in § 2.20 of the Glossary Attachment states that "[s]ometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed." Thus, the definition of

a “Verizon Wire Center” includes any Verizon PA premises that houses a switch and thus acts as a “Central Office.” More importantly, however, Verizon PA’s definition of “Dark Fiber Loops” in § 8.1.1 is fully consistent with § 51.319(a)(1) of the FCC’s rules, which defines the loop network element as “a transmission facility between a distribution frame (or its equivalent) *in an incumbent LEC central office* and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC.” 47 C.F.R. § 51.319(a)(1) (emphasis added).

Covad’s proposed modification to the definition of “Dark Fiber Loops” in § 8.1.1 is inaccurate and confusing, for the reasons explained above in Verizon PA’s response to Issue 42. What Covad is seeking at “other Verizon premises” where the fiber is terminated is not a “loop” at all, but a “subloop,” which is already covered under § 8.1.2 of the UNE Attachment. In particular, § 8.1.2(b) defines “Dark Fiber Sub Loops” to include dark fiber strands “between Verizon’s Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon’s main termination point located within a Customer premise.” Covad should not be permitted to conflate the definitions of Dark Fiber Loops and Dark Fiber Subloops in this manner.

Contract Reference. UNE Attachment, § 8.1.1

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

Covad Position. It is Covad’s position and the FCC found that requiring a requesting carrier to submit separate requests for each leg of a fiber route places unreasonable burden on carriers that is not comparable to Verizon’s own information about and access to its fiber, and is therefore discriminatory. *Virginia Arbitration Order*, at ¶ 457.

Verizon Position. As described in response to Issue 44, Verizon PA will propose new language for § 8.2.5 that would allow Covad to request information about and/or order dark fiber on an indirect route basis, without having to collocate at intermediate central offices. In the event that Covad wishes to order dark fiber IOF on an indirect route basis, Verizon PA would provide fiber optic cross-connects to join the terminated dark fiber IOF strands at the intermediate central offices.

Reasonable limitations on this offering, however, are necessary. Indeed, the FCC’s Wireline Competition Bureau did not indicate that Verizon PA’s obligation to cross-connect fiber at intermediate offices for a CLEC requires Verizon PA to provide fiber along indirect routes through an unlimited number of intermediate offices, especially when it would result in inefficient use of scarce fiber cable resources or would require the use of optical repeaters to carry light end-to-end (which necessarily requires collocation by the CLEC at an intermediate office along the route). As set forth above in Verizon PA’s proposed new language, Verizon PA reserves the right to limit the number of intermediate central offices on an indirect route consistent with limitations in Verizon PA’s network design and/or prevailing industry practices for optical transmission

applications. Verizon PA will discuss with Covad any limitations on the number of intermediate offices along an indirect route to permit Covad to make any necessary collocation decisions.

Contract Reference. UNE Attachment, §§ 8.2.3, 8.2.5

47. **Should Verizon provide Covad detailed dark fiber inventory information?**

Covad Position. Yes. In order to meaningfully utilize dark fiber, Covad must be able to know where and how much dark fiber exists in the network in order to develop its business and network plans, evaluate competitive customer opportunities, and otherwise truly utilize dark fiber as a component of a network build out strategy. Verizon must provide Covad detailed dark fiber inventory information, including, but not limited to, field surveys and access to maps of routes that contain available dark fiber by LATA and availability of dark fiber between any two points in a LATA without regard to the number of dark fiber arrangements that must be spliced or cross connected together for Covad's desired route. Verizon performs field surveys for itself to determine the quality, sufficiency, and transmission characteristics of dark fiber. The FCC has made plain that Verizon must provide to Covad the same detailed underlying information regarding the composition and qualifications of the loop that Verizon itself possesses. *Virginia Arbitration Order*, at ¶ 473.

Verizon Position. Verizon PA's obligation to provide information regarding its dark fiber inventory does not compel Verizon PA to provide to CLECs information that Verizon PA itself does not possess. In its proposed § 8.2.5.1, Covad demands that Verizon PA provide "maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction." Verizon PA, however, does not have such "maps" available for its own use that show what dark fiber is available along each route in Verizon PA's network, and does not have the ability to provide such nonexistent "maps" for the cost of "reproduction" (there is nothing to "reproduce"). Indeed, Verizon PA does not have the ability to provide this information. The availability of dark fiber at specific locations changes on a day-to-day basis depending on the needs of Verizon PA, CLECs, IXCs, and other customers for lit fiber services, as well as on-going construction activities. If Verizon PA were to provide a snapshot picture of all available dark fiber in Pennsylvania at any given time — which it cannot do — Covad could not assume that such dark fiber would be available when and if Covad later decides to place an order. In fact, because Verizon PA must review its records manually on a route-by-route basis to determine the availability of dark fiber, by the time Verizon PA finished a review of the entire state, the results would *already* be outdated. Therefore, requiring Verizon PA to provide Covad information identifying all available dark fiber in Pennsylvania not only would be unduly burdensome and costly for Verizon PA, but the information would be useless to Covad as soon as it was received.

In addition, for the reasons set forth in Verizon PA's response to Issues 44 and 46, Covad's proposed modifications to § 8.2.5 of the UNE Attachment are unnecessary (and, insofar as they purport to require Verizon PA to splice fiber for Covad, are inconsistent with applicable law). Verizon PA will propose language such that, if no direct route is

available between the A and Z points requested by Covad, Verizon PA will search for reasonable indirect routes without requiring Covad to submit additional dark fiber inquiries.

Contract Reference. UNE Attachment, §§ 8.2.5, 8.2.8.1 (proposed), 8.2.5.1 (proposed)

48. **Should Verizon's responses to field surveys requests provide critical information about the dark fiber in question that would allow Covad a meaningful opportunity to use it?**

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

Verizon Position. The type of detailed technical information requested by Covad in its proposed § 8.2.8.1 to the UNE Attachment is not the type of detail that should be defined on an interconnection-agreement-by-interconnection-agreement basis. Indeed, at this time, Verizon does not know whether it has the capability of providing the type of information requested by Covad. "Parity" access to dark fiber information does not include access to information that Verizon does not track for itself.

Contract Reference. UNE Attachment, § 8.2.8.1 (proposed)

49. **Should Verizon be permitted to refuse to lease up to a maximum of 25% of the dark fiber in any given segment of Verizon's network?**

Covad Position. No. Any and all dark fiber deployed by Verizon is subject to unbundling pursuant to the Act and FCC regulations. Verizon should not be able to take away Covad's ability to obtain dark fiber in a manner that will enable Covad to compete. Indeed, the improper exclusion of fiber will violate federal law defining UNE dark fiber unbundling requirements. Moreover, Covad is concerned with its ability to verify the accuracy of Verizon's reporting and method of calculation with respect to a 25% limit on dark fiber.

Verizon Position. Yes. Contrary to Covad's claim, Verizon PA's proposed limitation does not violate the FCC's unbundling rules. To the contrary, the FCC has ruled that state commissions retain the flexibility to establish reasonable limitations and technical parameters for dark fiber unbundling. *See UNE Remand Order* ¶¶ 199, 352. Verizon PA's contract language is patterned after the 25-percent cap on dark fiber established by the Texas Public Utility Commission in 1996, which the FCC expressly approved. *Id.* ¶ 352 n.694 (finding that "the measures established by the Texas PUC address the incumbent LEC's legitimate concerns").

Dark fiber is a scarce resource in Verizon PA's network. Verizon PA's proposed limit of 25 percent of fiber on a given route is a reasonable anti-warehousing provision that prevents one CLEC from occupying all available dark fiber in a particular area and excluding entry by other carriers. It does not reserve even a single strand of fiber for Verizon PA. This 25-percent limit does not impose any practical limitation on Covad's ability to provide service to its customers, given the huge bandwidth of fiber. In fact, such a limit would encourage Covad and other CLECs to utilize fiber more efficiently so as to maximize the resources available for all telecommunications companies in Pennsylvania.

Covad's concerns about reporting or "method of calculation" of the 25-percent limit are unfounded. If a fiber route consists of a 24-strand cable, Covad may lease up to 6 fibers on that route. The calculation is neither complex nor subject to interpretation.

Contract Reference. UNE Attachment, § 8.2.15

50. Should Verizon be permitted to reclaim dark fiber upon 12 months advanced notice to Covad?

Covad Position. With respect to Verizon's ability to reclaim dark fiber from a CLEC, Covad has requested that Verizon reclaim dark fiber previously provisioned to Covad only after 24 months advanced written notice to Covad and only if necessary to meet documented actual demand. Having fiber that Covad is using reclaimed by Verizon can only undercut Covad's ability to reasonably rely upon and deploy a network based on the supply of fiber facilities. The issue is not whether Verizon is entitled to reclaim dark fiber, but whether Verizon should provide commercially reasonable notice to Covad of the proposed reclamation.

Verizon Position. Covad does not dispute that Verizon PA may, upon a showing of need to the Commission, reclaim fiber facilities that it has leased to Covad as dark fiber. In the event that Verizon PA petitions the Commission for such relief, 12 months advance notice to Covad is commercially reasonable and provides Covad with adequate time to migrate services provisioned on that fiber to alternative facilities. If Covad needs additional time to migrate its services, it may raise its concerns with the Commission, and the Commission may decide — based upon the needs of both Verizon PA and Covad — whether to afford Covad additional time. Setting the default at 24 months (two years), however, unreasonably restricts Verizon PA's ability to reclaim fiber facilities to meet its carrier-of-last-resort obligations.

Contract Reference. UNE Attachment, § 8.2.15.1

RESALE

51. **Should Verizon provide Covad direct notification within one business day of end users switching from Verizon Telecommunications Services that Covad resells to a retail Verizon Service?**

Covad Position. Yes. Covad needs to know when its end users have returned to Verizon so that Covad can cease billing them.

Verizon Position. Verizon PA provides CLECs with line loss notifications when a CLEC's customer switches to another carrier — whether Verizon PA or a different CLEC. Verizon PA's line loss notifications are generated once its billing systems are updated to reflect the new carrier as the service provider on the line. Verizon PA's retail division receives line loss notifications at the same point in the provisioning process when a Verizon PA retail customer switches to a CLEC. The FCC has repeatedly reviewed and approved Verizon PA's line loss notification process. *See, e.g., Pennsylvania 271 Order* ¶ 52; *Massachusetts 271 Order*⁹ ¶ 100. Covad proposes a radical restructuring of the line loss notification process. It would require notification that one of its customers had placed an order with Verizon PA at least one day *prior* to the provisioning of that order. (For reasons that are unexplained, under Covad's proposed language it would not receive line loss notifications if one of its customers switched to another reseller.) Yet the line is not lost until after it is provisioned — customers can change their minds at any time prior to that point. Accordingly, if Verizon PA sent Covad notification prior to the provisioning of the order, Covad might cease billing a customer that, in the end, decided to stay with Covad. Finally, because Verizon PA's current line loss notifications, for both retail and CLECs, are triggered by an update to the billing systems, which occurs after the line is provisioned, Covad's proposal would require Verizon PA to develop an entirely new OSS system, solely to provide Covad with these potentially inaccurate pre-loss notifications.

Contract Reference. Resale Attachment, § 5.3

PRICING ISSUES

52. **Should the Agreement provide that Covad will pay only those UNE rates that are approved by the Commission (as opposed to rates that merely appear in a Verizon tariff)?**

Covad Position. Yes. The charges for a service shall be the Commission or FCC approved charges and should be accurately represented and warranted in Appendix A to the Agreement to the extent such rates are available. To the extent certain charges for a service have not yet been approved by the Commission or the FCC, when such rates are approved Verizon should be required to apply them retroactively starting on the effective

⁹ *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001).

date of the Agreement. Verizon should provide a refund to Covad of over-charged rates if necessary.

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

Verizon Position. Covad's claim that Verizon PA should be required to warrant that charges set forth in the agreement are the approved charges for service is frivolous: Verizon PA's tariffed charges are publicly filed and available on the Internet; Covad can easily confirm the accuracy of any charges, and Verizon PA would be happy to provide assistance in the course of good-faith negotiations. And Verizon PA cannot be required to provide a refund of charges duly imposed pursuant to a filed tariff absent an appropriate Commission or FCC order issued under appropriate statutory authority.

Where there is a generally applicable rate for a service, effective under the laws of Pennsylvania or federal law, and subject to the rigorous process of regulatory review provided for under state and federal law, that rate should govern. Covad's effort to portray this provision as giving Verizon PA the ability to modify rates contained in the agreement unilaterally is incorrect. Under Verizon PA's proposal, only tariffs that this Commission or the FCC has allowed to go into effect can supersede a rate contained in the agreement. Covad's proposal would permit Covad to game the system by seeking to *maintain rates that are more favorable than those available to all other CLECs in Pennsylvania simply based on an accident of timing.*

Finally, to the extent that rates are set forth in Appendix A to the Pricing Attachment, rather than in a generally applicable tariff, Covad has not raised a dispute with respect to any of those rates. Accordingly, these are agreed-upon rates and, therefore, are binding upon the approval of this agreement by this Commission. These rates will be superseded by any new rates that 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. There is no basis, however, to suggest that either party is entitled to retroactive application of those rates.

Contract Reference. Pricing Attachment, §§ 1.3, 1.4, 1.5

53. **Should Verizon provide notice of tariff revisions and rate changes to Covad?**

Covad Position. Yes. Verizon typically uses the tariff filings as a vehicle for seeking different UNE rates from the Commission. Covad proposes that Verizon provide direct and meaningful notice of such filings to ensure that Covad can protect its interests. Verizon files a large number of tariffs with the Commission and it is unreasonable to

expect that Covad can devote substantial resources to obtain and review all those various filings, or else risk having such tariff amendment become effective as filed with no further regulatory review. Verizon also should update the Pricing Appendix of the Agreement on an informational basis when the Commission orders new rates.

Verizon Position. Verizon PA already provides public notice to its customers, including wholesale customers, of its tariff filings. Verizon PA should not also be required to provide individualized notice to each of the CLECs operating in Pennsylvania. When a tariff is approved, Covad is just as able as Verizon PA to make informational updates to the parties' Pricing Appendix. Verizon PA should not be required to perform such administrative tasks on Covad's behalf.

Contract Reference. Pricing Attachment, § 1.9 (proposed)

COLLOCATION ISSUES

54. **Should Verizon provide collocation to Covad pursuant to Commission-approved tariffs?**

The parties have resolved this issue.

Contract Reference. Collocation Attachment, § 1

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

Covad Position. No. Covad, as a competitive carrier, cannot be compelled to offer collocation under the Act. *Virginia Arbitration Order*, at ¶ 75. Only incumbent local carriers are obligated to provide collocation to other carriers under Section 251(c)(6) of the Act. If Congress had intended that CLECs should be subject to collocation obligations, it simply would have included collocation obligations under Section 251(b), which delineates the duties of all carriers. Congress chose not to do so.

Verizon Position. Verizon PA recognizes that § 251(c)(6) applies to ILECs and not to CLECs. Nothing in the Act, however, prohibits the Commission from allowing Verizon PA to interconnect with a CLEC via a collocation arrangement at its premises. By preventing Verizon PA from doing so, CLECs limit Verizon PA's interconnection choices. All of the interconnection locations, therefore, would be determined by the CLECs, which gives the CLECs the ability to minimize their own expenses and maximize Verizon PA's.

Contract Reference. Collocation Attachment, § 2

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

Covad Position. Yes. The Agreement should state the minimum amount of power Covad may order per arrangement (2 amps) and the minimum additional increments of power Covad may order (1 amp).

Verizon Position. All terms and conditions regarding collocation, including those for the offering of DC power, should be provided in Verizon PA's effective Pennsylvania collocation tariff. Under that tariff, the same terms and conditions are provided to all CLECs in Pennsylvania. Under Verizon PA's currently effective Pennsylvania collocation tariff, Covad can order power in the amounts and increments that it wants. However, in the event Verizon PA seeks to change the DC power provisions of that tariff — and the provisions take effect — then Covad should be bound by the new terms of the tariff, as will every other CLEC in Pennsylvania. Covad will be able to challenge before this Commission any proposed changes that Verizon PA files with respect to its collocation tariff.

Contract Reference. Collocation Attachment, § 3 (proposed)

ATTACHMENT D -- VERIZON NORTH

Issues and Party Positions

APPLICABLE LAW

1. **Should Verizon continue to provide unbundled network elements and other services required under the Act and the Agreement until there is a final and non-appealable change in law eliminating any such requirements?**

Covad Position. Yes. As the Commission knows well, the telecommunications industry has been subject to numerous changes in law that later were reversed (e.g., the various 8th Circuit decisions on TELRIC). The Commission should not permit Verizon to disrupt Covad's business operations and the service it provides to end users in Pennsylvania, unless there is a final and non-appealable change in law that relieves Verizon of the obligation to provide unbundled network elements or other services under this Agreement.

Verizon Position. No. The parties should be bound by applicable law. With respect to FCC decisions, 47 U.S.C. § 405(a) specifically provides that FCC orders are enforceable when issued, notwithstanding requests for review; likewise, federal law governs the binding effect of federal court decisions. Nothing in the 1996 Act suggests that a state commission may relieve the parties of the obligation of complying with valid legal requirements simply because such requirements may be subject to challenge. Notably, when a change in law *expands* the list of services that Verizon North is required to provide, Verizon North provides such services before there is a final and non-appealable order upholding such a change in law. By the same token, Verizon North is entitled to the benefit of a change in law that eliminates any of those services as soon as that change of law becomes effective. In addition, the agreed-upon contract language already provides for a transition period of up to 45 days, which would mitigate any disruption to Covad's business operations and would provide Covad with time in which to seek a stay of any change in law.

Contract Reference. General Terms and Conditions, § 4.7; UNE Attachment, § 1.5; Collocation Attachment, § 1

BILLING

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

Covad Position. No. Backbilling should be limited to services rendered within one year of the current billing date in order to provide some measure of certainty in the billing relationship between the Parties.

Verizon Position. The parties' right to backbill should be governed by the applicable statute of limitations on contract actions. Backbilling is used when one party has received service and has paid either no charge for the service or a charge that is less than the correct charge specified in its agreement or in the other party's tariffs. Carrier-to-carrier billing is complicated and subject to regulatory changes that may make it difficult for carriers to bill for services promptly and completely. Accordingly, the general contractual statute of limitations provides appropriate protection for the parties' interest in collecting the established price for services that they provide under the agreement. Otherwise, a party might be able to provide service and collect fees from its customers while avoiding the appropriate payments for the inputs that it purchases from the other party. Moreover, Covad's proposal is one-sided and therefore unreasonable. The parties' right to backbill to recoup any undercharges should be symmetrical with the right to contest any previously billed overcharges. Despite its claims that a time limit on the right to backbill is necessary to provide "certainty in the billing relationship," Covad has proposed no similar limitation on the right to dispute past overcharges. But, just as a party's right to dispute overcharges should not be arbitrarily limited, so too a party's right to collect undercharges should not be limited.

Contract Reference. General Terms and Conditions, §§ 9.1.1 (proposed), 9.5

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

Covad Position. When a billed Party gives notice to the billing Party of a dispute regarding a billed amount, the billing Party should assign a Claim Number to the dispute for the purpose of allowing both Parties to reference the dispute quickly and accurately in correspondence and other communications.

Verizon Position. Verizon North notes that Covad's description of its position — under which Verizon North, as the billing party, would assign a claim number to claims submitted by Covad — differs from its proposed language, under which billing claims submitted by Covad would be identified by a claim number that Covad assigns. Verizon North already provides Covad with a billing claim number for billing disputes that Covad raises. Moreover, Verizon North is not opposed to establishing a billing claim number system under which both Verizon North's claim numbers and the CLEC's claim numbers are referenced and is in the process of implementing such a system. However, until this new system is in place, Verizon North should be permitted to assign any claim numbers, so that it may utilize a uniform claim number system for all CLECs with which it does business in Pennsylvania. Covad's proposal, by contrast, could force Verizon North to implement unique systems for each CLEC, which would be unnecessarily expensive and neither justified nor practical.

Contract Reference. General Terms and Conditions, § 9.3

4. **When the Billing Party disputes a claim filed by the Billed Party, how much time should the Billing Party have to provide a position and explanation thereof to the Billed Party?**

Covad Position. The Billing Party should provide its position and a supporting explanation regarding a disputed bill within thirty (30) days of receiving notice of the dispute.

Verizon Position. Standards governing when Verizon North must respond to a billing dispute should be set on an industry-wide basis. Otherwise, the process for responding to such disputes would soon become unworkable as different standards may be established for different CLECs. In any event, Covad's proposed standard is unreasonable. Under Covad's proposal, there is no requirement that Covad's notice of the dispute contain sufficient information for Verizon North to investigate the matter; nor is there any requirement that the billing dispute be sufficiently current so that Verizon North has relatively easy access to the data necessary to investigate Covad's claim within 30 days. For example, the billing dispute resolution performance measurements adopted in other Verizon states include both requirements, as well as others. Verizon North would not object to the inclusion of language requiring the parties to use commercially reasonable efforts to resolve billing disputes in a timely manner.

Contract Reference. General Terms and Conditions, § 9.3

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 Position. No. Late payment charges should not accrue for the time that Verizon takes to address the dispute beyond thirty days. Any other outcome would mean that Verizon could profit from a failure to timely resolve billing disputes.

Verizon Position. Yes. Covad is not required to pay disputed amounts during the pendency of a dispute. As a result, if late payment fees do not accrue after 30 days from Verizon North's receiving notice of a dispute, Covad would have the incentive to submit frivolous claims to earn interest on the "disputed" amounts. Moreover, for the reasons noted above, the 30-day period, as Covad has it, is unreasonable. Verizon North would not object to the inclusion of language requiring the parties to use commercially reasonable efforts to resolve billing disputes in a timely manner, but late payment charges, which compensate Verizon North for Covad's use of disputed amounts that should have been paid when due, should accrue during the pendency of any dispute.

As reflected in Attachment B to this filing, Covad also proposes language that would prohibit a party from assessing late payment charges on previously assessed late charges that the other party failed to pay. Verizon North contends that it is commercially reasonable for late payment charges to apply to any failure to pay amounts due under the agreement.

Contract Reference. General Terms and Conditions, § 9.4

DEFAULT

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

Covad Position. 60 days. Although making payments under the Agreement could be done sooner, inadvertent operational violations of the Agreement may not be so easily remedied. In a complex relationship involving tens of thousands of lines providing business and residential customers with technologically advanced services over the wide variety of networks that comprise Verizon's plant, a period of time shorter than 60 days to cure a breach is likely to prove insufficient even in those instances where the breach is undisputed and the breaching Party is working diligently to correct the breach.

Verizon Position. Thirty days following written notice is a commercially reasonable period in which Covad could make any required payments or cure any material breach of the agreement. In the event that Covad could not, through diligent efforts, cure a material breach during that time, 30 days following written notice provides Covad with more than sufficient time in which to petition this Commission to prevent Verizon North from either suspending or terminating the provisioning of services under the agreement.

Contract Reference. General Terms and Conditions, § 12.

DISPUTE RESOLUTION ISSUES

7. **For service-affecting disputes, should the Parties 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 Position. Yes and yes. Unlike situations subject to the standard dispute resolution provisions of the agreement in which the dispute involves only the relationship between Verizon and Covad, a service-affecting dispute harms either Covad's or Verizon's end users. The services that both Parties provide to their customers must be protected to the greatest extent possible, and a dispute that affects those services should be resolved faster than other disputes. Accordingly, either party should be able to submit such a dispute to binding arbitration under the expedited procedures described in the Commercial Arbitration Rules of the American Arbitration Association (rules 53 through 57) in any circumstance where negotiations have failed to resolve the dispute within five (5) business days.

Verizon Position. As Covad recognizes, under the 1996 Act, all open issues must be resolved in accordance with the requirements of federal law. Although federal law protects parties' right to *choose* to resolve their disputes through binding arbitration, no

provision of federal law authorizes this Commission to *require* Verizon North to give up its right to seek resolution of any dispute before an appropriate forum.

Contract Reference. General Terms and Conditions, § 14.3 (proposed)

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

Covad 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 Position. Yes. Verizon North cannot be required to condition any sale of its operations on the purchaser agreeing to an assignment of this agreement. Nor can the purchaser be forced to accept Verizon North's obligations under this agreement. Not only does federal law provide no basis for such obligations, but any such requirement would likely reduce the price that Verizon North could receive for a sale and could impose on any would-be purchaser obligations under the agreement greater than those that apply to it under federal law. *See, e.g.,* 47 U.S.C. § 251(f) (exempting rural carriers from certain requirements under the 1996 Act). Covad's proposed language, which states only that Verizon North "may assign" its rights to the purchaser, adds little, if anything, to Verizon North's rights in the absence of such language. Under the agreed-upon provision regarding contract assignment, each party can assign the agreement with prior written consent of the other party, "which consent shall not be unreasonably withheld, conditioned or delayed." Agreement, § 5. At the same time, nothing in the agreed-upon language *requires* Verizon North and a purchaser to agree to an assignment — nor should it. In any event, if Verizon North were to sell an exchange or territory in Pennsylvania, Covad can protect its rights and interests without the inclusion of the language that it seeks to add, by participating in the Commission's proceeding regarding the sale.

Contract Reference. General Terms and Conditions, § 43.2

WAIVER

9. Should the anti-waiver provisions of the Agreement be implemented subject to the restriction that the Parties may not bill one another for services rendered more than one year prior to the current billing date?

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

Verizon Position. No. See Verizon North's position with respect to Issue 2.

Contract Reference. General Terms and Conditions, §§ 9.1.1 (proposed), 48

10. **Should the Agreement preclude Covad from asserting future causes of action against Verizon for violation of Section 251 of the Act?**

Covad 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 deal with *Trinko v. Bell Atlantic Corp.*, 294 F.3d 307 (2d Cir. 2002), in which the court held that because Section 252 of the Act allows the parties to negotiate interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1), the act of entering an interconnection agreement can extinguish a CLEC's right to damages for violations of Section 251. The court held that such CLECs have the right to sue for only common law damages for breach of contract. Covad and Verizon, however, did not negotiate the instant Agreement "without regard to the standards set forth in subsections (b) and (c) of section 251." Indeed, the Parties negotiated this Agreement with regard to Section 251, as many of the provisions thereof are based either explicitly or implicitly upon that section of the Act. Accordingly, Covad wishes explicitly to preserve causes of action that arise from Sections 206 and 207 of the Act. And there is good reason for doing so. As the Commission can well imagine, the Parties are incapable of enumerating in the Agreement all potential causes of action that exist now or may exist in the future.

Verizon Position. Contrary to Covad's implication, there are no terms in the agreement that preclude Covad from asserting future causes of action against Verizon North for violation of § 251 of the Act. Covad, however, seeks to insert language that would impede Verizon North's ability to defend against such a cause of action should Covad ever assert one. The agreement should be silent on the question. Whether the execution of an interconnection agreement affects any other remedies is a question that is not presented here and that the Commission should not attempt to pre-judge in this proceeding. In particular, the question whether Covad could bring an action against Verizon North based on an alleged violation of subsections (b) and (c) of § 251 is not presented in this proceeding, and the Commission should not include any language in the parties' agreement purporting to address that issue. Instead, that question should be addressed by a court of competent jurisdiction if and when the question arises. In any event, uniform federal court authority holds that no action may be brought pursuant to §§ 206 and 207 for such alleged violations of § 251, and Verizon North believes that uniform federal court authority is correct.

Contract Reference. General Terms and Conditions, § 48; Glossary, § 2.11; Collocation Attachment, § 1

GLOSSARY

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

Covad Position. No. The definition of UDLC should not prejudice the issue of whether loops provisioned over IDLC may be unbundled.

Verizon Position. Yes. Covad is wrong in asserting that there is an “issue” as to whether loops provisioned over IDLC may be unbundled. As a technical matter, a loop provisioned over IDLC is integrated with the switch and, therefore, cannot be provisioned on an unbundled basis. The FCC has recognized as much, most recently in approving BellSouth’s five-state § 271 application. *See BellSouth Five-State 271 Order*¹ ¶¶ 57, 62.

Contract Reference. Glossary, § 2.111

OPERATIONAL SUPPORT SERVICES

12. **Should Verizon 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 Position. Yes. Although Covad does not have to be granted access to the same systems that Verizon uses for pre-ordering and ordering OSS functions for its own customers, Verizon must ensure that Covad has access to the same information that Verizon accesses with those systems. Verizon also must make certain that this access is available in the *same* manner as Verizon makes the information available to third parties and in a functionally equivalent manner to the way it makes the information available to itself and its affiliates. The FCC has consistently found that such nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. *See, e.g., Bell Atlantic New York Order*, at 3990, ¶ 83; *BellSouth South Carolina Order*, 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653; *see also Telecommunications Act of 1996*, § 271(c)(2)(B)(ii). Without such access, the FCC has determined that a competing carrier “will be severely disadvantaged, if not precluded altogether, from fairly competing.” *Bell Atlantic New York Order* at 3990, ¶ 83. In order to meet the standards set by the FCC, Verizon must provide nondiscriminatory access to the systems, information, documentation, and personnel that support its OSS. *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, ¶ 84. For OSS functions that are analogous to those that Verizon provides to itself, its customers or its affiliates, the nondiscrimination standard requires that it offer requesting carriers access that is *equivalent in terms of quality, accuracy, and timeliness*. *Id.* at 3991, ¶ 85 (emphasis added).

¹ *Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, Memorandum Opinion and Order, WC Docket No. 02-150, FCC 02-260 (rel. Sept. 18, 2002) (“*BellSouth Five-State 271 Order*”).

Verizon Position. The dispute here is not over whether Verizon North must provide Covad with nondiscriminatory access to loop qualification information. Instead, the issue is whether Covad's proposed additional language is necessary. The agreement already provides that "[t]he pre-ordering function includes providing Covad nondiscriminatory access to the same detailed information about the loop that is available to Verizon and its affiliates." Additional Services Attachment, § 8.1.1. The agreement also provides that Verizon North "shall provide to Covad, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), Verizon OSS Services." *Id.* § 8.2.1; *see also* UNE Attachment, § 3.13.3 ("Verizon shall provide access to loop qualification information in accordance with, but only to the extent required by, Applicable Law"). Accordingly, the agreed-upon provisions of the agreement already require Verizon North to provide Covad with loop qualification information as required by federal law. Covad has shown no need for its additional language.

Contract Reference. Additional Services Attachment, §§ 8.1.4, 8.2.3 (proposed)

13. **In what interval should Verizon be required to return Firm Order Commitments to Covad for pre-qualified Local Service Requests submitted mechanically and for Local Service Requests submitted manually?**

Covad Position. Verizon should be required to return Firm Order Commitments to Covad for pre-qualified Local Service Requests submitted mechanically within two (2) hours and for Local Service Requests submitted manually within twenty-four (24) hours. These benchmarks are not unreasonable given that they represent the performance that Verizon is already providing to CLECs for these functions.

Verizon Position. Intervals for returning Local Service Confirmations ("LSCs") — formerly referred to as Firm Order Confirmations ("FOCs") — should not be established on an interconnection-agreement-by-interconnection-agreement basis. Instead, any such intervals should be established on an industry-wide basis, as in the performance measurements established in the *Bell Atlantic/GTE Merger Order*,² under which Verizon North reports its performance in Pennsylvania. The processing of CLECs' Local Service Requests ("LSRs") would soon become unmanageable if a different timeliness standard applied to each CLEC's LSRs. Furthermore, including these intervals in interconnection agreements would mean that amendments to those agreements would be required to modify the intervals, when necessary.

Contract Reference. Additional Services Attachment, § 8.2.4 (proposed)

² *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) ("Bell Atlantic/GTE Merger Order").*

14. **Should auditing rights regarding access to, and use and disclosure of, OSS information be reciprocal or should Verizon only have the right to conduct such audits? How frequently should such audits be conducted?**

Covad Position. Auditing rights should be reciprocal and should occur no more frequently than once per year. The Parties are engaged in a complex relationship that is governed by the Agreement and by Applicable Law. Verizon seeks the right to audit Covad for compliance with the relevant bodies of law as they relate to access to, and use and disclosure of, OSS information, and Covad merely seeks the same rights.

Verizon Position. The provisions of the agreement at issue here enable Verizon North to ensure that Covad is not using information that it obtains through its access to Verizon North's OSS in ways that are contrary to the requirements of applicable law. Verizon North does not understand how those rights could be made reciprocal. Verizon North currently has no general right of access to Covad's OSS information (see Issue 18), but, if it did, Verizon North would not object to a provision allowing Covad to audit Verizon North's access to and use of that information. There no reason, however, for Covad to audit *Verizon North* "with regard to *Covad's* access to, and use and disclosure of, Verizon OSS information," which is what Covad is ostensibly seeking. Additional Services Attachment, § 8.5.4.1 (Covad's proposal) (emphasis added). Verizon North does not object to limiting audit rights to once per year, as long as Verizon North has the right to audit more frequently (but no more frequently than once in each calendar quarter) if the immediately preceding audit revealed violations of applicable law and/or this agreement.

Contract Reference. Additional Services Attachment, §§ 8.5.4.1, 8.5.4.3

15. **If auditing rights are made reciprocal as part of this arbitration, should confidential information obtained in such an audit also be treated in a reciprocal fashion?**

Covad Position. If reciprocal auditing rights are ordered pursuant to Issue 14, the Parties should treat any confidential information obtained in such an audit in accordance with § 8.5.4.3 of the Agreement.

Verizon Position. See Verizon North's response to Issue 14. Verizon North does not understand what confidential information Covad could obtain — that it does not already possess — if it conducted an audit "with regard to Covad's access to, and use and disclosure of, Verizon OSS information." Additional Services Attachment, § 8.5.4.1 (Covad's proposal).

Contract Reference. Additional Services Attachment, §§ 8.5.4.1, 8.5.4.3

LIABILITIES AND REMEMDIES

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

Covad Position. If Covad breaches §§ 8.4 or 8.5 of the Agreement and does not cure the breach after being given notice of the breach and a reasonable opportunity to cure it,

Verizon should have the right to seek permission from the appropriate regulatory body to suspend Covad's license to use Verizon OSS information. Regulatory oversight of Verizon's ability to suspend Covad's OSS license is absolutely critical given that (1) the "breach" described in the relevant part of the Agreement (§ 8.6) is a breach in Verizon's *opinion* that may or may not be supported by competent evidence and (2) the right to suspend the license is equivalent to the right suspend Covad's ability to serve new customers. Thus, a lack of regulatory oversight of Verizon's powers in this area could amount to a unilateral grant to Verizon of the right to cut off Covad's ability to compete.

Verizon Position. Verizon North's proposed language requires Verizon North to notify Covad in writing of a material breach related to the use of Verizon North's OSS and prevents Verizon North from taking further action until at least 10 days after Covad receives the written notice. However, if Covad does not cure the material breach, then Verizon North should be permitted to suspend Covad's license. Verizon North seeks this right because misuse of Verizon North's OSS could damage these systems or impair their functionality, adversely affecting all of the carriers that rely on them. The 10-day period provides Covad with ample time in which to raise a dispute before this Commission as to Verizon North's written notice of breach and/or to the suspension of Covad's license in the event it does not cure the breach.

Contract Reference. Additional Services Attachment, §§ 8.4, 8.5, 8.6

ACCESS TO INFORMATION RELATED TO COVAD'S CUSTOMERS

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

The parties have resolved this issue.

Contract Reference. Additional Services Attachment, § 8.9.1

18. **Should Covad be obligated to provide Verizon access to Covad's OSS systems for the purpose of accessing information about Covad's customers that Verizon already possesses?**

Covad Position. Although Covad agrees to negotiate in good faith with Verizon regarding access to Covad's OSS systems (for the purpose of obtaining relevant information about Covad's customers), Covad should not be required to provide Verizon access to Covad's OSS systems for any purpose other than to obtain information that Verizon does not already have in its possession.

Verizon Position. Verizon North and Covad are in agreement that Covad need only negotiate in good faith with Verizon North regarding access to Covad's OSS systems. The only dispute between the parties concerns Covad's proposed addition of the clause "provided that such information is not already in Verizon North's possession" to § 8.9.2 of the Additional Services Attachment. As stated, that language would limit the scope of the negotiations. There is no reason to limit the scope of those negotiations before they

begin, especially when Covad's use of Verizon North's OSS is not limited to accessing information not already in the possession of Covad.

Contract Reference. Additional Services Attachment, § 8.9.2

UNE ATTACHMENT ISSUES

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

Covad Position. Yes. Verizon should provide Covad UNEs and UNE combinations in instances when Verizon would provide such UNE or UNE combinations to itself. Pursuant to Section 251(c)(3) of the Act, and applicable FCC rules, Verizon is obligated to provide Covad access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory terms. As the FCC itself has found, Section 251(c)(3)'s requirement that incumbents provide 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 affirmed the fact that Section 251(c)(3) obligates incumbents to provide requesting carriers combinations that it provides to itself. *Verizon Communications v. F.C.C.*, 535 U.S. ___, ___ (2002) ("otherwise, an entrant would not enjoy true 'nondiscriminatory access'" pursuant to Section 251(c)(3)). As the FCC has found, the same reasoning requires that incumbents provide requesting carriers UNEs in situations where the incumbent would provide the UNE to a requesting retail customer as part of a retail service offering. Verizon's proposed language would unduly restrict Covad's access to network elements and combinations that Verizon ordinarily provides to itself when offering retail services.

Verizon Position. The dispute here is not over whether Verizon North must provide Covad with nondiscriminatory access to UNEs and UNE combinations to the extent required by federal law. Instead, this issue pertains to Covad's attempt to expand Verizon North's unbundling obligations under federal law, by requiring Verizon North to build facilities in order to provision Covad's UNE orders. Under the Act, Verizon North has no such obligation. *See, e.g., Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Virginia Arbitration Order*³ ¶ 468. Verizon North follows the same practices with respect to providing unbundled elements in Pennsylvania as other Verizon companies (including Verizon PA) do elsewhere, and the FCC has found that those

³ *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*, Memorandum Opinion and Order, CC Docket Nos. 00-218 & 00-249, DA 02-1731, 2002 WL 1576912 (Chief, Wireline Competition Bureau rel. July 17, 2002) ("*Virginia Arbitration Order*").

policies satisfy the requirements of the 1996 Act. *See, e.g., New Hampshire/Delaware 271 Order*⁴ ¶¶ 112-114; *New Jersey 271 Order*⁵ ¶ 151; *Pennsylvania 271 Order*⁶ ¶ 92.

Contract Reference. UNE Attachment, §§ 1.2, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.13.4

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

Covad Position. Yes. Consistent with the Act's good-faith negotiation obligations, Covad believes that the parties should be given the opportunity to negotiate and mutually agree upon terms, conditions, and pricing of UNE or UNE combinations resulting from a change in law. 47 U.S.C. §§ 251(c)(1), 252. While this might result in the parties eventually adopting the terms, conditions, and pricing in a Verizon tariff, Covad believes the parties should first be given the opportunity to negotiate.

Verizon Position. In those situations where Verizon North is required to offer a new UNE or UNE combination and a valid tariff governs the terms and conditions for the provision of such UNE or UNE combination, those tariff conditions — which contain the legal rate for the service and are applied to all requesting carriers on nondiscriminatory terms — should govern. Both federal law and Pennsylvania law provide carriers like Covad ample procedural protection to ensure that any such filed tariffs are consistent with law.

Contract Reference. UNE Attachment, § 1.4.1.

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

Covad Position. Yes. Verizon is obligated to make access to UNEs available at any technically feasible point as required by 47 C.F.R. § 51.311 and 47 U.S.C. § 251(c)(3).

Verizon Position. Section 1.1 of the UNE Attachment already requires Verizon North to provide UNEs as required by federal law. Accordingly, there is no need to make Covad's proposed changes to § 1.7 of that attachment, especially when, for practical reasons, CLECs must collocate to obtain most UNEs.

⁴ *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, Memorandum Opinion and Order, WC Docket No. 02-157, FCC 02-262 (rel. Sept. 25, 2002).

⁵ *Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, Memorandum Opinion and Order, 17 FCC Rcd 12275 (2002).

⁶ *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) (“*Pennsylvania 271 Order*”).

Contract Reference. UNE Attachment, § 1.7

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

Covad Position. Yes. Like any vendor, Verizon should be obligated to provide its customer (Covad) a commercially reasonable three-hour 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.

Verizon Position. No. Verizon North does not provide a 3-hour appointment window for its retail customers when it must dispatch a technician to the end user's premises to install loops comparable to those that Covad orders. Accordingly, Covad is requesting superior service, rather than the nondiscriminatory service to which it is entitled under the 1996 Act. In any event, because it is Covad's responsibility to ensure that its end user customer is available during any scheduled appointment window, if Verizon North fails to meet an appointment window because Verizon North's technician cannot obtain access to Covad's customer's premises, it should not be deemed a missed appointment and Verizon North should face no penalty. For example, under the performance measurements established in the *Bell Atlantic/GTE Merger Order*, under which Verizon North reports its performance, Verizon North is permitted to exclude such "no access" situations from its missed appointments results.

Contract Reference. UNE Attachment, § 1.9 (proposed)

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

Covad Position. The agreement should refer to industry ANSI standards and not to Verizon's internal (and unilaterally changeable) technical references.

Verizon Position. Verizon North agrees that these sections of the agreement should make reference to industry standards. However, because Covad is entitled to obtain unbundled access only to Verizon North's existing network, the agreement should also reference the Verizon North technical documents that define loop characteristics specific to Verizon North's network. Verizon North revises its technical documents from time to time to remain current with industry standards. The standards set forth in Verizon North's technical documents apply to loops provided both to CLECs and to Verizon North's retail customers.

Contract Reference. UNE Attachment, §§ 3.1, 3.2, 3.3, 3.4

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

Covad Position. 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 so for its own customers.

Verizon Position. Covad has combined two different issues here. First, Covad's proposed language would require Verizon North to build facilities in order to provision Covad's UNE orders. As explained above in Verizon North's response to Issue 19, Verizon North has no such obligation under the 1996 Act. Second, Covad would apparently require Verizon North to provide loop extension equipment for free, as Covad has struck the sentence in § 3.1 stating that a "separate charge will apply for loop extension equipment." Covad has no entitlement to obtain this service at no cost.

Contract Reference. UNE Attachment, §§ 3.1, 3.2, 3.4, 3.6, 3.7

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?**

Covad Position. Yes. Verizon should provision Covad DS-1 loops with associated electronics for such loops to work, at no additional charge, in instances when such electronics are not already in place, if it does so for its own end users.

Verizon Position. As above, Covad's proposed language would require Verizon North to build facilities in order to provision Covad's UNE orders, which Verizon North is not obligated to do under federal law. And, Covad again would apparently require Verizon North to provide loop extension equipment for free, as Covad has struck the sentence in § 3.5 stating that a "separate charge will apply for loop extension equipment." Covad has no entitlement to obtain this service at no cost.

Contract Reference. UNE Attachment, § 3.5

26. **Should Covad be able to offer full-strength symmetric DSL services?**

Covad Position. Yes. Covad should be able to offer full-strength symmetric DSL services, which means providing services to end users with up to 1.544 Mbps of bandwidth. To do that, the definition of SDSL in the Agreement must permit Covad to offer services that meet Spectrum Management Classes ("SMC") 7 and 8.

Verizon Position. Verizon North does not prevent Covad from offering full-strength symmetric DSL services. The agreed-upon language defines a 2-Wire SDSL Loop as one that, among other things, "meets Class 2 length limit in T1E1.4/2000-002R3," which enables the provision of full-strength symmetric DSL services. The language further states that, "alternately," a CLEC's "connecting equipment should conform to the limits for SMC2." Thus, the agreement does not prevent Covad from using equipment that conforms to the limits of SMC 7 and 8. Indeed, the language further provides that the

“data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop.”

Contract Reference. UNE Attachment, § 3.7

27. **Should the Agreement make clear that Covad has the right, under Applicable Law, to deploy services that either (1) fall under any of the loop type categories enumerated in the Agreement (albeit not the one ordered) or (2) do not fall under any of loop type categories?**

Covad Position. Yes. Covad’s language is consistent with Applicable Law, namely 47 C.F.R. § 51.230. Covad anticipates that spectrum management law is likely to change during the term of the Agreement due to proposed industry proposals presently before the FCC, and agreed to by both Covad and Verizon. Covad believes the Agreement should generically reference Applicable Law in order to capture automatically the current and future state of the law.

Verizon Position. With respect to the first issue raised here, Covad’s proposed changes to the agreement would substantially impair Verizon North’s ability to ensure that the various services provided over loops in a binder group, or in adjacent binder groups, do not interfere with each other. Verizon North is legally required to know which services are provided over which loops in order to be better able to address any potential interference problems that arise. With respect to the second issue raised here, Verizon North’s proposed language in § 3.11 of the UNE Attachment provides that, for any “loop type or technology that has not yet been developed,” Covad should submit a bona fide request if it wants to deploy such a brand new loop type or technology. This is entirely consistent with 47 C.F.R. § 51.230, which does not presume that as-yet undeveloped loop types and technologies are acceptable for deployment. Finally, the agreement already contains a change-of-law clause that would apply in the event that § 51.320 changes. *See* Agreement, § 4.

Contract Reference. UNE Attachment, §§ 3.10, 3.10 (proposed), 3.11, 4.5

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

The parties have resolved this issue.

Contract Reference. UNE Attachment, § 3.10

29. **Should Verizon maintain or repair loops it provides to Covad in accordance with minimum standards that are at least as stringent as either its own retail standards or those of the telecommunications industry in general?**

Covad Position. Yes. Consistent with the nondiscrimination provisions of the Act, Verizon should be obligated to maintain or repair loops using standards that are at least as stringent as the standards it uses in maintaining or repairing the same or comparable

loops for itself or, in the alternative, applicable industry standards for maintaining or repairing such loops.

Verizon Position. The agreement already provides that Verizon North will maintain and repair loops in a nondiscriminatory fashion. See UNE Attachment, § 14. Furthermore, the 1996 Act does not require Verizon North to perform maintenance and repair functions in accordance with industry standards if those differ from the standards that Verizon North applies in maintaining and repairing its retail customers' loops. Instead, the Act requires Verizon North to perform those functions in a nondiscriminatory fashion. Accordingly, there is no need for the first half of Covad's proposed addition, and the second half is contrary to federal law.

Contract Reference. UNE Attachment, § 3.10 (proposed)

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

Covad Position. Yes. Cooperative testing assists in the timely and efficient provisioning of functioning loops. Verizon should conduct cooperative testing at no additional charge until it can demonstrate that it can consistently deliver working loops to Covad. Covad's proposed language provides specific terms and conditions concerning how the parties currently conduct cooperative testing and should continue to do so under the Agreement, including, but not limited to, the following:

- (i) When Verizon should conduct cooperative testing (*i.e.*, where Verizon determines a dispatch is required to provision a loop).
- (ii) What such testing should entail.
- (iii) How the parties should coordinate such testing. (Verizon will call Covad with the technician on the line to perform the test and Covad will within 15 minutes begin testing with the technician, while testing will take no longer than 15 minutes.)
- (iv) What happens if the Verizon technician performing testing is unable to contact a Covad employee. (The Verizon technician will test the loop to ensure it meets the requirements of the Agreement, provide the reason he/she was unable to contact Covad, and later engage in a joint "one way" test with Covad whereby a Verizon employee will call Covad and stay on the line while Covad tests the loop remotely using its equipment to which the loop is connected.)
- (v) Escalation procedures.
- (vi) Procedures if the acceptance test fails loop continuity testing.
- (vii) That Verizon should not bill Covad for loop repairs when the repair results from a Verizon problem.

Verizon Position. As an initial matter, the agreed-upon language in § 3.13.13 of the UNE Attachment limits any obligation to conduct cooperative acceptance testing to "the former Bell Atlantic Service Areas only." Because Verizon North's territory in Pennsylvania is not part of the former Bell Atlantic Service Areas, there is no open issue in this proceeding with respect to cooperative acceptance testing.

Verizon North agrees that testing can identify service-affecting issues with loops before they are provisioned. Indeed, when Verizon North provisions an xDSL Compatible Loop or a 2-wire digital conditioned loop (equivalent to a Digital Designed Loop), Verizon North already performs continuity testing and, if requested by the CLEC, “meet me” testing, whereby a Verizon North technician will meet with a CLEC technician to isolate and resolve any issues. However, as with other issues raised in this proceeding, the procedures for cooperative acceptance testing should not be established on an interconnection-agreement-by-interconnection-agreement basis. Instead, any procedures for testing should be worked out collaboratively with all CLECs, so that a uniform process may be employed.

Finally, if cooperative acceptance testing processes are established on an industry-wide basis for Verizon North in Pennsylvania, Covad’s obligation to pay for cooperative testing should not be contingent on Covad’s proposed vague and undefined requirement that Verizon North first “demonstrate” that it consistently delivers working loops to Covad. In any event, Verizon North’s performance reports for Pennsylvania, pursuant to the *Bell Atlantic/GTE Merger Order*, consistently show high installation quality rates and low rates of trouble reports, thus meeting any such burden of proof.

Contract Reference. UNE Attachment, § 3.13.13

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

Covad Position. Yes. Verizon should be obligated to tell Covad where it has provisioned a loop. For large office buildings, Verizon will usually provision a loop in the termination room, in which all the loops serving that building are terminated. CLECs should not be forced to blindly search large office buildings for the terminal room. In situations where Verizon sends a technician to provision a loop, Verizon must “tag” the provisioned loop to allow Covad to find the newly provisioned loop, as opposed to having to search through a virtual bird’s nest of wires. In cases in which Verizon provisions a loop without sending a technician, Verizon must provide Covad sufficient information to allow Covad to locate the circuit being provisioned.

Verizon Position. As an initial matter, and as noted above, the agreed-upon language in § 3.13.13 of the UNE Attachment is limited to “the former Bell Atlantic Service Areas only.” Because Verizon North’s territory in Pennsylvania is not part of the former Bell Atlantic Service Areas, there is no open issue in this proceeding with respect to this section.

As with other issues raised in this proceeding, the procedures for enabling a CLEC to locate the loops that Verizon North provisions should not be established on an interconnection-agreement-by-interconnection-agreement basis. Instead, any such procedures should be worked out collaboratively with all CLECs, so that a uniform process may be employed. In any event, Verizon North already tags loops that it provisions if it dispatches a technician and offers Covad the opportunity to request that Verizon North tag a loop on a no-dispatch order (in which case, Verizon North will

dispatch a technician to tag the loop and Covad will be charged for the dispatch). In the event that Covad does not request Verizon North to tag a loop on a no-dispatch order, the FCC has recently reaffirmed that Verizon North is required only to provide a CLEC “with the same general information regarding the location of demarcation points that is available to [the ILEC’s] own employees and in the same timeframe.” *BellSouth Five-State 271 Order* ¶ 143. Verizon North already provides Covad with this information and therefore satisfies its obligations under federal law.

Contract Reference. UNE Attachment, § 3.13.13

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

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

Verizon Position. Covad’s proposals are generally inapplicable to the procedures that Verizon North provides for retail and CLEC loop qualification requests in Pennsylvania. Verizon North has no “extended query” transaction in Pennsylvania — that transaction is offered by the OSS employed in Verizon’s former Bell Atlantic Service Areas, including by Verizon PA. The single electronic loop qualification transaction that Verizon North offers to itself and to CLECs in Pennsylvania not only provides all the information that is provided by the 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. For this reason, Verizon North does not offer a manual loop qualification process in Pennsylvania. Nonetheless, as an exceptions process, Verizon North will manually investigate loop qualification information on particular loops for both for its retail DSL service and for CLECs, and will provide to both any information found in substantially the same time and manner. Verizon North will also update its OSS with the information found.

In addition, Covad’s proposal is contrary to law. The FCC has recently reaffirmed that an ILEC’s obligation with respect to loop qualification information is to provide CLECs with nondiscriminatory access to the information that the ILEC has compiled. The FCC “has never required incumbent LECs to ensure the accuracy of their loop qualification databases.” *BellSouth Five-State Order* ¶ 142. Accordingly, there is no basis to Covad’s asserted right to be able to obtain loop qualification information at no cost in cases where the information that Verizon North returns through the mechanized transaction is “defective.” In addition, Covad’s proposal to establish a one-business-day standard for manual loop qualifications should be rejected even if Verizon North offered such a process in Pennsylvania. First, as with other issues raised in this proceeding, standards in which processes must be performed should be set on an industry-wide basis, not on an

interconnection-agreement-by-interconnection-agreement basis. Second, Verizon North's obligation is only to provide information to Covad in substantially the same time and manner that it provides such information to itself; Covad is not entitled to receive such information in shorter intervals.

Contract Reference. UNE Attachment, § 3.13.5

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

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

Verizon Position. It is essential that orders for advanced services be provisioned on loops that possess the appropriate technical capabilities. Accordingly, Verizon North expects that CLECs have prequalified their xDSL orders before submitting them. If Covad seeks to dispute Verizon North's determination that a particular loop or set of loops does not meet the necessary technical specifications to handle the advanced services that Covad seeks to provide, then Covad may challenge those findings. But Covad should not be permitted to eliminate entirely the prequalification requirement for a particular class of loops.

Contract Reference. UNE Attachment, § 3.13.7

34. In what interval should Verizon provision loops?

Covad 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 three business days for line shared loops not needing conditioning. These intervals are reasonable and ensure that Covad receives reasonable and nondiscriminatory access to UNE loops.

Verizon Position. There is no dispute among the parties with respect to the requirement that Verizon North provision loops within the shorter of the interval that Verizon North provides to itself or the Commission-adopted interval. The dispute between the parties centers around whether the Commission should adopt intervals for loops that are unique to Covad's orders. There is no basis in federal law for Covad to obtain an interval that is shorter than the interval that Verizon North provides to itself (for products with retail analogs) or the interval that this Commission establishes for all CLECs (for products with no retail analog). Instead, Covad should obtain the same nondiscriminatory intervals available to all other CLECs.

Covad's proposed changes to §§ 3.13.10 and 4.4.6 also eliminate language that is not discussed in Covad's summary of the issues. Specifically, Covad has proposed the deletion of language stating that the applicable interval for provisioning a loop does not include any time necessary for engineering and conditioning. Although Verizon North will perform such engineering and conditioning work to enable a loop to handle the service that Covad has ordered, that work is not part of the normal provisioning process and Verizon North should have additional time in which to complete that work.

Contract Reference. UNE Attachment, §§ 3.13.10, 3.14, 4.4.6

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

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

Verizon Position. Verizon North will conduct an LST if the loop currently serving an end user cannot handle the service that Covad has ordered and there is a spare loop that meets the necessary technical specifications for that service. The LST enables Verizon North to complete Covad's order by rearranging the loops. Verizon North began performing LSTs as a matter of course when provisioning CLECs' orders because CLECs, including Covad, requested that Verizon North take the steps necessary to provision their orders successfully. Verizon North is developing a uniform process by which CLECs would indicate, on an order-by-order basis, whether they wish to have an LST performed. However, Covad and other CLECs should be required to pay for any LSTs performed, as such activity constitutes additional work that Verizon North is not required to perform in order to provide unbundled access to its network. Finally, because performing an LST can add additional time to the provisioning process, Verizon North should have additional time to perform an LST when it is required to provision a CLEC's order.

Contract Reference. UNE Attachment, §§ 3.13.4, 3.13.12, 4.4.6

36. Should Verizon provide Covad Access to PARTS loop network architecture as an end-to-end UNE and provide Covad access to such UNE at the Central Office via port on the Verizon Optical Concentration Device?

Covad Position. Yes. Verizon's PARTS architecture is nothing more than a loop, as it provides a transmission path from the Central Office to the customer premise. 47 C.F.R. § 51.319(a)(1). Like any other loop, Covad should be provided access to it via collocation space at the Central Office. In the alternative, were PARTS to be considered

“packet switching,” the FCC’s packet switching criteria are met. 47 C.F.R. § [51.]319(c)(4). Finally, PARTS should be unbundled as a UNE because Covad would be impaired without access to PARTS loops. 47 U.S.C. § 251(d)(2)(B); *see also* 47 C.F.R. § [51.]317. Verizon should also allow Covad to use all commercially available features, functions, and capabilities of such facilities and allow Covad to connect any of its technically compatible equipment to such facilities. Verizon should also provide Covad access to the piece-parts of PARTS as separate UNEs.

Verizon Position. No. Covad seeks to impose obligations that, as Covad’s own proposed language expressly states, are “[w]ithout regard to Applicable Law.” UNE Attachment, § 3.18 (Covad proposal). Yet this Commission must resolve open issues in this arbitration *with regard* to governing law. Under governing law, Verizon North is not required to provide the unbundled access that Covad seeks.

PARTS — Verizon North’s Packet At the Remote Terminal Service offering — is an end-to-end packet switching service that will facilitate DSL access service at the remote terminals by using next generation digital loop carrier equipment. In the *UNE Remand Order*,⁷ the FCC expressly refused to require the unbundling of packet switching, except in extremely limited circumstances. *See UNE Remand Order* ¶¶ 306-313. Under the FCC rules, packet switching must be unbundled only if each of four criteria is satisfied — and they are not. *See* 47 C.F.R. § 51.319(c)(5). Finally, Covad incorrectly claims that PARTS is simply a loop. In fact, PARTS is a loop plus complex advanced services equipment, operations support systems, and an OCD (similar to an ATM switch). The FCC’s regulations expressly state that Verizon’s obligation to unbundled loops does not include “those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers.” *Id.* § 51.319(a)(1). Because PARTS utilizes DSLAM capabilities at the remote terminal, it does not fall within the Commission’s definition of the loop unbundled element. If CLECs wish to utilize PARTS, they may do so through Verizon’s access tariff filed with the FCC.

Contract Reference. UNE Attachment, § 3.18 (proposed)

37. **Should Verizon be obligated to provide “Line Partitioning” (i.e., line sharing where the customer receives voice services from a reseller of Verizon’s services)?**

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

Verizon Position. No. Federal law on this point is clear. Verizon North has no obligation to provide line sharing — or “line partitioning,” to use Covad’s terminology

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”), *petitions for review granted, United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

— where another carrier provides voice service on a loop. See *Line Sharing Order*⁸ ¶ 72; *Texas 271 Order*⁹ ¶ 330. CLECs may resell Verizon North's retail DSL service over resold lines, so end users that purchase their voice service from a reseller are able to obtain DSL services on a competitive basis.

Contract Reference. UNE Attachment, § 4.2.1 (proposed)

38. What should the interval be for Covad's line sharing Local Service Requests ("LSRs")?

Covad 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.

Verizon Position. See Verizon North's response to Issue 13.

Contract Reference. UNE Attachment, § 4.4.3

39. What interval should apply to collocation augmentation where a new splitter is to be installed?

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

Verizon Position. Verizon North already performs augmentation of physical and cageless collocation within 45 days of receiving a completed collocation application, as per the effective tariff. See PUC Tariff 9, Section 19.4.1.

Contract Reference. UNE Attachment, § 4.7.2

40. Should Covad be permitted to access line shared loops for testing purposes?

Covad Position. Yes. Consistent 47 C.F.R. § 51.[3]19(h)(7)(i), Covad should be allowed to supply its own test head for line shared loops.

Verizon Position. Section 4.8.1 of the UNE Attachment — which is not subject to dispute here — already permits Covad to use its own test head for line shared loops in

⁸ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), vacated and remanded, *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

⁹ *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000).

Verizon North end offices where Verizon North employs a POT Bay for interconnection of a Covad collocation arrangement with Verizon North's network. Under § 4.8.2, Covad may not use its own test head where Verizon North has not employed a POT Bay for interconnection of a Covad collocation arrangement with Verizon North's network. However, Verizon North will make available to Covad an on-line, electronic test system for those lines. This complies fully with federal law, which requires ILECs to provide "test access points . . . at the splitter . . . or through a standardized interface, such as . . . a test access server." 47 C.F.R. § 51.319(h)(7)(i) (emphasis added).

Covad has proposed to specify in § 4.8.2 that the inability to use its own test head pertains only to line shared loops. Verizon North believes that this is already clear from the context of the section, but would not object to the inclusion of this language, which does not change the meaning of the provision. Covad has further proposed to add language stating that it may use Verizon North's on-line test system at no charge. Verizon North opposes this provision, which Covad does not defend, and for which there is no basis. Finally, Covad proposes to add language stating that the inclusion of § 4.8.2 in the agreement does not constitute Covad's acknowledgement that Verizon North has satisfied its obligations under § 51.319(h)(7)(i). But Verizon North has clearly done so, as explained above. Accordingly, there is no basis for Covad's proposed language.

Contract Reference. UNE Attachment, § 4.8.2

DARK FIBER ISSUES

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

The parties have resolved this issue.

Contract Reference. UNE Attachment, § 8.1

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

Verizon's termination requirement would allow it unilaterally to protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility.

Verizon Position. Covad is simply wrong in claiming that the FCC's definition of dark fiber includes both terminated and unterminated dark fiber. The *UNE Remand Order* defines dark fiber as "unused loop capacity that *is physically connected to facilities* that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by competitive LECs *without installation by the incumbent.*" *UNE Remand Order* ¶ 174 n.323 (emphases added). Moreover, as described above, the law is clear that Verizon North is not required to construct new UNEs for a CLEC. See, e.g., *Virginia Arbitration Order* ¶ 468 ("Verizon is also correct that the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for . . . other carriers.").

As noted above, the FCC's definition of the "dark fiber" unbundled network element fully reflects this "no-build" rule. Fiber that has not been installed between two terminals (for example, between two end offices or between an end office and a customer premises) does not meet the FCC's definition because it is *not* physically connected to facilities used to provide service and *cannot* be used *by anyone* without installation by Verizon North. The FCC expressly held that dark fiber must "connect[] two points within the incumbent LEC's network" to be fully installed and available as a UNE. *UNE Remand Order* ¶ 325. Fiber that does not extend from one terminal to another does not *connect* any point in the network to any other point in the network (and thus is physically incapable of carrying traffic). Such fiber, therefore, does not fall within the FCC's definition: it is not "an uninterrupted pathway between locations in Verizon's network," as Covad claims. In fact, the FCC stated that "dark fiber" is a "network element" within the meaning of § 153(29) of the Act *only* if it is both "physically connected to the incumbent's network and is *easily called into service.*" *Id.* ¶ 328 (emphasis added). If additional construction is required to complete an end-to-end route and make fiber ready for use, that fiber is not yet a network element under the FCC's definition.

Covad claims that terminating fiber at an accessible terminal is "an inherently simple and speedy task" and that Verizon North supposedly would "protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility." Covad's claim, however, does not reflect the manner in which Verizon North actually constructs fiber facilities in its network. Verizon North does not construct new fiber optic facilities to the point where the *only* remaining work item required to make them available and attached end-to-end to Verizon North's network is to terminate the fibers onto fiber distributing frame connections at the customer premises.

Contract Reference. UNE Attachment, § 8.2.2

43. **Should Covad be permitted to access dark fiber in any technically feasible configuration consistent with Applicable Law?**

Covad Position. Yes. Covad should be able to access dark fiber at any technically feasible point, which is the only criterion that Congress adopted for determining where carriers may access the incumbent's network. Verizon's attempt to limit access to dark

fiber at central offices and via three defined products would diminish Covad's rights to dark fiber under Applicable Law.

Verizon Position. Covad's description of this issue is inconsistent with its proposed contract language in § 8.1.5 of the UNE Attachment. "Dark fiber" is not a separate, stand-alone UNE under the FCC's rules. To the contrary, dark fiber 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 North's proposed contract language allows Covad to obtain access to dark fiber loops, subloops, and IOF, as those network elements are specifically defined by the FCC. That is all that applicable law requires. Covad's proposed § 8.1.5, which 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.

In addition, Covad's proposed modification to the definition of dark fiber loops in § 8.1.1 of the UNE Attachment is inaccurate and confusing. Section 51.319(a)(1) of the FCC's rules defines the loop network element as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC." 47 C.F.R. § 51.319(a)(1). Verizon North's proposed contract language in § 8.1.1 follows this definition, describing a dark fiber loop as unlit fiber optic strands "between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center [*i.e.*, a "central office"], and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise." Covad, however, expands this definition to include unlit fiber optic strands at a "Verizon Wire Center or other Verizon premises in which Dark Fiber Loops terminate." In other words, Covad would define a dark fiber "loop" as any dark fiber that extends between a terminal located somewhere other than the central office (*i.e.*, a "remote terminal") and the customer premises. What Covad is describing, however, is not a "loop" at all, but a "subloop," which is already covered under § 8.1.2 of the UNE Attachment. In particular, § 8.1.2(b) defines a dark fiber subloop to include dark fiber strands "between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise." Therefore, Covad's proposed modification to Verizon North's proposed contract language is unnecessary to provide Covad with access to dark fiber at accessible terminals outside a Verizon North central office.

Contract Reference. UNE Attachment, §§ 8.1.1, 8.1.5 (proposed)

44. **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 Position. The Agreement should clarify that Verizon's obligation to provide UNE dark fiber includes the duty to provide any and all of the fibers on any route

requested by Covad regardless of whether individual segments of fiber must be spliced or cross connected to provide continuity end to end. This provision is consistent with the FCC's rules governing nondiscriminatory access to UNEs. Verizon should be required to splice because Verizon splices fiber for itself when provisioning service for its own customers and affiliates. In addition, according to usual engineering practices for carriers, two dark fiber strands in a central office can be completed by cross-connecting two dark fiber strands with a jumper. The FCC, acting as the arbitrator for the state of Virginia, has determined that Verizon may not decline to cross connect fiber to complete a route. *Virginia Arbitration Order*, at ¶ 457. It is Covad's position, and the FCC agreed, that Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of fiber, and thus conflicts with FCC rules 51.307 and 51.311. *Virginia Arbitration Order*, at ¶ 457.

Verizon Position. Covad's description of this issue improperly conflates two separate issues: (1) whether Verizon North is required to splice fiber together to create new continuous routes for Covad, and (2) whether Verizon North will cross-connect two existing, fully terminated dark fiber IOF strands for a CLEC at an intermediate central office without requiring Covad to collocate at the intermediate central office.

With respect to the first issue, Covad's claim has been squarely rejected in the order that Covad cites. *See Virginia Arbitration Order* ¶¶ 451-453. If fiber optic strands must be spliced together end-to-end to create a continuous, uninterrupted transmission path, that fiber route is not yet fully constructed and does not meet the definition of dark fiber. As explained above, the law is clear that Verizon North is not required to construct new UNEs for a CLEC; nor is an ILEC required to splice new fiber routes for a CLEC.

With respect to the second issue, however, Verizon North will propose new contract language that would allow Covad to order dark fiber on an indirect route basis, without having to collocate at intermediate central offices. Verizon North would provide fiber optic cross-connections to join two terminated dark fiber IOF strands at the intermediate central offices.

Contract Reference. UNE Attachment, §§ 8.1.1, 8.1.2, 8.1.3, 8.1.4, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.9

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

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

Verizon Position. Verizon North's proposed § 8.1.1 of the UNE Attachment provides that Covad may access dark fiber loops at an accessible terminal in a Verizon North Wire Center. "Wire Center" is defined in § 2.115 of the Glossary Attachment as "[a] building or portion thereof which serves as a Routing Point for Switched Exchange Access Service. The Wire Center serves as the premises for one or more Central Offices."

Furthermore, the definition of “Central Office” in § 2.20 of the Glossary Attachment states that “[s]ometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.” Thus, the definition of a “Verizon Wire Center” includes any Verizon North premises that houses a switch and thus acts as a “Central Office.” More importantly, however, Verizon North’s definition of “Dark Fiber Loops” in § 8.1.1 is fully consistent with § 51.319(a)(1) of the FCC’s rules, which defines the loop network element as “a transmission facility between a distribution frame (or its equivalent) *in an incumbent LEC central office* and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC.” 47 C.F.R. § 51.319(a)(1) (emphasis added).

Covad’s proposed modification to the definition of “Dark Fiber Loops” in § 8.1.1 is inaccurate and confusing, for the reasons explained above in Verizon North’s response to Issue 42. What Covad is seeking at “other Verizon premises” where the fiber is terminated is not a “loop” at all, but a “subloop,” which is already covered under § 8.1.2 of the UNE Attachment. In particular, § 8.1.2(b) defines “Dark Fiber Sub Loops” to include dark fiber strands “between Verizon’s Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon’s main termination point located within a Customer premise.” Covad should not be permitted to conflate the definitions of Dark Fiber Loops and Dark Fiber Subloops in this manner.

Contract Reference. UNE Attachment, § 8.1.1

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

Covad Position. It is Covad’s position and the FCC found that requiring a requesting carrier to submit separate requests for each leg of a fiber route places unreasonable burden on carriers that is not comparable to Verizon’s own information about and access to its fiber, and is therefore discriminatory. *Virginia Arbitration Order*, at ¶ 457.

Verizon Position. As described in response to Issue 44, Verizon North will propose new language for § 8.2.5 that would allow Covad to request information about and/or order dark fiber on an indirect route basis, without having to collocate at intermediate central offices. In the event that Covad wishes to order dark fiber IOF on an indirect route basis, Verizon North would provide fiber optic cross-connects to join the terminated dark fiber IOF strands at the intermediate central offices.

Reasonable limitations on this offering, however, are necessary. Indeed, the FCC’s Wireline Competition Bureau did not indicate that Verizon North’s obligation to cross-connect fiber at intermediate offices for a CLEC requires Verizon North to provide fiber along indirect routes through an unlimited number of intermediate offices, especially when it would result in inefficient use of scarce fiber cable resources or would require the use of optical repeaters to carry light end-to-end (which necessarily requires collocation by the CLEC at an intermediate office along the route). As set forth above in Verizon

North's proposed new language, Verizon North reserves the right to limit the number of intermediate central offices on an indirect route consistent with limitations in Verizon North's network design and/or prevailing industry practices for optical transmission applications. Verizon North will discuss with Covad any limitations on the number of intermediate offices along an indirect route to permit Covad to make any necessary collocation decisions.

Contract Reference. UNE Attachment, §§ 8.2.3, 8.2.5

47. **Should Verizon provide Covad detailed dark fiber inventory information?**

Covad Position. Yes. In order to meaningfully utilize dark fiber, Covad must be able to know where and how much dark fiber exists in the network in order to develop its business and network plans, evaluate competitive customer opportunities, and otherwise truly utilize dark fiber as a component of a network build out strategy. Verizon must provide Covad detailed dark fiber inventory information, including, but not limited to, field surveys and access to maps of routes that contain available dark fiber by LATA and availability of dark fiber between any two points in a LATA without regard to the number of dark fiber arrangements that must be spliced or cross connected together for Covad's desired route. Verizon performs field surveys for itself to determine the quality, sufficiency, and transmission characteristics of dark fiber. The FCC has made plain that Verizon must provide to Covad the same detailed underlying information regarding the composition and qualifications of the loop that Verizon itself possesses. *Virginia Arbitration Order*, at ¶ 473.

Verizon Position. Verizon North's obligation to provide information regarding its dark fiber inventory does not compel Verizon North to provide to CLECs information that Verizon North itself does not possess. In its proposed § 8.2.5.1, Covad demands that Verizon North provide "maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction." Verizon North, however, does not have such "maps" available for its own use that show what dark fiber is available along each route in Verizon North's network, and does not have the ability to provide such nonexistent "maps" for the cost of "reproduction" (there is nothing to "reproduce"). Indeed, Verizon North does not have the ability to provide this information. The availability of dark fiber at specific locations changes on a day-to-day basis depending on the needs of Verizon North, CLECs, IXCs, and other customers for lit fiber services, as well as on-going construction activities. If Verizon North were to provide a snapshot picture of all available dark fiber in Pennsylvania at any given time — which it cannot do — Covad could not assume that such dark fiber would be available when and if Covad later decides to place an order. In fact, because Verizon North must review its records manually on a route-by-route basis to determine the availability of dark fiber, by the time Verizon North finished a review of the entire state, the results would *already* be outdated. Therefore, requiring Verizon North to provide Covad information identifying all available dark fiber in Pennsylvania not only would be unduly burdensome and costly for Verizon North, but the information would be useless to Covad as soon as it was received.

In addition, for the reasons set forth in Verizon North's response to Issues 44 and 46, Covad's proposed modifications to § 8.2.5 of the UNE Attachment are unnecessary (and, insofar as they purport to require Verizon North to splice fiber for Covad, are inconsistent with applicable law). Verizon North will propose language such that, if no direct route is available between the A and Z points requested by Covad, Verizon North will search for reasonable indirect routes without requiring Covad to submit additional dark fiber inquiries.

Finally, Verizon North notes that the agreed-upon language in § 8.2.8 of the UNE Attachment limits any obligations with respect to field surveys to "the former Bell Atlantic jurisdictions." Because Verizon North's territory in Pennsylvania is not part of the former Bell Atlantic Service Areas, there is no open issue in this proceeding with respect to field surveys.

Contract Reference. UNE Attachment, §§ 8.2.5, 8.2.8.1 (proposed), 8.2.5.1 (proposed)

48. **Should Verizon's responses to field surveys requests provide critical information about the dark fiber in question that would allow Covad a meaningful opportunity to use it?**

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

Verizon Position. As an initial matter, as noted above, the agreed-upon language in § 8.2.8 of the UNE Attachment limits any obligations with respect to field surveys to "the former Bell Atlantic jurisdictions." Because Verizon North's territory in Pennsylvania is not part of the former Bell Atlantic Service Areas, there is no open issue in this proceeding with respect to field surveys. Moreover, the type of detailed technical information requested by Covad in its proposed § 8.2.8.1 to the UNE Attachment is not the type of detail that should be defined on an interconnection-agreement-by-interconnection-agreement basis. Indeed, at this time, Verizon North does not know whether it has the capability of providing the type of information requested by Covad. "Parity" access to dark fiber information does not include access to information that Verizon North does not track for itself.

Contract Reference. UNE Attachment, § 8.2.8.1 (proposed)

49. **Should Verizon be permitted to refuse to lease up to a maximum of 25% of the dark fiber in any given segment of Verizon's network?**

Covad Position. No. Any and all dark fiber deployed by Verizon is subject to unbundling pursuant to the Act and FCC regulations. Verizon should not be able to take away Covad's ability to obtain dark fiber in a manner that will enable Covad to compete. Indeed, the improper exclusion of fiber will violate federal law defining UNE dark fiber unbundling requirements. Moreover, Covad is concerned with its ability to verify the accuracy of Verizon's reporting and method of calculation with respect to a 25% limit on dark fiber.

Verizon Position. Yes. Contrary to Covad's claim, Verizon North's proposed limitation does not violate the FCC's unbundling rules. To the contrary, the FCC has ruled that state commissions retain the flexibility to establish reasonable limitations and technical parameters for dark fiber unbundling. *See UNE Remand Order* ¶¶ 199, 352. Verizon North's contract language is patterned after the 25-percent cap on dark fiber established by the Texas Public Utility Commission in 1996, which the FCC expressly approved. *Id.* ¶ 352 n.694 (finding that "the measures established by the Texas PUC address the incumbent LEC's legitimate concerns").

Dark fiber is a scarce resource in Verizon North's network. Verizon North's proposed limit of 25 percent of fiber on a given route is a reasonable anti-warehousing provision that prevents one CLEC from occupying all available dark fiber in a particular area and excluding entry by other carriers. It does not reserve even a single strand of fiber for Verizon North. This 25-percent limit does not impose any practical limitation on Covad's ability to provide service to its customers, given the huge bandwidth of fiber. In fact, such a limit would encourage Covad and other CLECs to utilize fiber more efficiently so as to maximize the resources available for all telecommunications companies in Pennsylvania.

Covad's concerns about reporting or "method of calculation" of the 25-percent limit are unfounded. If a fiber route consists of a 24-strand cable, Covad may lease up to 6 fibers on that route. The calculation is neither complex nor subject to interpretation.

Contract Reference. UNE Attachment, § 8.2.15

50. **Should Verizon be permitted to reclaim dark fiber upon 12 months advanced notice to Covad?**

Covad Position. With respect to Verizon's ability to reclaim dark fiber from a CLEC, Covad has requested that Verizon reclaim dark fiber previously provisioned to Covad only after 24 months advanced written notice to Covad and only if necessary to meet documented actual demand. Having fiber that Covad is using reclaimed by Verizon can only undercut Covad's ability to reasonably rely upon and deploy a network based on the supply of fiber facilities. The issue is not whether Verizon is entitled to reclaim dark fiber, but whether Verizon should provide commercially reasonable notice to Covad of the proposed reclamation.

Verizon Position. Covad does not dispute that Verizon North may, upon a showing of need to the Commission, reclaim fiber facilities that it has leased to Covad as dark fiber. In the event that Verizon North petitions the Commission for such relief, 12 months advance notice to Covad is commercially reasonable and provides Covad with adequate time to migrate services provisioned on that fiber to alternative facilities. If Covad needs additional time to migrate its services, it may raise its concerns with the Commission, and the Commission may decide — based upon the needs of both Verizon North and Covad — whether to afford Covad additional time. Setting the default at 24 months (two years), however, unreasonably restricts Verizon North’s ability to reclaim fiber facilities to meet its carrier-of-last-resort obligations.

Contract Reference. UNE Attachment, § 8.2.15.1

RESALE

51. **Should Verizon provide Covad direct notification within one business day of end users switching from Verizon Telecommunications Services that Covad resells to a retail Verizon Service?**

Covad Position. Yes. Covad needs to know when its end users have returned to Verizon so that Covad can cease billing them.

Verizon Position. Verizon North provides CLECs with line loss notifications when a CLEC’s customer switches to another carrier — whether Verizon North or a different CLEC. Verizon North’s line loss notifications are generated once its billing systems are updated to reflect the new carrier as the service provider on the line. Verizon North’s retail division receives line loss notifications at the same point in the provisioning process when a Verizon North retail customer switches to a CLEC. The FCC has repeatedly reviewed and approved Verizon North’s line loss notification process. *See, e.g., Pennsylvania 271 Order* ¶ 52; *Massachusetts 271 Order*¹⁰ ¶ 100. Covad proposes a radical restructuring of the line loss notification process. It would require notification that one of its customers had placed an order with Verizon North at least one day *prior* to the provisioning of that order. (For reasons that are unexplained, under Covad’s proposed language it would not receive line loss notifications if one of its customers switched to another reseller.) Yet the line is not lost until after it is provisioned — customers can change their minds at any time prior to that point. Accordingly, if Verizon North sent Covad notification prior to the provisioning of the order, Covad might cease billing a customer that, in the end, decided to stay with Covad. Finally, because Verizon North’s current line loss notifications, for both retail and CLECs, are triggered by an update to the billing systems, which occurs after the line is provisioned, Covad’s proposal would require Verizon North to develop an entirely new OSS system, solely to provide Covad with these potentially inaccurate pre-loss notifications.

¹⁰ *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001).

PRICING ISSUES

52. **Should the Agreement provide that Covad will pay only those UNE rates that are approved by the Commission (as opposed to rates that merely appear in a Verizon tariff)?**

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

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

Verizon Position. Covad's claim that Verizon North should be required to warrant that charges set forth in the agreement are the approved charges for service is frivolous: Verizon North's tariffed charges are publicly filed and available on the Internet; Covad can easily confirm the accuracy of any charges, and Verizon North would be happy to provide assistance in the course of good-faith negotiations. And Verizon North cannot be required to provide a refund of charges duly imposed pursuant to a filed tariff absent an appropriate Commission or FCC order issued under appropriate statutory authority.

Where there is a generally applicable rate for a service, effective under the laws of Pennsylvania or federal law, and subject to the rigorous process of regulatory review provided for under state and federal law, that rate should govern. Covad's effort to portray this provision as giving Verizon North the ability to modify rates contained in the agreement unilaterally is incorrect. Under Verizon North's proposal, only tariffs that this Commission or the FCC has allowed to go into effect can supersede a rate contained in the agreement. Covad's proposal would permit Covad to game the system by seeking to maintain rates that are more favorable than those available to all other CLECs in Pennsylvania simply based on an accident of timing.

Finally, to the extent that rates are set forth in Appendix A to the Pricing Attachment, rather than in a generally applicable tariff, Covad has not raised a dispute with respect to any of those rates. Accordingly, these are agreed-upon rates and, therefore, are binding upon the approval of this agreement by this Commission. These rates will be superseded

by any new rates that 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. There is no basis, however, to suggest that either party is entitled to retroactive application of those rates.

Contract Reference. Pricing Attachment, §§ 1.3, 1.4, 1.5

53. Should Verizon provide notice of tariff revisions and rate changes to Covad?

Covad Position. Yes. Verizon typically uses the tariff filings as a vehicle for seeking different UNE rates from the Commission. Covad proposes that Verizon provide direct and meaningful notice of such filings to ensure that Covad can protect its interests. Verizon files a large number of tariffs with the Commission and it is unreasonable to expect that Covad can devote substantial resources to obtain and review all those various filings, or else risk having such tariff amendment become effective as filed with no further regulatory review. Verizon also should update the Pricing Appendix of the Agreement on an informational basis when the Commission orders new rates.

Verizon Position. Verizon North already provides public notice to its customers, including wholesale customers, of its tariff filings. Verizon North should not also be required to provide individualized notice to each of the CLECs operating in Pennsylvania. When a tariff is approved, Covad is just as able as Verizon North to make informational updates to the parties' Pricing Appendix. Verizon North should not be required to perform such administrative tasks on Covad's behalf.

Contract Reference. Pricing Attachment, § 1.9 (proposed)

COLLOCATION ISSUES

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

The parties have resolved this issue.

Contract Reference. Collocation Attachment, § 1

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

Covad Position. No. Covad, as a competitive carrier, cannot be compelled to offer collocation under the Act. *Virginia Arbitration Order*, at ¶ 75. Only incumbent local carriers are obligated to provide collocation to other carriers under Section 251(c)(6) of the Act. If Congress had intended that CLECs should be subject to collocation obligations, it simply would have included collocation obligations under Section 251(b), which delineates the duties of all carriers. Congress chose not to do so.

Verizon Position. Verizon North recognizes that § 251(c)(6) applies to ILECs and not to CLECs. Nothing in the Act, however, prohibits the Commission from allowing Verizon

North to interconnect with a CLEC via a collocation arrangement at its premises. By preventing Verizon North from doing so, CLECs limit Verizon North's interconnection choices. All of the interconnection locations, therefore, would be determined by the CLECs, which gives the CLECs the ability to minimize their own expenses and maximize Verizon North's.

Contract Reference. Collocation Attachment, § 2