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VIA HAND DELIVERY

James J. McNulty  
Secretary  
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DOCUMENT  
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Re: DIECA Communications, Inc. t/a Covad Communications  
Company

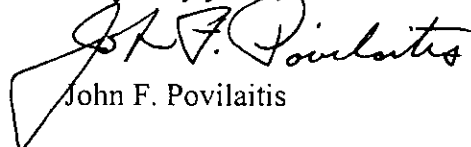
Petition For Arbitration Of Interconnection Rates,  
Terms and Conditions And Related Arrangements with  
Verizon Pennsylvania Inc. and Verizon North Inc. Pursuant  
to Section 252(b) of the Communications Act of 1934  
Docket Nos. A-310696F7000, A-310696F7001 –  
Corrected Brief Post-Technical Conference Brief

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Dear Secretary McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") in the above-captioned proceeding are originals and nine (9) copies each of the Corrected Post Hearing Technical Initial Brief of Covad Communications Company. In addition, Administrative Law Judge Marlane R. Chestnut is being provided copies of non-Pennsylvania Administrative decisions and other reference material. Copies of this Corrected Brief are being served upon the parties of record as shown on the attached Certificate of Service.

Very truly yours,



John F. Povilaitis

Counsel for  
Covad Communications Company

JFP/cc  
Enclosures  
Certificate of Service  
The Honorable Marlane R. Chestnut

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIECA Communications, Inc. t/a Covad  
Communications Company

ORIGINAL

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

Docket Nos.  
A-310696F7000  
A-310606F7001

POST-TECHNICAL CONFERENCE INITIAL BRIEF OF COVAD  
COMMUNICATIONS COMPANY

CORRECTED BRIEF

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIECA Communications, Inc. t/a Covad  
Communications Company

Petition for Arbitration of Interconnection Rates,  
Terms and Conditions and Related Arrangements  
with Verizon Pennsylvania Inc. and Verizon North  
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Communications Act of 1934

Docket Nos.  
A-310696F7000  
A-310606F7001

**POST-TECHNICAL CONFERENCE INITIAL BRIEF OF COVAD  
COMMUNICATIONS COMPANY**

Pursuant to the direction of the Administrative Law Judge (“ALJ”), Covad Communications Company (“Covad”) respectfully submits its Post-Technical Conference Initial Brief.

**I. INTRODUCTION**

In an attempt to resolve many open issues raised in this arbitration that have existed since the Technical Conference was held, Covad has put forth a great effort to find compromise language that is just and reasonable and strives for mutuality. At this time, out of the 56 issues<sup>1</sup> that were originally arbitrated, 26 of them have been settled. As a consequence, only 30 issues remain for the Commission to resolve. Because of the nature of this proceeding, which encouraged ongoing settlement, some of the issues, as identified herein, have evolved to the point where the parties are (1) closer to agreeing upon newly proposed language; however, certain aspects of the new language are still in dispute, or (2) have offered new language in an effort to achieve a settlement and full disagreement on the newly proposed language exists. The

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<sup>1</sup> This includes issue 24A.

remaining open Issues include: 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 19, 22, 23, 24, 25, 27, 30, 32, 33, 34, 35, 37, 38, 39, 42, 43, 44, 47 52, 53.<sup>2</sup> Of these issues, Issues 1, 7, 10, 12, 33, 35, and 52 are being briefed for the first time as originally scheduled.

The open issues should be resolved in Covad's favor consistent with federal law and applicable Commission precedent. Covad's position with respect to these open issues is just and reasonable and its proposed language is mutual and fairly addresses the concerns of both parties given the underlying facts and the need for the contractual provisions. As Covad has emphasized throughout this proceeding, there are two overarching issues that need to be addressed.

First, on many issues there is agreement between Verizon and Covad as to what Verizon should provide, but Verizon refuses to memorialize such agreement within the four corners of the interconnection agreement. Instead, Verizon expects Covad to take Verizon at its word and defer to its representations. Detailed contract language is, however, needed to prevent future disputes between Covad and Verizon. Throughout this proceeding, Covad has demonstrated that Verizon's approach is to attempt to limit its statutory obligations to Covad, so that they are not as broad as required by the Act, but only as specifically stated in the Agreement or a tariff. This is a transparent legal snare, designed to put Covad at risk of losing substantive rights if it has failed to include express language in the Agreement regarding its entitlements. Verizon should not be allowed to avoid its legal obligations under the Act through its own selective inclusion and exclusion of contract language. Without clear and unambiguous language that outlines Verizon's specific duties, the risk of potential future litigation is real. Therefore, the need for specific contractual terms and conditions describing Verizon's duties in this regard is abundantly necessary.

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<sup>2</sup> See Exhibit 1, Revised Proposed Language Matrix.

The second overarching issue is that Verizon attempts to deny efforts by Covad to customize its interconnection agreement to meet Covad's specific business needs and the needs of Covad's customers. Covad is the only carrier in the marketplace that focuses primarily on providing advanced broadband and DSL services and, thus, has very unique business needs and requirements. It is therefore critical that Covad have an interconnection agreement that supports the services it provides to its customers from now and into the future.

As will be demonstrated herein, Verizon repeatedly contends that resolution of issues should be deferred to other fora, such as the Carrier-to-Carrier Working Group or the Billing and Collections Task Force. And any attempt of Covad to seek contract language tailored to Covad's particular business, and customer, needs is met with Verizon's standard retort that such action will undermine the Commission's policy of "uniform treatment for all industry participants."<sup>3</sup> Verizon's arguments, however, have no merit because they render Section 252 negotiation and arbitration process a virtual nullity and attempt to homogenize all of Verizon's competitors in the marketplace by forcing them into generic and uncustomized interconnection agreements. As the New York Commission has noted, interconnection agreements "are tailored to meet the particular needs of the competitive carrier."<sup>4</sup>

Covad has a legal right to an agreement that conforms to its business needs. If, for instance, a shorter provisioning interval for line shared-loops is vital to Covad's interests, and it can demonstrate that a shorter interval is feasible and reasonable, then it should be entitled to such an interval. By the same token, individual carriers need to be allowed to use the interconnection agreement process as a way to address issues of great import to their operations.

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<sup>3</sup> Verizon Original Brief at 2.

<sup>4</sup> *Petition of AT&T Communications of New York, Inc. for Arbitration of an Interconnection Agreement with New York Telephone Company*, Case 96-C-0723, Order Approving AT&T Best and Final Offer, 1999 WL 33563862 (1999).

Verizon's policy of deference to the findings of other fora would render hollow its duty of good faith negotiation under Section 252(a)(1), since in its view much of the substance of the parties' interconnection agreement has already been pre-determined, or will be determined by the needs of carriers other than Covad. Verizon's position also runs counter to the philosophy behind the Act's specification that the promulgation of a Statement of Generally Available Terms does "not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under Section 251."<sup>5</sup> Parties are clearly encouraged to negotiate and arbitrate for contract terms tailored to their particular interests even if these terms differ from those established in more generic proceedings.

For these reasons and as further discussed below, the Commission should resolve the open issues in Covad's favor.

## II. ARGUMENT

**Issue 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?**

**Summary:** Covad's proposed language providing for continuation of services when renegotiations are taking place is fair and reasonable, whereas Verizon's language improperly allows discontinuance of services shortly after release of a legal decision based on Verizon's unilateral interpretation of the decision.

In an attempt to compromise and settle this issue, Covad proposed, in its best and final offer to Verizon, new language for section 4.7 that the New York Commission previously adopted in the AT&T arbitration. In particular, this language states as follows:

During the pendency of any renegotiation or dispute resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, unless the Commission, the Federal Communications

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<sup>5</sup> 47 U.S.C. § 252(f)(5).

Commission, or a court of competent jurisdiction determines that modifications to this Agreement are required to bring it into compliance with the Act, in which case the Parties shall perform their obligations in accordance with such determination or ruling.<sup>6</sup>

In the AT&T arbitration, the New York Commission concluded that this language “provides suitable procedures for continuing services when further negotiations and disputes occur. The interconnection agreement provisions shall continue to operate unless the FCC, the Commission, or a court of competent jurisdiction mandates a differing obligation.”<sup>7</sup>

Significantly, the FCC, in the *Virginia Arbitration Award*, flatly rejected Verizon Virginia’s proposed change of law language which included discontinuance terms and separate changes in law provisions that are similar to what Verizon proposes here.<sup>8</sup> The FCC held that,

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

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<sup>6</sup> See Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Dated as of June 24, 2002, by and between Verizon New York, Inc. and AT&T Communications of New York, Inc. (“AT&T Agreement”), at § 27.4.1.

<sup>7</sup> *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues, at 8 (NY PSC July 30, 2001) (“*AT&T NY Arbitration Award*”).

<sup>8</sup> See *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 & 00-249, Memorandum Opinion and Order, DA 02-1731, ¶ 717 (Chief, Wireline Competition Bureau rel. July 17, 2002) (“*Virginia Arbitration Order*”).

decision, then Verizon should address those specific concerns with the Commission at that time.<sup>9</sup>

Notably, the language the FCC adopted in the *Virginia Arbitration Award* for the change of law provision was similar in many respects to language the New York Commission adopted in the *AT&T NY Arbitration Award*.<sup>10</sup>

Consistent with the New York Commission's determinations in the AT&T arbitration, Covad's newly proposed language is abundantly fair and reasonable because it provides suitable procedures for continuation of services when renegotiations are taking place, pursuant to section 4.6, due to changes in law that materially affect any provision of the Agreement. Both Verizon and Covad have agreed to section 4.6, which is similar to section 27.4 of the AT&T Agreement, and it provides the following:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to

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<sup>9</sup> *Virginia Arbitration Award* ¶ 717.

<sup>10</sup> In particular, the FCC adopted the following language, which did not allow Verizon to unilaterally discontinue service:

25.2 In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially alter the obligation(s) to provide services or the services themselves embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date of such rules, regulations or orders become effective, then the parties shall resolve their disputes under the applicable procedures set forth in Section [13] (Dispute Resolution Procedures) hereof.

*Virginia Arbitration Award* ¶ 717 (adopting language in WorldCom's November Proposed Agreement to Verizon, § 25.2); see FCC Docket No. 00-218, WorldCom's Nov. 13, 2001 filing.



Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.

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

Covad is a leading national broadband service provider of high-speed Internet and network access offering DSL, T1, managed security, IP and dial-up services directly through Covad Broadband Solutions and through Internet Service Providers, value-added resellers, telecommunications carriers, and affinity groups to small and medium-sized businesses and home users. Covad provisions its services over UNE loops and is the only carrier in the Pennsylvania marketplace that focuses primarily on providing advanced broadband and DSL services and, thus, has unique business needs. Because any regulatory or judicial decisions regarding Verizon's duty to provide UNEs upon which Covad provisions its services would likely be subject to differing interpretations, Verizon should not be allowed to unilaterally discontinue services and pull the plug on Covad when interpretive questions remain as to

whether Verizon may do so. Such questions need to be resolved by an independent entity rather than unilateral decision of Verizon, and Covad proposes language accommodates just that.

Although Verizon's proposed section 4.7 does not specifically state that Verizon can exercise its right to discontinue services under the agreement based on its interpretation of a decision, it does not state that it cannot. And the basic problem with Verizon's language is that, based on Verizon's actions in the past, it means as interpreted by Verizon.<sup>11</sup> The provision, as Verizon has applied it, means that Verizon will not provide any service, facility or arrangement whenever Verizon interprets a judicial or regulatory decision to relieve it of such obligation.<sup>12</sup> As a result, Verizon's interpretation of such decisions becomes instantly binding unless and until some body with legal authority overrules Verizon's interpretation. And Verizon's opinions on when a court or regulatory authority has relieved it of some obligation under the Telecommunications Act range from the "aggressive to the fanciful."<sup>13</sup>

It is well known that Verizon broadly construes determinations that serve to relieve it of a duty under the Act while at the same time narrowly construing determinations that serve to expand its obligations. Moreover, Verizon has always argued that it should not be compelled to perform an obligation that the law does not, or no longer imposes. Although Verizon makes this argument, it provides no answer to the question of why Verizon's opinion about what the law requires is entitled to greater deference than its contract partner, Covad.

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<sup>11</sup> See *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-C-0095, AT&T Initial Brief dated April 18, 2001, at 64-70.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 63

At bottom, Verizon's provision is inequitable because Verizon unreasonably grants itself the right to impose its unilateral view of the changed legal landscape upon Covad without regard to the merits of Covad's position and without any mechanism for prompt and reliable review. There is no reason why Verizon's interpretation of the consequences of changes in law should be entitled to greater effect or consequence than Covad's interpretation.

Covad's proposal, which reflects the language previously adopted by the New York Commission in the AT&T arbitration, differs from Verizon's in two principal ways. First, it does not assume that either Covad's or Verizon's position on such a dispute is entitled to presumptive validity. If Verizon thinks the law has changed in its favor and Covad disagrees, neither side's position should control. Rather, the status quo is maintained until a neutral decision-maker resolves the dispute.

The status quo arrangement adopted by the New York Commission in the AT&T arbitration should again be adopted in this arbitration because it is mutual, reciprocal, and therefore fair. If Covad believes the law has changed in a manner creating a new right that had not previously existed or been clear, Verizon would not be obligated to accept Covad's judgment until the Commission, FCC or a court of competent jurisdiction rules. If Verizon believes that its obligations have receded, Verizon would not be allowed to impose its judgment on Covad until such an entity rules. In adopting the AT&T language that Covad proposes here, the Commission considered the concerns referenced above and found that AT&T's language was more appropriate and reasonable.

Apart from the language Covad proposes with respect to Section 4.7, Covad requests that the Commission reject the prefatory language Verizon proposes in section 1.5 of the UNE Attachment that provides,

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.<sup>14</sup>

This language is redundant and entirely unnecessary because it is fully addressed in sections 4.6 and 4.7 of the General Terms and Conditions of the Agreement. Verizon's proposed language in the UNE Attachment serves to cause ambiguity and inconsistency in the Agreement. Sections 4.6-4.7 should be the single relevant sections that addresses changes in law. Therefore it is appropriate that Verizon's proposed language be rejected and, instead, a simple reference back to section 4.6 and 4.7 be made, as Covad proposes. Significantly, the FCC, as indicated above, rejected Verizon Virginia's attempt to have separate changes of law provisions as Verizon requests here.<sup>15</sup>

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

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

**Issue 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?**

**Summary:** FCC and state commission decisions support restricting Verizon's backbilling for services to those rendered within one year of the current billing date; Verizon's reliance on statutory limitation periods or collaboratives efforts should be rejected.

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<sup>14</sup> Exhibit 1, at 6.

<sup>15</sup> *Virginia Arbitration Award* ¶ 717.

Covad believes that Verizon's ability to assess previously unbilled charges for services rendered ( *i.e.*, its ability to backbill) should be limited to services rendered within one year of the current billing date. Verizon, on the other hand, believes that its ability to backbill should be governed by a four-year statute of limitations.

A one-year limitation is well-supported under Pennsylvania regulations<sup>16</sup> and FCC precedent,<sup>17</sup> and would provide much-needed certainty for Covad and its customers. As described in Covad's Initial Pre-Hearing Brief, if Verizon's proposal of a four-year time limitation for backbilling were adopted, Covad would face two significant problems with its customers and the Securities and Exchange Commission ("SEC"). Covad is not the ultimate party to be billed, and Covad's officers must attest to the accuracy of financial statements filed with the Securities and Exchange Commission ("SEC") on a yearly basis.<sup>18</sup> A one year limitation for backbilling will provide some measure of certainty in the billing relationship between the Parties and will comport with the approach the New York Commission has taken in regard to backbilling for non-residential customers of utilities.<sup>19</sup> If the Commission does apply a one year limitation, Covad asks that the waiver provisions of the Agreement be modified to reflect this one year limitation on backbilling.

Verizon contends that this issue is being addressed in collaborative workshops and that consideration of this issue should be deferred to those proceedings.<sup>20</sup> The New York

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<sup>16</sup> Covad's 1/17/03 Initial Brief, at 16-19.

<sup>17</sup> Covad's 1/17/03 Initial Brief, at 23-26.

<sup>18</sup> Covad's 1/17/03 Initial Brief, at 18.

<sup>19</sup> Covad's 1/17/03 Initial Brief, at 18-19.

<sup>20</sup> Verizon's 1/17/03 Opening Brief, at 5.

Commission has, however, stated that parties should address the issue of appropriate backbilling limits in intercarrier agreement negotiations.<sup>21</sup> Thus, there is no question that this proceeding is the appropriate place to address the issue.

Verizon's sole substantive argument is that backbilling is covered by the applicable statute of limitations which pursuant to 42 Pa. Cons. Stat. § 5525(8) is four years for an action upon a contractually obligation or liability.<sup>22</sup> First, as discussed in Covad's Initial Pre-Hearing Brief, the FCC has explicitly rejected the proposition that the appropriate period for backbilling is linked to the statute of limitations period in its *American Network Decision*.<sup>23</sup> In its decision, the Enforcement Bureau of the FCC found that Section 415 sets a two year statute of limitations on actions filed by a carrier to recover compensation for unpaid bills rendered in a timely fashion, but does not similarly establish a two-year limit for the initial submission of bills to customers.<sup>24</sup> The Bureau later affirmed that the "statute of limitations in Section 415 governs the time between the accrual of a cause of action and the initiation of an action at law to collect charges or obtain a refund of overcharges. That section does not address what is an acceptable amount of time between a carrier's provision of service and the rendering of its bill."<sup>25</sup>

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<sup>21</sup> Case 00-C-1945, Letter from Janet Hand Deixler, Secretary, New York Public Service Commission to Parties in Billing and Collection Task Force (Feb. 5, 2003).

<sup>22</sup> 42 Pa. Cons. Stat. § 5525(8).

<sup>23</sup> *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charge*, Memorandum Opinion and Order, 4 FCC Rcd 550 (1989) *recon. denied*, 4 FCC Rcd 8797 (1989). Section 415 of the Act provides in relevant part that "All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after." 47 U.S.C. § 415.

<sup>24</sup> In fact, FCC noted that statute of limitations was originally one year and Congress extended it to two years to allow more time for consumers to scrutinize their bill. *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, Order on Reconsideration, 4 FCC Rcd 8797, ¶ 8 (1989)

<sup>25</sup> *See Id.*, ¶ 10.

Even if the Commission deems the four-year statute of limitations provision relevant to the issue of backbilling, it does not support application of a four-year period for backbilling. Provision 42 Pa. Cons. Stat. § 5525(8) only applies for an action upon a contractual obligation or liability.<sup>26</sup> The object of this proceeding is to establish the contractual obligations between Covad and Verizon including what an appropriate period for backbilling would be. In fact, Verizon concedes that a shorter period could be used, but that the Commission may not force it to accede to a shorter period.<sup>27</sup>

The New York Commission, however, has unequivocally recognized that in an interconnection agreement it can implement a backbilling period shorter than the statute of limitations period. For instance, the New York Commission rejected an interexchange carrier's claim that given the six year statute of limitations in New York it was entitled to recoup overcharges for access service covering a six year period. Instead, the New York Commission stated that the IXC could only recoup overcharges for a two year period.<sup>28</sup> A court subsequently denied the IXC's challenge to the New York Commission's authority to deviate from the six year period. The court found that the six year period is not applicable to all cases.<sup>29</sup> The court held:

We do not find that the PSC exceeded its authority in imposing a two-year limitation period for the recoupment of overcharges under the circumstances presented here. It is well settled that judicial deference is afforded determinations of the PSC requiring technical expertise in matters involving the 'weighing [of] the potential costs associated with \* \* \* overcharge cases and consideration of other policy factors affecting a public utility's operation and management.'<sup>30</sup>

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<sup>26</sup> 42 Pa. Cons. Stat. § 5525(8). Thus, contrary to Verizon's contention (Tr. At 196), if the contract did provide for a shorter limitations period, this would supersede the four year period.

<sup>27</sup> Verizon's 1/17/03 Opening Brief, at 5.

<sup>28</sup> See *Glen Falls Communication Corporation v. New York Public Service Commission*, 667 N.Y.S.2d 793 (1998).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

The court found that the New York Commission appropriately imposed a two-year period based on a number of considerations including promoting the submission of accurate data and expeditious future resolution of disputes.<sup>31</sup>

Thus, there is no mandate that a four year period be used. In fact, in one of the cases Verizon cited to support use of the statute of limitations period in New York, the utility itself had a policy which permitted the cancellation of backbills beyond one year prior to the date billed when the failure to bill was attributable to company deficiencies.<sup>32</sup>

Verizon also contends that Covad's position has no counterpart in state law. However, while Pennsylvania regulations provide a four-year period for backbilling for residential utility customers,<sup>33</sup> the regulations themselves do not specify a time period for non-residential telephone customers, such as Covad. New York regulations as to backbilling for customers of gas, electric and steam corporations also provides some valuable insight. For residential customers of gas, electric and steam companies, there is a two year limitation period for backbilling, the same period that is applicable to residential telephone customers.<sup>34</sup> As further explained in Covad's Initial Pre-Hearing Brief, for non-residential customers of gas, electric and steam corporations, the New York regulations provide for a one year limitation.<sup>35</sup>

In setting a limitation on backbilling, the New York Commission strove to set a balance between the telephone company's right to payment for services rendered and the telephone company's obligation to bill in an accurate and timely manner. The New York Commission

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<sup>31</sup> *Id*

<sup>32</sup> *Capital Properties Co. v. Public Service Commission*, 457 N.Y.S.2d 635 (1982).

<sup>33</sup> 52 Pa. Code §§ 56.35, 56.83(7) (2002).

<sup>34</sup> N.Y. Comp. Codes R. & Regs. Tit. 16, § 11.14. (2002).

<sup>35</sup> N.Y. Comp. Codes R. & Regs. Tit. 16, § 13.9 (2002).



noted, “[w]ith regard to billing, ratepayers are not required to pay for underbillings for more than one year where there is utility neglect and no culpable conduct by the customer, because while the utility, generally speaking, has control over billing, ratepayers should not be able to completely escape responsibility for paying for service that was indeed used.”<sup>36</sup> Thus, the one year approach is clearly in line with the policy goals of this Commission.

The one year limitation would also be in accord with FCC rulings on backbilling. While the FCC has not established a fixed time limit for permissible backbilling by telecommunications carriers, the FCC's Enforcement Bureau will determine if the backbilling period in question is unreasonable under section 201(b) of the Communications Act on a case-by-case basis.<sup>37</sup> The Commission has noted that delays significantly longer than 160 days could be found to be unjust and unreasonable.<sup>38</sup>

Verizon argues that Covad has only demonstrated a couple of instances of backbilling, and in one case, the FCC exonerated Verizon in the Virginia 271 proceeding.<sup>39</sup> The FCC did not find checklist non-compliance because the problem was corrected and had limited impact in Virginia.<sup>40</sup> The FCC, far from exonerating Verizon, noted that it was “troubled by the manner in

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<sup>36</sup> *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures – Rehearing Petition by Joseph Piccininni of the Commission Determination Rendered Partially in Favor of Consolidated Edison Company of New York, Inc.*, Case No. 98-E-0801, Commission Determination at 5 (2000).

<sup>37</sup> Covad’s 1/17/03 Initial Brief, at 23-26.

<sup>38</sup> *See, Brooten v. AT&T*, Memorandum Opinion and Order, File No. E-96-32, 11 FCC Rcd 13343, (1997).

<sup>39</sup> Verizon’s 1/17/03 Opening Brief, at 5.

<sup>40</sup> *Joint Application by Verizon Virginia, Inc., et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, FCC 02-297, ¶ 50 (Oct. 30, 2002) (“Virginia 271 Order”).

which Verizon chose initially to bill for this aggregate charge.”<sup>41</sup> In any event, even if Verizon has only infrequently engaged in backbilling longer than one year, that would provide no reasonable basis to allow it to backbill for periods as long as four years. If Verizon has been able to do most of its billing within one year, it would be inappropriate to encourage it to slow down its billing to as long as four years.

Verizon also contends that Covad has not demonstrated how backbilling impacts its operations. Covad has, however, demonstrated the substantial detrimental impact that Verizon’s backbilling has on its operations. Covad sets its end user rates based on charges it reasonably expects to incur from Verizon. *If a charge unexpectedly appears a year later, it is very difficult to go back to the customer to recoup this charge.*<sup>42</sup> It also affects Covad’s financial statements which Covad files with the SEC on an annual basis. In the wake of the Enron/WorldCom situations, companies have to explain any changes in statements, particularly those that revise in a downward manner net revenues.<sup>43</sup> Finally, backbilling compounds problems Covad already experiences with Verizon’s billing. Covad already experiences problems with unsupported charges, misapplied credits, and dilatory dispute resolution. To add into this mix, bills for charges more than one year old would only further exacerbate Covad’s problems. It would prolong an already lengthy and unreasonable claims and dispute process.<sup>44</sup> For all these reasons, the Commission should set a one year limit for backbilling.

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<sup>41</sup> *Virginia 271 Order* at ¶ 50.

<sup>42</sup> NY 2/4/03 Technical Conference, Tr. at 192: 1-4, 12-14.

<sup>43</sup> NY 2/4/03 Technical Conference, Tr. at 192: 5-7.

<sup>44</sup> NY 2/4/03 Technical Conference, Tr. at 192: 19-24; 193: 1-4.

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

**Issue 5:** When Verizon calculates the late payment charges due on disputed bills (where it ultimately prevails on the dispute), should it be permitted to assess the late payment charges for the amount of time exceeding thirty days that it took to provide Covad a substantive response to the dispute? Should Verizon be permitted to assess late fees on unpaid late fees?

**Summary:** The Agreements should require Verizon to respond to Covad billing disputes within 30 days and Verizon's assessment of the late charge should be limited to 30 days where Verizon fails to timely resolve a dispute; Verizon's late charge policy is not in accord with agency requirements or at parity with its policies for retail customers.

Issues 4 and 5 pertains to two issues that arise from Verizon's dilatory response to billing disputes raised by Covad. Applicable performance standards require Verizon to respond to disputes within thirty days.<sup>45</sup> Verizon, however, often fails to respond within thirty days which invariably pushes the time period of Covad's pending unresolved claims far beyond the thirty day time period. As a result, Covad is exposed to cumulative late penalty charges and late penalty charges on late penalty charges. Thus, Covad not only has to seek resolution of the underlying claim, but it also has to raise claims to dispute all the late penalty charges. The Commission can help alleviate this situation by requiring Verizon to provide Covad a response to disputes within thirty days, and by limiting Verizon's assessment of late payment charges on disputed charges.

**Issue 4**

Covad requests that when the billed party disputes a claim filed by the billing party, the billing party be required to provide its position and a supporting explanation regarding a disputed bill within thirty (30) days of receiving notice of the dispute. Very often, Verizon fails to provide

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<sup>45</sup> Actually the time frame is 28 days.

Covad with its position and a supporting explanation for more than 30 days after receiving Covad's dispute, thus delaying the resolution of disputes well beyond the target 30-day window.<sup>46</sup> Covad's request is consistent with Commission regulations,<sup>47</sup> and C2C billing metrics.<sup>48</sup> Verizon's dilatory conduct in this regard precludes Covad from having a meaningful opportunity to compete.<sup>49</sup>

What Covad is seeking is eminently reasonable. Providing a response within 30 days is in accord with the performance Verizon currently provides under the interim billing metrics. Metric BI-3-04 requires that 95% of CLEC billing claims be acknowledged within two (2) business days.<sup>50</sup> Metric BI-3-05 requires 95% of CLEC billing claims to be resolved within 28 calendar days.<sup>51</sup> Thus, Verizon should be able to provide a response within thirty days.

Verizon is correct that Covad's proposal does go slightly beyond what the metrics require. Covad's experiences with Verizon's billing warrant this extra protection. In the year 2002, Covad has filed over 1,300 billing claims with Verizon East. In Covad's experience, it takes an average of 221 days to resolve a high capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to resolve a collocation claim in the Verizon East region.<sup>52</sup>

As the ALJ in New York (Judge Linsider) has noted, there are essentially two issues in regard to Issue 4. For those disputes that are covered by applicable performance metrics, Covad

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<sup>46</sup> Covad's 1/17/03 Initial Brief, at 33-34.

<sup>47</sup> Covad's 1/17/03 Initial Brief, at 35.

<sup>48</sup> Covad's 1/17/03 Initial Brief, at 36-37.

<sup>49</sup> Covad's 1/17/03 Initial Brief, at 33-35.

<sup>50</sup> *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports*, NY PSC Case No. 97-C-0139, May 2002 Compliance Filing at 94 (May 14, 2002).

<sup>51</sup> *Id.*

<sup>52</sup> Covad's 1/17/03 Initial Brief, at 33.

must demonstrate why it is entitled to something beyond what the performance metrics provide. For those disputes not covered by the metrics, the ALJ in New York (Judge Linsider) agreed with Covad that the agreement needs to address these issues.<sup>53</sup> In regard to the former, the performance metrics cover Verizon's response time to billing disputes pertaining to UNEs.<sup>54</sup> Covad has demonstrated how it has been particularly affected by Verizon's delays in responding to disputes pertaining to UNEs. Covad also demonstrated how Verizon's dilatory claim resolution has resulted in Verizon misapplying Covad payments to the wrong accounts, resulting in underpayments in the accounts for which payment was intended, unnecessary and unwarranted late fees for Covad, and raising the prospect of unwarranted service disconnection by Verizon.<sup>55</sup> Indeed, Covad has received multiple disconnect notices for several billing account numbers for which Covad's records indicate it has paid all amounts due in full. Thus, Covad clearly needs added assurance in regard to claim responses by Verizon. Covad's reasonable extension of what is already required under current billing metrics will not impose an undue burden on Verizon.

There are also issues not covered by the metrics that should be addressed in the Agreement. Verizon concedes that access services are not covered, but tries to paint this as a minor problem. Of course, Verizon conveniently overlooks the ramifications of its policies that force CLECs, such as Covad, to purchase UNEs as special access facilities and then convert them to UNEs.<sup>56</sup> Verizon admits that even after this conversion, the facility may not be tracked by its UNE metrics given its special access origin. For instance, Verizon concedes that if a

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<sup>53</sup> NY 2/4/03 Technical Conference, Tr. at 217:3-10.

<sup>54</sup> NY 2/4/03 Technical Conference, Tr. at 211: 1-3.

<sup>55</sup> Covad's 1/17/03 Initial Brief, at 33-35.

<sup>56</sup> See NY 2/4/03 Technical Conference, Tr. at 217:15-18.

CLEC had to purchase a T-1 as an access facility because there were “no facilities available” and subsequently converted the facility to an UNE, the facility would still be considered a special access facility in Verizon’s OSS and not subject to the UNE billing metrics.<sup>57</sup> Verizon concedes this is an issue that needs to be addressed, but Verizon’s solution is to defer this issue to the Carrier Working Group. This would mean that there would be no default policy to apply in the interim to cover these converted UNEs.<sup>58</sup> Until the issue is resolved in the Carrier Working Group, it is important to insert contract language to address these facilities in this Agreement.<sup>59</sup> Verizon itself concedes that it may take some time to reach an industry consensus on this issue and there is no guarantee that a consensus will ever be reached.<sup>60</sup>

In addition, while counsel for Verizon asserts that collocation and transport disputes are covered by the billing metrics, Verizon’s operations people, such as its Vice President for Billing, contend that they are not.<sup>61</sup> This is all the more reason why it is important to have this issue covered in the interconnection agreement as opposed to the billing metrics where Verizon can attempt to evade culpability.

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<sup>57</sup> NY 2/4/03 Technical Conference, Tr. at 211-214.

<sup>58</sup> NY 2/4/03 Technical Conference, Tr. at 222: 1-3.

<sup>59</sup> NY 2/4/03 Technical Conference, Tr. at 223: 18-24.

<sup>60</sup> NY 2/4/03 Technical Conference, Tr. at 224: 22-24.

<sup>61</sup> NY 2/4/03 Technical Conference, Tr. at 214: 12-15.

## Issue 5

The Commission should hold that late charges will not be imposed for any time that Verizon takes beyond thirty days to address the dispute. This will prevent Verizon from profiting from its own failure to comply with the requirement that it address the dispute in a timely manner. In addition, it will increase Verizon's incentive to provide a response within thirty days. Otherwise, Verizon will have little incentive to do so.<sup>62</sup> Similarly, Verizon should not be allowed to assess a late payment charge on unpaid previously billed late payment charges when the underlying charges are in dispute. Late payment charges should only apply to the initial outstanding balance and Verizon should not have the right to apply late penalties upon late penalties when a dispute remains regarding the original charges.<sup>63</sup>

Contrary to Verizon's contention,<sup>64</sup> its late payment charge policy is in not accord with the Commission's requirements or at parity with the policies for retail customers. While the New York Commission has allowed application of late payment charges to arrearages including unpaid late payment charges, it has limited such application to unpaid, undisputed amounts.<sup>65</sup> In fact, one of the cases Verizon cites to support the propriety of its practices in New York demonstrates the impropriety of its practices. The late payment charge approved by the New

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<sup>62</sup> Covad's 1/17/03 Initial Brief, at 37-38.

<sup>63</sup> Covad's 1/17/03 Initial Brief, at 38-39.

<sup>64</sup> Verizon's 1/17/03 Opening Brief, at 12-13.

<sup>65</sup> *Proceeding on Motion of the Commission as to the Proposed Changes in Rates, Charges, Rules and Regulations of the New York Telephone Company*, Case 28961, Opinion and Order Determining Revenue Requirement and Rate Design, Opinion No. 85-17, 25 NY PSC 3699, 1985 WL 258236, \*58 (1985); see also, *MCI WorldCom v. New York Telephone Company*, Case No. 99-C-0975, Declaratory Ruling Regarding Interconnection Agreement, 2000 WL 749232, \*9 (2001).

York Commission in that case unequivocally specified that “disputed items . . . would not be subject to the charge.”<sup>66</sup>

Once a claim has been acknowledged by Verizon, the late payment charges associated with that claim should be suspended until the claim is resolved. Currently, Verizon is assessing Covad late payment charges on amounts that are in the process of being disputed. Covad then files a dispute for those late payment charges. The following month, Verizon will assess late payment charges on the original disputed amount *as well as* the disputed late fee charges from the prior month.<sup>67</sup> This is clearly inappropriate.

Covad demonstrated the importance of suspending late payment charges on disputed charges. For instance when Verizon backbilled Covad \$1.1 million with no supporting documentation, it took Covad eight months working with Verizon to determine what was actually owed. It turned out that approximately 30% was incorrectly billed.<sup>68</sup> Late payment charges were being applied cumulatively to the \$1.1 million amount while the parties were determining what was actually owed. Verizon provides an “all’s well that ends well” response arguing that all the late payment charges were ultimately credited to Covad, but as Covad notes, it had to file claims to get those charges back.<sup>69</sup> Thus, there were claims on disputed charges and claims on disputed late payment charges. Even if Covad ultimately did owe the full amount, it

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<sup>66</sup> *Re New York Telephone Company*, NY PSC Case 28601, Opinion No. 84-16, 24 N.Y.P.S.C. 2627, 1984 WL 256124 (1984).

<sup>67</sup> Covad's 1/17/03 Initial Brief, at 38-39.

<sup>68</sup> NY 2/4/03 Technical Conference, Tr. at 230: 18-24.

<sup>69</sup> NY 2/4/03 Technical Conference, Tr. at 232: 6-19. Covad provided a very apt analogy to a credit card. If a customer disputes a credit charge, the amount is removed from the amount owed and no late payment charges are applied to that amount. Even if the charge is ultimately validated, no late payment charges accrue. NY 2/4/03 Technical Conference, Tr. at 233: 1-7.



should not have to pay late payment charges caused by the failure of Verizon to resolve the dispute in a timely manner.<sup>70</sup>

If Verizon's practice in regard to its retail customers is to apply late payment charges to disputed charges, then far from demonstrating the appropriateness of its position in this arbitration, this practice shows how it inappropriately assigns late payment charges to its retail customers. In addition, Verizon's retail customers do not have to endure the manual bills that CLECs do.<sup>71</sup> As noted above, it took months to determine what Covad actually owed on the manually-processed \$1.1 million bill.

It should be emphasized that Covad is not asking for a complete elimination of late payment charges. Covad is simply requesting that if Verizon fails within thirty days to resolve a dispute that Covad has initiated, if the charges are ultimately upheld, the late payment charges will be limited to thirty days. Covad is not asking to be allowed to stretch out payment for years, without paying additional late charges, on undisputed charges or if the disputes have been resolved. As for any incentive to dispute charges, the exposure of thirty days of late payment charges provides a disincentive to frivolous claims.<sup>72</sup> Moreover, if Verizon resolves disputes in a timely manner, it can quickly weed out any unsubstantiated disputes.

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<sup>70</sup> NY 2/4/03 Technical Conference, Tr. at 231: 4-13.

<sup>71</sup> NY 2/4/03 Technical Conference, Tr. at 247: 14-21.

<sup>72</sup> The late payment charge would offset the time value of money Covad would possess in holding the funds. Moreover, as Covad noted, it is not only a time value of money issue, because Verizon will threaten to disconnect services because of unpaid charges. NY 2/4/03 Technical Conference, Tr. at 243: 8-12.

**Issue 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?

**Summary:** Parties should be able to submit disputes to binding arbitration under expedited procedures in the Commercial Arbitration Rules of the American Arbitration Association, and Verizon's argument that Commission's cannot mandate arbitration should be rejected.

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.

This approach is in accord with the recent rulings of the New York Commission on this issue. In the *AT&T NY Arbitration*, the New York Commission held that it had the authority to require commercial arbitration and alternative dispute resolution ("CAADR") provisions in interconnection agreements established pursuant to the 1996 Act.<sup>73</sup> The Commission noted that such procedures are a typical feature in the interconnection agreements the Commission has approved in the past. The Commission observed:

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<sup>73</sup> *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 01-C-0095, Order Resolving Arbitration Issues at 10 (2001).

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

The New York Commission has also found that “a provision for expedited resolution of service-affecting disputes is an essential element of the agreement” because “the failure to seasonably address service issues could directly impact customers.”<sup>74</sup> The New York Commission required that its Expedited Dispute Resolution process be included as an option for either party in the *AT&T NY Arbitration* because the ADR in the subject agreement was shown to be inadequate for expedited resolutions. The New York Commission therefore required that its EDR process be included to supplement the ADR processes in the agreement.<sup>75</sup>

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

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<sup>74</sup> *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 01-C-0095, Order On Rehearing at 11 (2001).

<sup>75</sup> *AT&T Arbitration Order on Rehearing* at 12.

Verizon's opposition does not appear to be centered on the specifics of Covad's proposal. Instead it challenges the very right of this Commission to mandate arbitration provisions in an interconnection agreement.<sup>76</sup> The New York Commission, however, explicitly rejected this argument in the *AT&T NY Arbitration* and as noted above, not only determined that it had authority to mandate arbitration provisions in interconnection agreements, but that many interconnection agreements that it has approved contain such provisions.<sup>77</sup>

Verizon invokes a series of cases for support for the proposition that an "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit."<sup>78</sup> Verizon raised this same argument in the *AT&T NY Arbitration*, and the New York Commission rejected it.<sup>79</sup> In fact, as AT&T noted in its arbitration brief, Verizon has raised this argument repeatedly to no avail in every arbitration in which ADR has been proposed.<sup>80</sup>

The New York Commission was correct to reject the argument because arbitrations pursuant to the 1996 Act are designed to determine just, reasonable and nondiscriminatory contract provisions that conform to the requirements of the Act. In enacting the 1996 Act,

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<sup>76</sup> *Covad Communications Company Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Agreements with New York Telephone d/b/a Verizon New York Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Verizon New York Inc.'s Response to Covad's Petition for Arbitration, Attachment B at 4 (October 7, 2002).

<sup>77</sup> *AT&T NY Arbitration Award* at 10.

<sup>78</sup> *See AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648 (1986).

<sup>79</sup> *See AT&T NY Arbitration Award* at 8.

<sup>80</sup> *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 01-C-0095, Initial Brief on Designated Issues of AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecom Corp. at 32 (April 18, 2001).

Congress clearly recognized that absent legislative compulsion, ILECs would refuse to agree to reasonable contract provisions because of the superior bargaining power of the RBOCs.<sup>81</sup> Thus, it did not limit the establishment of interconnection agreements to the voluntary negotiations of the parties, but instead provided for an arbitration process conducted by state commissions to ensure the development of just and reasonable interconnection agreements. Thus, the very existence of the arbitration process before state commissions was designed to remedy deficiencies in the negotiation process that would otherwise exist in the telecommunications industry. The statutory provisions of the Act would be undercut if state commissions could not mandate provisions deemed necessary merely because Verizon does not want to subject itself to such provisions. As discussed above, the New York Commission has found the use of alternative dispute resolution processes such as arbitration to be a vital tool, and this Commission is well within its authority to mandate use of such processes.<sup>82</sup>

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

**Summary:** Covad's request that Verizon not be permitted to unilaterally terminate the agreements for exchange or territory it sells to another party will eliminate doubt as to Covad's rights in the event of a sale, prevent undermining of Covad's ability to provide service to customers and is consistent with general contract laws.

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<sup>81</sup> See, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, FCC Docket No. 96-98, FCC Docket No. 95-185, 11 FCC Record 15499, ¶¶ 216-218 (1996) ("*Local Competition Order*") (subsequent history omitted).

<sup>82</sup> Other state commissions have also stated that they have the authority to mandate arbitration provisions in interconnection agreements. See, e.g., *AT&T Communications of California, et al.*, California Public Utilities Commission Application No. 00-01-022, Decision 00-88-011, Opinion, 2000 WL 1752310 (August 3, 2000).

Covad asks that Verizon not be permitted unilaterally to terminate this Agreement for any exchanges or territory that it sells to another party. For the reasons previously and fully articulated in Covad's 1/17/03 Initial Brief, Covad's request is consistent with general contract law principles.<sup>83</sup>

Verizon's proposal would expose Covad to unwarranted risk, and should not be permitted.<sup>84</sup> In order to enter into and compete in the local exchange market throughout Pennsylvania, Covad must be assured that if Verizon sells or otherwise transfers some or all of its Pennsylvania operations to a third-party such an event will not alter or cast doubt on Covad's rights under the interconnection agreement, or undermine Covad's ability to provide service to its residential and business customers.<sup>85</sup>

Covad's request is consistent with typical requirements set out in a wide range of business contracts.<sup>86</sup> Indeed, it is certainly not commonplace for a supplier of goods or services to be able to avoid a contractual obligation simply by transferring its business to another.<sup>87</sup> For example, few rational business tenants would sign a lease for real estate that provided that the lease terminated at the lessor's option upon sale, obliging the lessee to negotiate from scratch with the purchaser for the right to continue to occupy the premises, possibly upon much more onerous rates, terms, and conditions.<sup>88</sup>

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<sup>83</sup> Covad's 1/17/03 Initial Brief at 39-45.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 41.

<sup>86</sup> *Id.* at 41-42.

<sup>87</sup> *Id.* at 41-42.

<sup>88</sup> *Id.* at 41-42.

As explained in Covad's 1/17/03 Initial Brief and as the New York Commission held in the AT&T Arbitration, "it is *reasonable* to expect that Verizon would negotiate terms to ensure continued performance under existing interconnection agreements."<sup>89</sup> Hence, Covad has every right to have such reasonable language in its Agreement; otherwise, upon transfer of some or all of Verizon's Pennsylvania operations, both Verizon and the transferee could walk away freely from the Agreement and its obligations.

In Verizon's 1/17/03 Opening Brief, Verizon submitted that 251(f) provides no basis for a would-be purchaser to accept Verizon's obligations under the agreement, and that "such requirement could impose on a would-be purchaser obligations under the agreement greater than those that apply to it under federal law."<sup>90</sup> Verizon's arguments are wrong because Verizon is not an exempt rural carrier, pursuant to 251(f), when it sells its exchanges. Not only that, 251(f) does not guarantee that a rural carrier will maintain its rural exemption when after the purchase of the exchanges of a non-rural ILEC, such as Verizon. Apart from this, Verizon's proposed language is overbroad: it would protect any would-be purchaser from having to assume the agreement, even if the purchaser had no 251(f) unbundling exemption.

In Verizon's 1/24/03 Reply Brief, Verizon noted that Covad has not proposed any changes to the language in the agreement, which provides for a minimum of 90 days notice of termination of the agreement following the sale of an exchange, to address Covad's concern that 90 days is not enough time to negotiate an agreement with a prospective buyer.<sup>91</sup> During the Technical Conference, Covad proposed that it be given 9 months or 270 days to negotiate a new

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<sup>89</sup> *AT&T NY Arbitration Award* at 25 (emphasis added).

<sup>90</sup> Verizon's 1/17/03 Opening Brief at 14.

<sup>91</sup> Verizon's 1/24/03 Reply Brief at 11.

interconnection agreement with the purchasing carrier, which is less time than it has taken Covad to negotiate its agreement with Verizon.<sup>92</sup> Verizon never agreed, however, to Covad's proposal.

Given the above, the contract language Covad originally requested for section 43.2, which is set forth in Exhibit 1, is entirely just and reasonable. Moreover, the substitution of the word "terminate" for "assign" does not conflict with the agreed-upon provision regarding contract assignment that allows each party to assign the Agreement with prior written consent of the other party, "which consent shall not be unreasonably withheld, conditioned or delayed." Agreement, General Terms and Conditions, § 5.<sup>93</sup> For these reasons, the Commission should adopt Covad's proposed language.

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

**Summary:** Rather than have the agreement remain silent as Verizon proposes, the agreement should explicitly preserve causes of action arising from Sections 206 and 207 of the Act and thus preserve the viability of resolving issues through the negotiation process.

The Agreement should not preclude Covad from seeking 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. There is good reason for allowing Covad to bring such an action

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<sup>92</sup> To reflect this proposal, the parties discussed during the Technical Conference that the last sentence in 43.2 be changed as follows: Verizon shall provide Covad with not less than 270 ~~150~~ calendar days prior written notice, ~~if possible, but not less than 90 calendar days prior written notice~~, of such termination, which shall be effective upon the date specified in the notice. See NY 2/4/03 Technical Conference, Tr. at 251. A 270-day period would provide Covad with some assurance that if it does not reach an agreement with the transferee, an arbitration decision would be issued.

<sup>93</sup> See Covad's 1/17/03 Initial Brief at 45.



because, 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.

Covad's proposed language is intended to address *Trinko v. Bell Atlantic Corp.*, 305 F.3d 89, 103-105 (2d Cir. 2002), *cert. granted*, *Verizon v. Law Offices of Curtis Trinko*, 538 U.S. \_\_\_\_ (2003) In *Trinko*, the court held that because Section 252(a)(1) of the Act allows the parties to negotiate interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1), the act of entering into a negotiated interconnection agreement with an ILEC can extinguish a CLEC's right to recover damages, pursuant to 47 U.S.C. §§ 206 & 207, for violations of Section 251.<sup>94</sup> Arguably, the court's holding could be viewed by some that CLECs that negotiated certain provisions of an interconnection agreement with an ILEC only have the right to sue for common law damages for breach of contract (as opposed to invoking §§ 251 or 252) unless the agreement specifies that the terms are premised on the standards set forth in sections 251(b) and (c) of the Act.

In this instance, Covad and Verizon negotiated and are in fact arbitrating this Agreement with regard to Section 251(b) and (c), as many of the provisions thereof are based either explicitly or implicitly upon that section of the Act. The parties *did not* negotiate the Agreement "without regard" to these standards, and *Verizon fully recognizes this fact and has not argued otherwise*. Verizon's refusal to adopt the Covad's proposed language fails to reflect this fundamental understanding between the parties during negotiations and this arbitration.

As the Commission is well aware, the 1996 Act permits parties to negotiate--rather than arbitrate--provisions of their interconnection agreement; however, provisions not arbitrated are

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<sup>94</sup> This does not apply to arbitrated provisions because a state commission, in resolving open issues that are being arbitrated, must ensure that resolution of the issue meets the requirements of section 251, including the regulations prescribed by the FCC pursuant to section 251. *See* 47 U.S.C. § 252(c)(1).

also not necessarily negotiated "without regard to the standards set forth in subsections (b) and (c) of section 251."<sup>95</sup> This is so because the 1996 Act requires both the ILEC and CLECs to negotiate in good faith. *See id.* (citing 47 U.S.C. § 251 (c)(1)). *See* 47 U.S.C. § 251(c)(1) . When the parties are negotiating in good faith, "many of their disputes will have been previously resolved by, among other things, FCC Rules and interpretations, prior state commission rulings and interpretations, and agreements reached with other CLECs--all of which are a matter of public record." *See id.* (citing, e.g., 47 U.S.C. § 252(i)). Given this, agreements or provisions that have been "negotiated" represent nothing more than a good faith attempt to comply with the requirements of the 1996 Act.<sup>96</sup>

As the court further explained in *AT&T of Southern States*,

if a particular provision is mandated by the 1996 Act, the FCC rules or regulations, or some application thereof, then a party might agree to that provision without resort to arbitration. Such an agreement, which would occur without arbitration, is not necessarily "without regard" to the 1996 Act and law thereunder. In other words, some provisions may be negotiated and agreed upon "with regard" to the 1996 Act and law thereunder, and provisions so negotiated and agreed upon may be reformed if the controlling law changes. *Indeed, were it otherwise, parties would have an incentive to submit each issue to arbitration, so that if there were a change in controlling law, the provision would be so reformed.* We decline to so encourage arbitration at the expense of negotiation.<sup>97</sup>

With this reasoning, the court in *AT&T of Southern States* had to determine, based on its consideration of certain factors, whether or not a specific provision of an agreement was negotiated with regard to the standards set forth in section 251(b) and (c). *Id.* In this case, Covad

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<sup>95</sup> *AT&T of the Southern States, Inc. v. BellSouth Telecommunications, Inc.*, 229 F.3d 457, 465 (4<sup>th</sup> Cir 2000) ("*AT&T of Southern States*") (citing 47 U.S.C. § 252(a)(1)).

<sup>96</sup> *See id.*; *see also Trinko v. Bell Atlantic Corp.*, 309 F.3d 71, 75-76 (4<sup>th</sup> Cir 2000) (Sack dissenting) (disagreeing with the majority's conclusion that the presence of a partially negotiated interconnection agreement here renders the duties of the defendant enumerated in § 251 "superfluous.").

<sup>97</sup> *AT&T of S.States*, at 465 (emphasis added).

seeks to avoid having a court make this determination at some later date when it is abundantly clear, at this point in time, that section 251 of the Act and related FCC and Commission rules and decisions have served or are serving as the framework by which Covad and Verizon have negotiated and are arbitrating various provisions in this Agreement. Verizon cannot deny this fact because it specifies that its fundamental obligations to provide Covad access to network elements, pursuant to section 251(c)(3) - which is Covad's sole purpose of entering into negotiations with Verizon - must track this applicable law and related FCC and Commission rules and decisions.<sup>98</sup>

Because the Commission encourages parties to negotiate and settle issues associated with provisions in an interconnection agreement rather than arbitrate them, the parties have worked in good faith towards that end. Covad should not be penalized for following this course and not arbitrating every sentence in the Agreement. The price to Covad of not arbitrating every issue should not be that: (1) Covad potentially surrenders its right to seek damages and other relief from Verizon based upon Sections 206 and 207 of the Act; and (2) future litigation is made far more complex than it needs to be, *i.e.*, requiring a court to investigate whether certain terms under the Agreement were negotiated and settled with regard to section 251 if Covad makes a claim for damages pursuant to section 206 or 207 due to Verizon's failure to comply with its obligations under the Agreement.

As stated above, both Covad and Verizon entered into negotiations and are arbitrating this Agreement with regard to the standards set forth in subsections (b) and (c) of section 251. Significantly, if the Commission does not recognize this basic fact and rejects Covad's proposed language, leaving the agreement silent as Verizon requests, then the Commission would be

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<sup>98</sup> See, *e.g.*, Covad's Arbitration Petition, Attachment C, UNE Attachment § 1.1.

encouraging arbitration at the expense of negotiation and settlement.<sup>99</sup> Such an outcome is contrary to the spirit of the Act and Commission directives and can be avoided with simple contract language that states that the Agreement was entered into with regard to section 251(b) and (c) of the Act.

Accordingly, Covad wishes explicitly to preserve causes of action that arise from Sections 206 and 207 of the Act and make clear that nothing in the Agreement waives either party's rights or remedies available under Applicable Law, including 47 U.S.C. §§ 206 & 207. For the foregoing reasons, the Commission should adopt Covad's proposed language.

**Issue 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?**

**Summary:** Contract language unambiguously specifying that Verizon must provide loop information in the same manner it provides to third parties and in a functionally equivalent manner to the way it provides information to itself should be adopted in lieu of Verizon's general promise of adherence to federal law.

Verizon must ensure that Covad has access to the same *information* that Verizon accesses about Verizon's loops. In addition, Verizon 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. Covad's proposed language memorializes Verizon's obligation in this regard and should be adopted by the Commission.

The FCC has consistently found that such nondiscriminatory access to OSS, which includes access to loop qualification information, is a prerequisite to the development of

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<sup>99</sup> See *AT&T of Southern States* at 465

meaningful local competition.<sup>100</sup> Without such access, the FCC has determined that a competing carrier “will be severely disadvantaged, if not precluded altogether, from fairly competing.”<sup>101</sup> 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.<sup>102</sup> Significantly, the FCC’s OSS unbundling rule 51.319(g) specifies that “An incumbent LEC must...provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC.”<sup>103</sup> 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*.<sup>104</sup> In its April 6, 1998 Pre-Filing Statement, Verizon committed to providing Nondiscriminatory access to its OSS.<sup>105</sup>

Verizon does not dispute that it has an obligation to provide Covad nondiscriminatory access to OSS.<sup>106</sup> Instead, Verizon asserts that Covad’s proposed additional language is unnecessary because the agreed-upon provisions of the Agreement already require Verizon to provide Covad with loop qualification information as required by federal law.<sup>107</sup> Verizon’s

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<sup>100</sup> See, e.g., *Bell Atlantic New York 271 Order*, 15 FCC Rcd at 3990, ¶ 83; *BellSouth South Carolina 271 Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana 271 Order*, 13 FCC Rcd at 20653; see also 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>101</sup> *Bell Atlantic New York 271 Order* at 15 FCC Rcd at 3990, ¶ 83.

<sup>102</sup> *Id.* at ¶ 84.

<sup>103</sup> 47 C.F.R. § 51.319(g).

<sup>104</sup> *Id.* at 3991, ¶ 85 (emphasis added).

<sup>105</sup> See Case No. 97-C-0271, Prefiling Statement of Bell Atlantic-New York, at 28-29 (April 6, 1998).

<sup>106</sup> Verizon’s Response to Covad’s Arbitration Petition, Exhibit B at 8.

<sup>107</sup> Verizon’s Response to Covad’s Arbitration Petition, Exhibit B at 8. Specifically, Verizon cites the Additional Services Attachment, § 8.1.1. (“[t]he pre-ordering function includes

assertion is unfounded because the agreed contract language does not expressly state the specific scope of Verizon's obligation to provide nondiscriminatory access. Rather than rely upon a passing reference that acknowledges Verizon's obligation to provide Covad nondiscriminatory access to OSS information, Covad requests express language so that the extent of Verizon's obligation in this regard is unequivocal. Covad's proposed language memorializes its entitlement in its proposed § 8.1.4 that "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 *functionality equivalent manner* to the way it provides such information to itself" (emphasis added) and § 8.2.3 that nondiscriminatory access means that Verizon will provide the same detailed information about the loop at the "same time and manner" that it is available to Verizon and/or its affiliates. Including such detail in the Agreement would minimize the ambiguity, delay, and potential litigation delay that are inherent in Verizon's proposed language, because it is devoid of such detail that specifies and clarifies Verizon's obligations that are associated with its duty to provide nondiscriminatory access to OSS. For these reasons, the Commission should order that the Agreement include the specific language proposed by Covad.

**Issue 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?**

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

**Issue 34: In what interval should Verizon provision loops?**

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providing Covad nondiscriminatory access to the same detailed information about the loop that is available to Verizon and its affiliates"); § 8.2.1 (Verizon "shall provide to Covad, pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251 (c)(3), Verizon OSS Services"); and 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"). *Id.*

**Issue 38: What should the interval be for Covad's line sharing Local Service Requests ("LSRs")? (Verizon North only)**

**Summary:** The incorporation of performance standards into agreements better ensures quality ordering and provisioning and does not harm Verizon; Verizon has presented no reasons why manual loop qualifications cannot be completed in one day and a two day interval for provisioning line-shared loop is within Verizon's capabilities.

Issues 13, 32, 34 and 38 pertain to performance standards to ensure timely ordering and provisioning for Covad's orders. In Issues 13 and 38, Covad seeks to incorporate current Verizon performance standards in regard to firm order commitments into the agreement. In Issue 34, Covad likewise seeks to apply a performance standard, this time in regard to provisioning of line-shared loops, but in this case, Covad seeks a shorter interval. In regard to these issues, there is an underlying issue of the propriety of incorporating performance standards into interconnection agreements. Covad believes that the incorporation of performance standards in regard to products and services of vital import to its operations are the best way to assure quality ordering and provisioning. Verizon takes the position that it is not necessary to incorporate performance standards into interconnection agreements, because Verizon is already under an obligation to meet these standards.

**Issue 13 and 38: LSRs**

The intervals proposed by Covad are identical to those set forth in this Commission's current guidelines and Firm Order Commitments ("FOCs") are critical to Covad's ability to provide its customers with reasonable assurances regarding the provisioning of their orders.<sup>108</sup> Covad is not seeking to change the industry-wide performance standards. Instead, Covad wants

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<sup>108</sup> Covad's 1/17/03 Initial Brief, at 46-47.

certain intervals that are of particular importance to it included in its interconnection agreement, as the law permits.<sup>109</sup>

After much back and forth, it appears that the parties have reached a mutual understanding that Covad is not seeking to modify performance standards in regard to firm order commitments, but is merely trying to incorporate the standards into the interconnection agreement.<sup>110</sup> With this understanding in mind, the ALJ in New York (Judge Linsider) accurately described what is really at issue by noting:

. . . it strikes me that the only disagreement is between the parties is that Covad is seeking a provision that Verizon says that Covad doesn't need, but whose presence doesn't harm Verizon.<sup>111</sup>

Covad has demonstrated that Firm Order Commitments ("FOCs") are critical to Covad's ability to provide its customers with reasonable assurances regarding the provisioning of their orders. Covad demonstrated that the New York Commission, as well as the FCC and Verizon itself, has recognized that Carrier-to-Carrier performance standards were never intended to displace use of performance standards in interconnection agreements.<sup>112</sup> The Carrier-to-Carrier Guidelines and the Performance Assurance Plan were designed to work in conjunction with interconnection agreements.<sup>113</sup> The New York Commission recently reaffirmed these principles in the AT&T arbitration, in which it denied Verizon's attempt to exclude metrics and remedies from the interconnection agreement and allowed AT&T to include performance metrics in the

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<sup>109</sup> Covad's 1/17/03 Initial Brief, at 46-48.

<sup>110</sup> NY 2/4/03 Technical Conference, Tr. at 169:7-14.

<sup>111</sup> NY 2/4/03 Technical Conference, Tr. at 172:17-20.

<sup>112</sup> Covad's 1/17/03 Initial Brief, at 48.

<sup>113</sup> Covad's 1/17/03 Initial Brief, at 48-51.



agreement.<sup>114</sup> The New York Commission allowed this even though, as is the case here, some of the metrics duplicated current Carrier-to-Carrier service guidelines.<sup>115</sup> In the AT&T Arbitration, the New York Commission determined that it would not be an undue burden for Verizon to report data based on a separate set of metrics from the Carrier-to-Carrier metrics, and noted that Verizon was already doing this in regard to AT&T.<sup>116</sup> In regard to Issues 13 and 38, Covad is not asking that Verizon report any additional performance data that it is not already reporting, so it is even less of a burden. The added assurance that incorporation of the FOC intervals in the parties agreement would provide Covad far outweighs any nominal burden this may place on Verizon.

### **Issue 32: Manual Loop Qualification**

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

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<sup>114</sup> *AT&T NY Arbitration Award* at 16. Verizon sought reconsideration on the issue, but its request was denied. See *Joint Petition of AT&T Communications of New York, Inc. TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(c) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 01-C-0095, Order on Rehearing, at 5-6 (Dec. 5, 2001).

<sup>115</sup> Covad's 1/17/03 Initial Brief, at 50-51.

<sup>116</sup> *AT&T NY Arbitration Award* at 17.

Commission rejected all loop qualification charges that Verizon proposed in the Pennsylvania UNE cost proceeding for that very reason.<sup>117</sup> Specifically, the Pennsylvania Commission held that:

Because a forward-looking network would not contain inherent obstacles to the provision of DSL services, there would be no need for loop qualification. Accordingly, we adopt the recommendation of the ALJ to disallow the charge.<sup>118</sup>

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

#### **Issue 34: Loop Provisioning Intervals**

In Issue 34, Covad does seek a shorter interval than is provided in the Carrier-to-Carrier Guidelines. Covad seeks a two day interval for the provisioning of line-shared loops, as opposed to the current three day interval.<sup>119</sup> Once again, Covad's proposal is not out of line with what the New York Commission recently ordered in the *AT&T NY Arbitration*. In the *AT&T NY Arbitration*, the Commission not only allowed the language of the interconnection agreement to

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<sup>117</sup> See *Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates*, R-00016683, Tentative Order, at 202 (Penn. P.U.C. Oct. 24, 2002) (rejecting Verizon's changes for Mechanized Loop Qualification, (2) Manual Loop Qualification; and (3) Engineering Query.).

<sup>118</sup> *Id.*

<sup>119</sup> Covad's 1/17/03 Initial Brief, at 53.

duplicate existing Carrier-to-Carrier metrics and standards, but also allowed for some different standards when AT&T sought additional protections or product disaggregation.<sup>120</sup> In this proceeding, Covad is seeking a more tailored provisioning interval on an issue that is of vital importance to its operations. Covad's customers are desirous of getting their service, particularly broadband, installed as quickly as possible.<sup>121</sup> Shortening the interval by one day would make a significant difference in Covad's operations.<sup>122</sup>

As the ALJ in New York (Judge Linsider) noted in regard to this issue, "essentially it comes down to an assessment of what Verizon can do."<sup>123</sup> In this regard, Covad demonstrated that a two day interval should be feasible. The three day interval was essentially a negotiated interval produced by the DSL Collaborative and in Technical Conferences related to Case 00-C-0127 in July and August 2000. In this discussion, which took place nearly three years ago, the participants discussed starting the Line Sharing interval at three days and revisiting the interval to progressively reduce it; first to two days and possibly to a single day. This was based upon the significantly reduced amount of work required to deliver a line shared service, as compared with a stand-alone service.<sup>124</sup>

The passage of three years surely has provided ample time for Verizon to become accustomed to provisioning line-shared loops such that a reduction in the interval is in order.<sup>125</sup> For instance, Verizon does not dispute that it can perform all cross-connection work for a hot cut within two days, and a hot cut requires no more cross-connect work (and possibly less), than

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<sup>120</sup> *AT&T NY Arbitration Award* at 16.

<sup>121</sup> NY 2/4/03 Technical Conference, Tr. at 151:9-13.

<sup>122</sup> NY 2/4/03 Technical Conference, Tr. at 151:23-24.

<sup>123</sup> NY 2/4/03 Technical Conference, Tr. at 166: 22-23.

<sup>124</sup> Covad's 1/17/03 Initial Brief, at 55.

<sup>125</sup> NY 2/4/03 Technical Conference, Tr. at 152: 5-16.

provisioning a line-shared loop.<sup>126</sup> Covad also noted that BellSouth can provision line-shared loops within two days.<sup>127</sup> Verizon and BellSouth have similar network configurations and perform similar functions to provision line sharing. This Commission and Verizon should strive to meet the performance of other ILECs.

Ultimately, Verizon concedes it is really an issue of workforce management. Verizon claims that it needs to ensure that it has enough workers in a particular central office to process the orders. For instance, some central offices may be unmanned.<sup>128</sup> Covad has stated, however, that it is willing to work with Verizon to address this issue.<sup>129</sup> Actually Covad has tried to work with Verizon on the issue by raising the issue of a shorter interval in numerous fora including the change management process, but Verizon adamantly refuses to change the interval.<sup>130</sup> The workforce issue should not be an obstacle because Covad provides periodic forecasts of its expected demand on a central office by central office basis, and has never exceeded its forecast.<sup>131</sup> In fact, Verizon concedes that Covad has not been a carrier that "sent us a huge volume of orders in one day, hoping that we would fail."<sup>132</sup> Thus, it should be feasible for Verizon and Covad to negotiate a shorter interval that would apply to Covad's orders. In fact, it appears that Verizon may be clinging to a longer interval to protect itself against situations in

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<sup>126</sup> NY 2/4/03 Technical Conference, Tr. at 150: 19-24; 151: 1-4.

<sup>127</sup> NY 2/4/03 Technical Conference, Tr. at 152: 2-4. Verizon contends that it may need a longer interval because "there are just a ton of differences geographically." NY 2/4/03 Technical Conference, Tr. at 155: 13-14. It is unclear how geographic differences would impact wiring that is done within a central office.

<sup>128</sup> NY 2/4/03 Technical Conference, Tr. at 153-154.

<sup>129</sup> NY 2/4/03 Technical Conference, Tr. at 161: 1-12.

<sup>130</sup> NY 2/4/03 Technical Conference, Tr. at 150: 9-13; 161: 13-18.

<sup>131</sup> NY 2/4/03 Technical Conference, Tr. at 163: 13-22.

<sup>132</sup> NY 2/4/03 Technical Conference, Tr. at 163: 15-17.

which a carrier may bombard it with orders that exceed its forecasts. Since Covad is not one of these carriers, there is no reason to penalize it by applying a longer interval. In short, there is no basis to defer the already long overdue reduction in the line sharing provisioning interval.

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

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

**Issue 25: Should Verizon provision Covad DS-1 loops with associated electronics needed for such loops to work, if it does so for its own end users?**

**Summary:** Verizon's rejection of many Covad orders for high capacity UNEs, allegedly due to facilities exhaust, its regular adjustments of electronics for its own end user customers and state and federal law all support the adoption of agreement language confirming the ILEC's duty to offer UNEs at parity.

Covad asks that Verizon provide UNEs and UNE combinations in instances in which Verizon routinely provides such UNE or UNE combinations to itself. Furthermore, Verizon should relieve capacity constraints in the loop network so that it can provide UNE loops to the same extent and on the same rates, terms and conditions that it routinely does for its own retail customers. Similarly, Verizon should perform routine network modifications needed to make copper UNE facilities available to the extent it makes such facilities available to its own customers.

Covad's request for its contract language is based on the fact that Verizon has rejected a large number of Covad orders for high capacity UNEs, claiming that no facilities are available because the capacity of those facilities is allegedly exhausted.<sup>133</sup> Covad notes that it is not the capacity of the transmission facility that is exhausted, but rather that the electronics are not

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<sup>133</sup> See NY 2/4/03 Technical Conference, Tr. at 76; Covad's 1/17/03 Initial Brief at 56-59 & Exhibit 1 at Issues 19 & 24.

configured to the particular level of capacity required to serve both Covad's and Verizon's customers.<sup>134</sup> While refusing to reconfigure or substitute electronics to meet Covad's needs, Verizon regularly reconfigures or substitutes electronics on its facilities in order to accommodate the needs of its end-user customers.<sup>135</sup>

For the reasons previously and fully articulated in Covad's 1/17/03 Initial Brief, Covad's request is supported by federal and state law that requires Verizon to provide UNEs, UNE combinations, and relieve capacity constraints in a nondiscriminatory manner.<sup>136</sup> In addition, the Commission has authority under federal and Pennsylvania law to order Verizon to comply with this obligation.<sup>137</sup> Moreover, other states have found that ILECs have this obligation and the Commission should follow suit.<sup>138</sup>

As the law was explained in Covad's Initial Brief, pages 60-72, and as factually developed in Covad's 1/24/03 Reply Brief, pages 16-19, an ILEC's duty to offer UNEs at parity does not stop at new construction when it is a routine, customary, or necessary activity. As Covad submitted on pages 62-69 of its 1/17/03 Initial Brief, the crucial limitation established in the *Iowa I*<sup>139</sup> and *Iowa II*<sup>140</sup> decisions requires that an ILEC (in treating CLECs at parity and in a nondiscriminatory manner<sup>141</sup>) make those modifications to its facilities that are necessary to

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<sup>134</sup> Covad's 1/24/03 Reply Brief at 16-19.

<sup>135</sup> Covad's 1/17/03 Initial Brief at 56-59; Covad's 1/24/03 Reply Brief at 16-19.

<sup>136</sup> See Covad's 1/17/03 Initial Brief at 60-72.

<sup>137</sup> *Id.* at 68-69.

<sup>138</sup> *Id.* at 69-72.

<sup>139</sup> *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8<sup>th</sup> Cir. July 18, 1997) ("*Iowa I*").

<sup>140</sup> *Iowa Utilities Board v. FCC*, 219 F.3d 744, 758 (8<sup>th</sup> Cir. July 18, 2000) ("*Iowa II*").

<sup>141</sup> See 47 C.F.R. § 51.311(a)&(b) and 51.313(a)&(b); see also, e.g., *U.S. West Communications, Inc. v. Jennings*, 46 F. Supp.2d at 1025 (D. Ariz. 1999); *US West*

accommodate interconnection or access to network elements, but do not require the ILEC “to provide superior interconnection or access by substantially altering its network.”<sup>142</sup> As the Court in *US West* found, the proper interpretation of this limitation requires that the term “necessary” be given a meaning consistent with FCC precedent.<sup>143</sup> Significantly, the FCC deems equipment is “necessary” for interconnection or access to unbundled network elements within the meaning of 251(c)(6) “if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.”<sup>144</sup> Thus, applying this FCC definition of the word necessary within the context of the *Iowa I* and *Iowa II* limitation means that modifications or expansions to equipment is *necessary* because a CLEC cannot obtain interconnection or access to UNEs without them.

This is the precise situation that Covad faces with respect to Issues 19, 24, and 25, and the limitation on *Iowa I* and *Iowa II* directly applies because Covad cannot access the associated DS1 and DS3 UNEs if Verizon does not make the same basic network modifications and

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*Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc.*, 31 F. Supp.2d at 856.

<sup>142</sup> See *US WEST Communications, Inc. v. THOMS*, 1999 WL 33456553 \*8 (S.D. Iowa Jan. 25, 1999) (“*US West*”).

<sup>143</sup> See also *US WEST* at \*8 (concluding that the state commission’s interpretation of the word “necessary” as it applied to the *Iowa I* limitation was appropriate because it tracked the FCC’s definition of necessary in the context of 251(c)(6)) (citing *Local Competition Order*, Docket No. 96-98, 11 FCC Rcd 15499, at ¶ 579 (“*Local Competition Order*”). Subsequent to this court’s decision, the FCC modified its definition of the term necessary in the *Fourth Report and Order* as discussed herein. See *Fourth Report and Order* ¶ 21.

<sup>144</sup> See *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capacity*, FCC Docket No. 98-147, Fourth Report and Order, FCC 01-204, 16 FCC Rcd 15435, ¶ 21 (rel. Aug. 8, 2001) (“*Fourth Report and Order*”).

expansions for CLECs that Verizon performs for its retail customers.<sup>145</sup> Because these modifications are basic and routinely offered to Verizon's retail customers, such modifications do not involve substantial alteration to Verizon's network and may not be rejected on the grounds that the request involves providing superior interconnection or access. Indeed, Covad is not requesting that Verizon construct network facilities that are superior in quality to that which Verizon provides to itself or construct a new, superior network; Verizon is already and routinely offering the same services to its retail customers. In short, these facilities are necessary to provide Covad with an *equivalent*, not a "superior," quality of interconnection or access to network elements.

ILECs already have a duty to "construct" network facilities when provisioning UNEs with respect to multiplexing and loop conditioning.<sup>146</sup> Furthermore, ILEC duties to perform the construction necessary to upgrade and enhance facilities are not a new revelation under the Act. The FCC fully recognizes that the expansion or modification of facilities may be necessary to create equivalent access. For instance, with respect to access to rights-of-way, ILECs must provide CLECs with nondiscriminatory access to poles, ducts, conduits or rights-of-way.<sup>147</sup> The FCC has found that "because [ILECs] can expand [their] capacity to suit their needs, '[t]he

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<sup>145</sup> See 46 F.Supp.2d at 1025; 31 F.Supp.2d at 856. Notably, the Sixth Circuit's recent September 30, 2002 opinion in *Michigan Bell Tel Co. v. Strand*, 2002 WL 31155092 \*10 (6<sup>th</sup> Cir. Sept. 30, 2002) is inapposite and does not change this result. In *Michigan Bell*, the court found that Ameritech could price discriminate when there was no retail analog. *Id.* In particular, the court found that because Ameritech does not provide loop conditioning to its retail customers, there was no retail analog and thus it was not discriminatory if Ameritech assessed CLECs such construction charges and did not assess its retail customers such charges. *Id.* In contrast to *Michigan Bell*, where there was no retail analog, a retail analog exists when ILECs reject CLEC requests for UNE circuits on the basis that no facilities exist. In fact, when Verizon responds to a CLEC request for high capacity UNEs that no facilities exist, Verizon instructs CLECs to purchase the identical facility out of a retail tariff.

<sup>146</sup> See Covad's 1/17/03 Initial Brief at 65-67.

<sup>147</sup> See 47 U.S.C. §§ 251 (b)(4) & 224(f)(1).



principle of nondiscrimination established by section 224(f)(1) requires that it do likewise for telecommunications carriers....”<sup>148</sup> Although the FCC declined to craft a rule categorically prescribing when a utility must expand an existing facility as requested versus when it may choose to decline on the basis of infeasibility,<sup>149</sup> it interpreted the Act “to require utilities to take all reasonable steps to accommodate requests for access in these situations. Before denying access based on a lack of capacity, a utility must explore potential accommodations in good faith with the party seeking access.”<sup>150</sup>

Consistent with the above legal analysis, which is further developed in Covad’s Initial Brief, the FCC announced in a February 20, 2003 press release regarding its Triennial Review of network unbundling obligations under the Telecommunications Act of 1996 that ILECs are required to make “routine network modifications” to existing loop facilities and “undertaking the other activities that incumbent LECs make for their own retail customers.” On pages 3-4 of the attachment to its press release, the FCC explained:

Modification of Existing Network/“No Facilities” Issues -- Incumbent LECs are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has already been constructed. These routine modifications include deploying multiplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers. The Commission also requires incumbent LECs to condition loops for the provision of xDSL services. The Commission does not require incumbent LECs to trench new cable or otherwise to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates, but it clarifies that the incumbent LEC’s unbundling obligation includes all transmission facilities deployed in its network.

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<sup>148</sup> *US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc.*, 1998 WL 1806670 \*4; *MCI Telecommunications Corp. v. US West Communications, Inc.*, 1998 WL 34004509 \*4 (same).

<sup>149</sup> *Local Competition Order* ¶ 1163; see also 1998 WL 1806670 \*4; 1998 WL 34004509 \*4.

<sup>150</sup> *Local Competition Order* ¶ 1163; see also 1998 WL 1806670 \*4; 1998 WL 34004509 \*4.

The FCC has not yet released its order in the Triennial Review. Covad understands that the order, which directly addresses the governing standard associated with Verizon's obligation to provide UNEs in a nondiscriminatory manner, is likely to issue by the end of June or shortly thereafter.

The above legal analysis and FCC news release support the contract language that Covad proposes. For instance, with respect to Section 1.2 of the UNE Attachment, Covad proposes contract language that states that Verizon shall have no obligation to construct or deploy new facilities to offer any UNE or Combination "except to the extent that such UNE or combination would be constructed or deployed, upon request of a Verizon end user."<sup>151</sup> This construction refers to "routine network modifications" contemplated by the FCC. Likewise, with respect to section 3.6 of the UNE Attachment, Covad proposes language that Verizon will not build new copper facilities "except to the extent that it does for its own customers. Verizon will relieve capacity constraints in the loop network to provide IDSL loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers."<sup>152</sup> In this instance, Covad is not requesting that Verizon rip up the streets and trench new cable.<sup>153</sup> Rather, building copper facilities and relieving capacity constraints in the central office and outside facilities refers to routine network modifications and augmentations that are needed to accommodate a UNE request as contemplated by the FCC. Indeed, Verizon should perform routine network modifications needed to make copper facilities available as UNEs to the extent it makes such modifications and facilities available to its retail customers. In its 1/17/03 Opening Brief and

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<sup>151</sup> See Exhibit 1, Revised Proposed Language Matrix, at 6.

<sup>152</sup> Exhibit 1, Revised Proposed Language Matrix at 10.

<sup>153</sup> Covad's 1/24/03 Reply Brief at 16.

1/24/03 Reply Brief, Verizon contended that Covad's requested language for section 16 is unnecessary because Covad could submit requests for new UNEs or UNE combinations through Verizon's tariffed bona fide request ("BFR") process.<sup>154</sup> Contrary to Verizon's assertion, Covad is not requesting this language to address new UNEs or combinations that are not recognized by Applicable Law but rather seeks access to UNEs and UNE combinations that Verizon regularly provides to its retail customers as Applicable Law requires. Verizon cannot use its tariffed BFR process as a means to (1) evade or delay its obligation to provide nondiscriminatory access to UNEs and UNE combinations or (2) reject a request for them if Applicable Law requires that Verizon offer them. Apart from this, the BFR process is a burdensome and prolonged process<sup>155</sup> that is mainly utilized for special requests and new types of UNEs or combinations. It was not designed for facilities that would normally be provided pursuant to Applicable Law but for Verizon's no facilities policy.

For the foregoing reasons and as demonstrated in Covad's Initial Brief and Reply Brief,<sup>156</sup> Verizon has a duty under the Act, FCC rules and implementing orders, and applicable judicial determinations to perform the construction involved in making routine network modifications or expansions because such construction is necessary to accommodate CLEC interconnection or access to network elements. Further, Verizon's failure to do so is patent discrimination because such network modifications do not involve providing superior access to

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<sup>154</sup> Verizon's 1/17/03 Opening Brief at 25; Verizon's 1/24/03 Reply Brief at 15.

<sup>155</sup> Contrary to Verizon's suggestion, the FCC's ruling in the *Verizon Virginia 271 Order* did not find that the BFR process was not burdensome. Verizon's 1/17/03 Opening Brief at 19-20; see *Virginia Arbitration Order* ¶ 435 (concluding that the BFR process would place an unreasonable burden on WorldCom's right of access to subloops at the FDI.) and ¶ 423 and n.1394 (finding "[t]he time it would take Verizon to decide whether or not to grant AT&T's BFR, plus the additional time needed to develop a price, would constitute an unreasonable burden on AT&T's access to inside wire subloop.").

<sup>156</sup> Covad's 1/17/03 Initial Brief at 56-75; Covad's 1/24/03 Reply Brief at 16-19.

network elements in that such modifications are routinely made to accommodate requests for services made by Verizon's retail customers. The Commission should therefore adopt the contract terms proposed by Covad.

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

**Summary:** To provide Verizon with proper incentives to avoid damaging Covad's relationship with customers when Verizon misses appointments, Covad should be able to request a new appointment outside the normal provisioning interval, the non-recurring dispatch charge should not be applied and where there are additional instances of missed appointments, Verizon should pay Covad the equivalent of the nonrecurring dispatch charge.

The parties have reached agreement that Verizon will strive to provide Covad a commercially reasonable appointment window when it will deliver the product (the loop) and will make a good faith effort to meet that window.<sup>157</sup> Covad's concerns on Issue 22 continue on the issue of what is the effect of Verizon's failure to meet that initial appointment or a subsequent appointment. If a dispatch does not occur (other than if the Covad end user was not available or upon the request of Covad), Covad should be able to request a new appointment window outside of the normal provisioning interval by contacting Verizon's provisioning center directly and Covad should not be required to pay the non-recurring dispatch charge for such appointment. Moreover, each additional instance in which the Verizon technician fails to meet the same customer during future scheduled windows, Verizon should 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.<sup>158</sup>

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<sup>157</sup> Exhibit 1, Revised Proposed Language Matrix, Covad's and Verizon's Proposed Language, at § 1.9. Verizon should, however, still meet the six day provisioning interval even if it is unable to meet the appointment window. NY 2/4/03 Technical Conference, Tr. at 96:3-6.

<sup>158</sup> Exhibit 1, Revised Proposed Language Matrix, Covad's Proposed Language, at § 1.9.

Covad devotes significant time and resources to preparing for these appointments. From a monetary perspective, Covad incurs the expense for the dispatch, the expense of initiating a supplement to the original order to Verizon with a new due date (there are charges associated with the SUP), and the expense of administering the order a second time to assure correct provisioning by Verizon. From a customer goodwill perspective, Covad is responsible for all negotiations with the customer and Verizon. It is often extremely challenging to get the initial date established, and incredibly hard to do so when Verizon misses the first appointment. Needless to say, when Verizon misses the first appointment, and the customer has stayed home all day, the customer is extremely irate and frustrated. Often, their frustration is directed at Covad because Covad has done all the communication with them even though it is completely Verizon's fault for the missed appointment.<sup>159</sup> If a first appointment is missed, Covad should not have to pay a charge for a dispatch that never occurred. Verizon also needs to be provided some incentive to ensure that subsequent appointments are not missed, and, paying a penalty would provide such an incentive.

In regard to the first missed appointment, Verizon concedes that it will not charge for the dispatch if it was at fault for the miss.<sup>160</sup> Covad simply seeks to incorporate this position into the interconnection agreement.<sup>161</sup> Verizon's position is that remedies for missed appointments are already addressed in the Performance Assurance Plan so there should not be a separate provision

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<sup>159</sup> See also, Covad's 1/17/03 Initial Brief, at 76-77.

<sup>160</sup> NY 2/4/03 Technical Conference, Tr. at 111:3-9.

<sup>161</sup> Codifying ILEC business practices in interconnection agreements, among other things, furthers the ability of CLECs to identify best practices of ILECs and ensure that ILECs are engaging in nondiscriminatory practices. See, e.g., *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5,22,24,25,63,90,95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, ¶ 172 (rel. Oct. 8, 1999).

in the agreement.<sup>162</sup> Both the New York Commission and the FCC, as well as Verizon itself, have recognized that the Performance Assurance Plan was not intended to displace remedies in interconnection agreements. The Carrier-to-Carrier Guidelines and the Performance Assurance Plan were designed to work in conjunction with interconnection agreements. For instance, Verizon itself represented that the PAP was only one part of a larger regulatory system designed to create incentives for adequate performance.<sup>163</sup> Verizon noted:

[T]he amounts at risk under the Performance Assurance Plan are in addition to the amounts at risk under the numerous interconnection agreements [Verizon-NY] has entered into with CLECs. Each of these agreements contains liquidated damage or bill credit provisions. These interconnection provisions provide a significant complement to the amounts at risk under the Performance Assurance Plan.<sup>164</sup>

The New York Commission agreed with Verizon's assessment, noting:

Verizon-NY noted that it is at risk in interconnection agreements with each CLEC for damages as well [as under the PAP] . . . . The Performance Assurance Plan and Change Control Plans represent a substantial counterweight to any incentive to thwart competitive entry. These incentives are in addition to those already contained in interconnection agreements.<sup>165</sup>

The FCC has also noted that:

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

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<sup>162</sup> NY 2/4/03 Technical Conference, Tr. at 95:20-24.

<sup>163</sup> Covad's 1/17/03 Initial Brief, at 48.

<sup>164</sup> *Petition of New York Telephone Company for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Cases 99-C-0949 and 97-C-0271, Verizon-NY Reply Brief at 5-6 (July 29, 1999).

<sup>165</sup> *Petition of New York Telephone Company for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Cases 99-C-0949 and 97-C-0271, Notice of Proposed Rulemaking at 10 (August 30, 1999).

it fails to sustain a high level of service to competing carriers, including . . . liquidated damages under 32 interconnection agreements.<sup>166</sup>

Thus, liquidated damages remedies set in interconnection agreements that must be paid in addition to PAP penalties are vital cogs in assuring adequate performance. These remedies in interconnection agreements are all the more valuable because they allow performance to be tailored to the interests of the particular carrier. As the New York Commission has noted, “performance incentives contained in individual interconnection agreements add their own set of remedies, which reflect the business strategies of individual CLECs.”<sup>167</sup> Thus, Covad is clearly entitled to have the waiver of the dispatch charge for a first missed appointment codified in the Agreement.

For the same reason, Covad is entitled to be compensated by additional remedies when Verizon repeatedly fails to meet appointment windows for a particular customer. The New York Commission has placed great emphasis on utilities meeting appointments. For instance, the New York Commission has previously established incentive programs designed, among other things, to improve a utility’s record in honoring service appointments with its customers. For example, Central Hudson Gas & Electric operated under one such program in which, upon its failure to meet a customer within its designated appointment window, the company would credit \$20 to the

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<sup>166</sup> *In the Matter of Application by Bell Atlantic New York, et al., for Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York*, FCC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 435 (1999).

<sup>167</sup> CC Docket No. 99-295, Evaluation of the New York Public Service Commission, Appendix at 164 (1999).

customer's account. This applied to both residential and commercial customers. The company was also required to send a letter apologizing for the missed appointment.<sup>168</sup>

The New York Commission also required telephone companies to provide rebates under certain conditions when an installation appointment was missed.<sup>169</sup> The New York Commission has required Verizon to provide rebates on installation charges and other charges when it missed appointments for either its wholesale or retail customers in regard to special services.<sup>170</sup> The Commission directed Verizon to file a warranty tariff that would provide rebates to customers whose appointments are missed by Verizon.<sup>171</sup> To ensure nondiscriminatory service, the Commission determined that competitors ordering Special Services should qualify for the same waiver of charges as Verizon's end user customers.<sup>172</sup> Covad requests the same treatment for services rendered pursuant to its interconnection agreement, and the fact that Verizon faces similar penalties in other contexts demonstrates that Covad's request is not unreasonable.

Thus, there is strong precedent for requiring Verizon to waive its nonrecurring dispatch charge for the first missed appointment, and pay additional missed appointment fees for any subsequent missed appointments for the same end user.

**Issue 23:      What technical reference should be used for the definition of the ISDN, ADSL and HDSL loops?**

**Summary:** The agreements should reflect only ANSI technical standards as the best means of defining technical terms, given the operation of

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<sup>168</sup>     *Re Central Hudson Gas & Electric Corporation*, Case No. 95-G-1034, Order Approving Settlement, 1997 WL 257604, \*2 (1997).

<sup>169</sup>     *Service Quality Standards for Telephone Companies*, Case 97-C-0139, Order, 2000 WL 1793146 (2000).

<sup>170</sup>     Covad's 1/17/03 Initial Brief, at 80, *citing, Re Verizon New York Inc.*, Cases No. 00-C-2051 and 92-C-0665, Order, 2001 WL 1131900 (June 15, 2001)

<sup>171</sup>     Covad's 1/17/03 Initial Brief, at 80.

<sup>172</sup>     Covad's 1/17/03 Initial Brief, at 80-81.



carriers in multiple-states, rather than Verizon's in-house technical standards.

Covad has requested that Verizon utilize only industry ANSI standards in the agreement rather than Verizon Technical Reference 72575 (TR 72575) for ISDN, ADSL and HDSL loops. Covad requires this language because in an industry where it is routine for carriers to operate in multiple-states and in a variety of ILEC territories, use of national industry standards are the best means of defining technical terms for purposes of an interconnection agreement.

As explained in Covad's 1/17/03 Opening Brief, the FCC explicitly rejected giving ILECs discretion to dictate unilaterally what standards apply with respect to advanced services. For these reasons, the Commission should reject Verizon's request to include its in-house standards in the definitions of ISDN, ADSL, and HDSL loops in the Agreement.

**Issue 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?**

**Summary:** Verizon should not be allowed to penalize Covad for offering services over loops that Verizon may not offer, by imposing charges for converting loops to loop types that Verizon subsequently creates and designates and thus undermine Covad's business plan associated with expedited deployment of technology.

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

Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.

If Covad seeks to deploy over Verizon's network a new loop technology that is not among the loop technologies described in the loop types set forth above (or in the cross-referenced sections of Verizon's tariff), then Covad shall submit to Verizon a written request, citing this sub section 3.6, setting forth the basis for its claim that the new technology complies with the industry standards for one or

more of those loop types. Within 45 calendar days of receiving this request, Verizon shall either (a) identify for Covad the loop type that Covad should order when it seeks to deploy that loop technology, or (b) indicate that it does not agree with Covad's claim that the new technology complies with industry standards. With respect to option (b), if Covad does not agree with Verizon's position, Covad may immediately institute an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction to resolve the dispute, without first pursuing dispute resolution in accordance with Section 14 of the General Terms and Conditions of this Agreement. With respect to option (a), if Verizon subsequently creates a new loop type specifically for the new loop technology, Covad agrees to convert previously-ordered loops to the new loop type, at no cost, and to use the new loop type on a going-forward basis. Verizon will employ good faith efforts to ensure that any such conversions are completed without any interruption of service.<sup>173</sup>

With this language, Verizon will allow Covad to deploy new loop technology over its network, so long as the technology complies with industry standards, even though Verizon has not "officially" developed or released a product that utilizes similar technology. Otherwise said, Verizon will not prevent Covad from deploying a new technology that complies with industry standards on the grounds that Verizon has yet to deploy product that does. In addition, by agreeing to this language, Verizon acknowledges that it cannot refuse a request made by Covad to deploy a certain technology over a loop if it complies with industry standards. Covad's 1/17/03 Initial Brief fully addresses Verizon's legal obligation in this regard.<sup>174</sup>

Verizon wants, however, to penalize Covad's speed to market in deploying this new technology prior to Verizon by requiring that Covad pay for converting the loops upon which Covad's new technology is deployed to loop types that Verizon officially creates and designates subsequently to handle the new technology. Verizon's desire to foist such costs on Covad is highly inappropriate as explained below.

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<sup>173</sup> Exhibit 1, Revised Proposed Language Matrix at 10-11

<sup>174</sup> Covad's 1/17/03 Initial Brief at 84-91.

Rather than having very generic loop definitions that can support a wide variety of loop technologies, Verizon has chosen to make narrower definitions of each of its loop offerings and associated technologies as reflected in Section 3 of the UNE Attachment. Verizon's decision to develop and manage its UNE loop "products" in this manner is of its own doing and should not by law impact Covad because Covad is legally entitled to use a loop in any manner it deems fit so long as the technology meets industry standards. Significantly, FCC rule 51.230(a) provides that,

- (a) An advanced services loop technology is presumed acceptable for deployment under any one of the following circumstances, where the technology:
  - (1) Complies with existing industry standards; or
  - (2) Is approved by an industry standards body, the Commission, or any state commission; or
  - (3) Has been successfully deployed by any carrier without significantly degrading the performance of other services.<sup>175</sup>

When it established these and other spectrum management rules, the FCC declared that ILECs "may not unilaterally determine what technologies may be deployed [over UNE loops]."<sup>176</sup> The FCC concluded the better approach is to "establish competitively neutral spectrum compatibility standards and spectrum management rules and practices so that all carriers know, without being subject to unilateral incumbent LEC determinations, which technologies can be deployed and

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<sup>175</sup> 47 C.F.R. § 51.230(a).

<sup>176</sup> *Deployment of Wireline Service Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, Third Report and Order in CC Docket No. 98-147*, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, ¶ 180 (1999) ("*Line Sharing Order*") vacated on other grounds sub nom. *USTA v FCC*, 290 F.3d 415 (D.C. Cir. May 24, 2002) (citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) ("*Advanced Services First Report and Order and FNPRM*").

can design their networks and business strategies accordingly.”<sup>177</sup> Because the FCC does not give ILECs unilateral control in this regard, the FCC’s spectrum management rules are fully harmonious with FCC Rule 51.309(a) that prohibits an incumbent LEC from imposing “limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements, that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.”<sup>178</sup>

Despite Covad’s legal right in this regard (which allows Covad to continue to use a UNE loop upon which it provides new loop technology without having to later convert it), Covad has voluntarily agreed to convert previously ordered UNE loops to new loop types Verizon designates for this new technology and to use the new loop type on a going forward basis. However, because the conversion is necessitated by (1) Verizon’s inability to offer the new technology on a timely basis as Covad provides it and (2) the manner in which Verizon prefers to designate its UNE loop products, Verizon’s request that Covad pay the costs associated with converting its UNE loops to Verizon’s newly designated UNE loop type is unreasonable when Covad gains nothing from the conversion.

If anything, Verizon benefits from learning from Covad’s UNE order that such new loop technology is in demand and that Verizon needs to develop a product associated with the new technology Covad is deploying so that it can potentially compete with Covad. Perversely, it is as a result of this decision by Verizon that Verizon seeks to penalize Covad with a conversion charge for beating Verizon to the market. Moreover, Verizon’s assessment of **conversion** costs, which the specific costs are unknown, is a transparent attempt to prevent Covad from deploying

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<sup>177</sup> *Line Sharing Order*, ¶ 180 (citing *Advanced Services First Report and Order and FNPRM*).

<sup>178</sup> 47 C.F.R. § 51.309(a).

new loop technology before Verizon does. Indeed, having such unknown costs pending is a tremendous risk to Covad because such costs may undermine Covad's entire business plan associated with the expedited deployment of the technology.

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

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

**Summary:** Covad proposes reasonable compromise language on cooperative testing appropriately covers when testing is performed, types of tests, repeat tests, standards and use of Covad's IVR system while Verizon proposes language that is vague and gives itself the unilateral right to decide if it will test on an automated or manual basis.

Covad seeks language in the Agreement that provides specific terms and conditions reflecting how the Parties currently conduct cooperative testing and should continue to do so under the Agreement.<sup>179</sup> Cooperative acceptance testing, or joint acceptance testing, assists in timely and efficient provisioning of newly requested stand alone UNE loops over which DSL

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<sup>179</sup> Please note that the parties have agreed on the language to address the tagging requirement that was associated with this issue. See Exhibit 1, Revised Proposed Language Matrix, at § 3.13, p. 14-15. That language provides that,

Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned.

and other advanced services will be provided. Additionally, cooperative testing can assure complete maintenance processes on such loops.

As stated in Covad's Initial and Reply Brief and during the New York Technical Conference, Verizon's proposed language does not set forth the specific procedures it follows when performing or what is involved when it performs cooperative testing.<sup>180</sup> Covad, unlike other CLECs, primarily offers advanced services over UNE loops and, as a result, cooperative testing is absolutely critical to its business and ensuring that the loops serving its customers are properly provisioned. Covad therefore seeks to protect its business interests by including language in the Agreement that details what is involved in the cooperative testing process, rather than leaving it to the imagination of the parties. And Covad has made its need for such certainty in the Agreement abundantly clear in this arbitration.<sup>181</sup> Verizon objects, however, to including a detailed process for cooperative testing in the agreement because the process is an evolving one and does not want to impede the evolution of the process by having to do it the "old-fashioned way" when there is a more efficient automated way to do it.<sup>182</sup>

To address Verizon's concerns in this regard, Covad has proposed new language in its best and final offer that *does not detail the specific process* that Verizon must follow when cooperative testing is performed. Instead, Covad proposes language that *takes a more functional and less granular approach* with regard to specifying the time when cooperative testing must take place and what should be accomplished when it is performed. Specifically, Covad proposes

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<sup>180</sup> Covad's 1/17/03 Initial Brief at 103-104; Covad's 1/24/03 Reply Brief at 24-25; NY 2/4/03 Technical Conference, Tr. at 134, 136 (explaining that Verizon never provided Covad the methods and procedures associated with the cooperative testing process and further discussing that cooperative testing process is not documented anywhere).

<sup>181</sup> Covad's 1/17/03 Initial Brief at 97-107; Covad's 1/24/03 Reply Brief at 24-25; NY 2/4/03 Technical Conference, Tr. at 129, 134, 136; *see also id.*

<sup>182</sup> NY 2/4/03 Technical Conference, Tr. at 122:12, 123:20-22.

general language about when cooperative testing will be performed, the types of tests that will be performed, when Verizon has to repeat the tests, the standard by which the loops should perform, and for what activities Verizon should use Covad's Interactive Voice Response ("IVR") system. In addition, Covad proposes language that allows for future improvement of cooperative testing, *i.e.*, additional testing, procedures and/or standards, upon agreement of the parties. Covad's proposed language for § 3.13 is as follows:

Verizon will cooperatively test jointly with a Covad technician (i) all stand alone loops ordered by Covad and provide demarcation information during the cooperative test and (ii) any loop on which Covad has opened a maintenance ticket to close out any loop troubles. Cooperative testing is a procedure whereby a Verizon technician and a Covad technician jointly perform the following tests: (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing. At the conclusion of such testing, Covad will either accept or reject the loop. If Covad rejects the loop, then Verizon shall correctly provision the loop and re-contact the Covad representative to repeat the cooperative test. Verizon shall deliver loops that perform according to the characteristics of the described loop types set forth in Sections 3.1-3.7, above. Covad will make its automated testing equipment ("IVR") available for Verizon technicians to utilize to sectionalize troubles on loops connected to Covad's network, either during provisioning or maintenance activities.

If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Agreement or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards.<sup>183</sup>

The specific tests referenced in Covad's proposed language, *i.e.*, (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing, are tests that Verizon performs today with Covad during the cooperative testing process.<sup>184</sup> Rather than specify how these tests will be performed in the

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<sup>183</sup> Exhibit 1, Revised Proposed Language Matrix at 14.

<sup>184</sup> A description of these tests is as follows: (1) Loop Length test - Clear and balanced open conductors with capacitance that represents expected/anticipated loop length; (2) DC Continuity

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

Verizon has by contrast proposed revised language that is still extremely vague and does not provide any contractual commitment to Covad regarding (1) when the cooperative testing process will be performed, (2) how it will be performed, *i.e.*, whether it will be a joint or automated test, and (3) what will be accomplished when it is performed.<sup>185</sup> Apart from being vague, Verizon's language states that "'Cooperative Testing' is a procedure whereby a Verizon technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order."<sup>186</sup> With this language, Verizon appears to give itself the unilateral right to decide whether it will perform cooperative testing on an automated or on a manual basis.

At this time, Covad needs manual Joint Acceptance Testing so that it can verify that the Verizon Technician is at the correct demarcation point when they call into Covad's center. The communication between the Verizon Technician and Covad's technician provides information that would not be otherwise transmitted to Covad that supports final provisioning of the Covad

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test - Technician at demarc (NID) applies a short circuit across the tip and ring of the loop and Covad technician acknowledges the appearance of the short circuit; (3) Foreign Battery/Conductor Continuity Test - Technician at demarc (NID) applies a ground to the tip side conductor and the Covad technician acknowledges the appearance of the ground on the tip side of the circuit. Subsequently the technician at demarc (NID) applies a ground to the ring side conductor and the Covad Technician acknowledges the appearance of the ground on the Ring side of the circuit; (4) AC continuity Test - The Covad Technician applies a test tone to the pair and the Technician at the Demarc (NID) acknowledges the tone appears on the terminal that the service is provisioned to at the Demarc; and (5) Covad technician verifies there are no foreign battery, escapes, or noise outside of accepted parameters and then provides a serial number to the Technician at the NID.

<sup>185</sup> Exhibit 1, Revised Proposed Language Matrix at 13-14.

<sup>186</sup> *Id.*



service to the end user. Joint Acceptance Testing also ensures that the Verizon technician is testing the overall end-to-end loop and not at some intermittent point. Even though Verizon has been doing Joint Acceptance Testing for over four years, Covad still encounters many instances where the Verizon technician is not at the correct location for testing and has not terminated the circuit at the correct demarcation point. Covad's automated IVR process would not identify this problem and Verizon and Covad would be required to re-test the loop via Joint Acceptance Testing. If Verizon's language were adopted, and Verizon unilaterally elected to perform cooperative testing on an automated basis before Covad agreed to allow Verizon to replace joint testing that is done with a Covad technician, these problems would remain and Verizon would not correctly provision Covad's loops

As indicated during the New York Technical Conference, Covad and Verizon "violently agree" that the automated cooperative testing process is "great."<sup>187</sup> Furthermore, Covad envisions transitioning from the joint testing process to the fully automated IVR process for cooperative testing and is eager to implement this automated system when it determines that Verizon's performance is acceptable. As indicated above, Covad has proposed language in the Agreement that allows for such evolution and future improvement of the testing process. In the meantime, *i.e.*, until Verizon's performance is improved, Covad proposes language, as specified in the last sentence of the first indented paragraph above, that makes the system available to Verizon technicians to utilize when determining troubles on loops connected to Covad's network, either during provisioning or maintenance activities.

Apart from the above, Covad objects to Verizon's language that attempts to assess cooperative testing charges upon Covad. As fully explained in Covad's 1/17/03 Initial Brief, this

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<sup>187</sup> NY 2/4/03 Technical Conference, Tr. at 133:21-24.

requirement is unlawful and should be rejected.<sup>188</sup> Likewise, Verizon should not be permitted to bill Covad for loop repairs when the repair resulted from a Verizon problem. Covad's proposed language appropriately prevents Verizon from doing so.

For the reasons set forth above and in Covad's Initial and Reply Briefs,<sup>189</sup> Covad's revised proposed contract language - unlike Verizon's - is an eminently reasonable compromise that is necessary, *i.e.*, factually justified, and consistent with Applicable Law. The Commission should therefore adopt Covad's proposed contract terms.

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

**Summary:** Covad seeks language preserving its right to contest the prequalification requirement on orders because Verizon's prequalification tool, LiveWire, is unreliable, does not detect unavailable copper resulting in customers' requests for DSL service being denied; urthermore there is no basis for Verizon to require CLECs to prequalify loops

Covad should have the right to contest Verizon's prequalification requirement. Prequalification pertains to the pre-order access that Verizon provides for a carrier to determine if a loop is qualified to provide xDSL service. Verizon requires Covad to prequalify its orders prior to submitting the order. For certain order types, however, Verizon has agreed to accept Covad service orders without regard to whether they have been prequalified. Covad seeks language that would preserve its right to contest the prequalification "requirement" for an order or set of orders. Covad seeks this right because Verizon's prequalification tool has proven to be unreliable on certain orders types. In the event Covad uncovers significant and pervasive

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<sup>188</sup> Covad's 1/17/03 Initial Brief at 105-106.

<sup>189</sup> Covad's 1/17/03 Initial Brief at 97-107; Covad's 1/24/03 Reply Brief at 24-27.

problems with Verizon's prequalification tool for an order or set of orders, Covad seeks to reserve its right to contest any requirement that such orders must pass prequalification.

Covad has experienced significant problems with LiveWire, Verizon's mechanized prequalification database. LiveWire is supposed to tell CLECs whether a loop is qualified for DSL prior to submission of an order. Verizon requires Covad to prequalify loops prior to placing an order. In Covad's experience, LiveWire falsely reports certain loops as non-qualifiers. Covad has experienced numerous instances where it must turn away a customer because LiveWire incorrectly reports that the customer is served by a long loop, which would preclude the loop's use for DSL service. In response, the customer will inform Covad that its neighbor has DSL thus indicating that the loop cannot be too long. Covad then must decide whether to incur Verizon's significant manual loop qualification charges to pursue the order.<sup>190</sup>

LiveWire has also provided responses indicating that a customer's loop has a length of zero feet and is, therefore, non-qualified. Clearly there can be no loops of zero length, so Covad has to conduct a manual workaround on the order, which increases the delay and costs associated with provisioning these loops. These manual workarounds often reveal that the loops actually are DSL-compatible. The fact that Verizon's manual workaround process provides the actual loop length shows that Verizon has at its disposal the means to obtain more accurate loop information than its LiveWire database provides. Verizon has been informed about this problem, but has refused to take any action to correct the inaccurate entries in its loop qualification database.<sup>191</sup>

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<sup>190</sup> *In the Matter of Application by Verizon Virginia, Inc., et al., for Authorization to Provide In-region, InterLATA Services in Virginia*, FCC Docket No. 00-214, Comments of Covad Communications Company at 6 (Aug. 21, 2002) ("*Covad VA 271 Comments*"). Covad has experienced similar problems in New York to those documented in the Virginia 271 proceeding.

<sup>191</sup> *Id.*, at 6-7.

Another problem area concerns the presence of digital loop carrier (“DLC”) on a loop. The presence of DLC on a line limits Covad’s ability to provide DSL services. Verizon’s pre-qualification tool, however, does not always reflect the presence of copper for loops that have DLC and copper. In the case of a CLEC that uses the “in bulk” qualification process, this results in a customer having its request for DSL denied, rather than fulfilled. Based on its own data, Covad believes that upwards of 30% of the pre-qualification responses of “loop not qualified” due to DLC could be served by available copper because copper is available in a binder group and, accordingly, the customer could receive broadband service.<sup>192</sup>

Based on the inaccurate nature of Verizon’s prequalification tool, it is patently evident why Covad should have the right to contest any requirement that an order or set of orders must pass prequalification. If Covad finds that Verizon’s prequalification tool is unreliable for certain types of orders, it should not be forced to use this tool particularly when it often incorrectly precludes Covad from ordering loops.

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

[w]e clarify that pursuant to our existing rules, an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install.<sup>193</sup>

There is no requirement, however, that a CLEC must prequalify loops. In fact, the FCC appears to contemplate expressly that prequalification by the ILEC is not a prerequisite for ordering a

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<sup>192</sup> *Id.* at 7-8.

<sup>193</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC Docket No. 96-68, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, ¶ 427 (1999), *subsequent history omitted*. (“*UNE Remand Order*”).

loop. For instance, the FCC has determined that if a CLEC wanted to use raw data from an ILEC's databases to construct its own loop prequalification tool, the CLEC would be free to do so.<sup>194</sup> In addressing a request for arbitration of SBC's obligations under the SBC/Ameritech Merger Conditions, the Common Carrier Bureau of the FCC stated that "the question of implementing an enhancement to SBC's OSS that would allow CLECs to skip the loop qualification process for loops less than 12,000 feet in length appears to be a question of fact, *i.e.*, whether SBC is capable of delivering such an enhancement across its 13-state region in response to CLEC requests during the collaborative sessions."<sup>195</sup> This suggests that if bypass of prequalification were technically feasible, the FCC would authorize it. The FCC gave no indication that prequalification of orders was mandated for CLECs. In fact, Verizon, when it implemented its mechanized loop qualification charge, waived the charge for CLECs that chose not to consult the database before placing their orders.<sup>196</sup> Verizon itself thus clearly recognized the optional nature of prequalification. The New York Commission has noted that Verizon, then Bell Atlantic, agreed to provide loop qualification "using a pre-ordering query or a service order, *at the CLEC's option.*"<sup>197</sup> Thus, there is clearly no basis for Verizon to require that Covad prequalify orders, and there is no doubt that Covad should have the right to contest the prequalification requirement for an order, or set of orders, if Covad finds problems with

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<sup>194</sup> *In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization to Provide In-region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, Memorandum Opinion and Order, FCC 02-331, ¶ 84 (December 19, 2002).

<sup>195</sup> *Letter from Carol E. Matthey, Deputy Chief, Common Carrier Bureau to Ms. Cassandra Carr, Senior Executive Vice President – External Affairs, SBC Communications, Inc.*, DA 00-2346 (October 18, 2000).

<sup>196</sup> *Re New York Telephone Company*, New York Public Service Commission Case No. 98-C-1357, Opinion No. 99-12, 1999 WL 1427420, \*3 (1999).

<sup>197</sup> *Re Inter-Carrier Service Quality Guidelines*, New York Public Service Commission Case No. 97-C-0139, Order, 1999 WL 358649 (February 16, 2000) (emphasis added).

Verizon's prequalification tool for that set of orders. Verizon already allows Covad to bypass the prequalification requirement for certain types of orders.<sup>198</sup> There is no reason then that Verizon should mandate prequalification for all orders.

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

**Summary:** Consistent with TELRIC principles and this Commission's determinations, after obtaining Covad's approval, when provisioning T1s or xDSL loop, Verizon should perform LSTs at no additional charge if Verizon does not charge its own customers and the standard provisioning interval should not change based on Verizon's needs to conduct LST's.

A Line and Station transfer ("LST") done in conjunction with a line sharing arrangement involves the reassignment and relocation of an existing Verizon end user voice service from a Digital Loop Carrier ("DLC") facility that is not qualified for line sharing to a spare or freed-up qualified non-loaded copper facility. Such a swap or transfer would be done in order to support the requested service transmission parameters.<sup>199</sup> 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 a LST.

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<sup>198</sup> Case No. 02-C-1175, Covad Communications Company's Petition for Arbitration of Interconnection Terms, Conditions and Prices with Verizon, Attachment C at § 3.7 (Sept. 10, 2002)(In Section 3.7 of the UNE Attachment the parties agree that Covad may bypass the loop prequalification requirement for loops that are in the same binder group with a known disturber such as a T1 facility).

<sup>199</sup> *Re Provision of Digital Subscriber Line Services*, New York Public Service Commission Case No. 00-c\_0127, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, Opinion No. 00-12, 2000 WL 33158570, \*12 (2000).

Such work is routinely done by Verizon to provision loops and should already be captured by the standard interval. In fact, Verizon's retail provisioning intervals do not vary depending on whether it must conduct an LST for its retail end users.

As an initial matter, Verizon should first obtain Covad's approval before conducting a LST, particularly if the Commission allows Verizon to impose a charge for the LST. Covad should be given the choice of whether it wants the LST conducted. Such a provision would allow Covad to control its costs and make appropriate determinations as to whether to utilize the service.

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

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

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

We are not convinced that the costs proposed for line station transfer are not duplicative of costs already recovered on a recurring cost basis. Further, this

function does not appear to be compatible with a forward-looking network assumption. Thus, we have the added concern that such charge could be discriminatory in that it imposes an additional cost on customer migration.<sup>200</sup>

Thus this Commission should again preclude Verizon from assessing a charge for LST. Verizon performs “Line and Station Transfers” as a routine business matter and would likely book the cost of performing these activities to its loop maintenance accounts. Verizon almost certainly has not eliminated the costs for these activities from its recurring cost study because Verizon does not normally charge retail customers for performing line and station transfers. To conform with Section 252(d)(1)(A)(ii)’s requirement that UNE rates be nondiscriminatory and the FCC’s requirement of forward-looking network assumptions,<sup>201</sup> the Commission should require that Verizon provide LSTs at no additional charge.

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

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<sup>200</sup> *Re Verizon Pennsylvania, Inc.*, PA PUC Rulemaking Proceeding 00016683, Tentative Order, 2002 WL 31664693, \*89 (Nov. 4, 2002).

<sup>201</sup> 47 U.S.C. § 252(d)(1)(A)(ii); *Local Competition Order*, FCC 96-325 at ¶ 685; see also 47 C.F.R. § 51.505(b)(1).



**Issue 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)?**

**Summary:** The Commission should end Verizon’s anti-competitive, discriminatory policy that prohibits the resale of Verizon’s voice service in Line Partitioning when Covad provisions DSL over the high frequency portion of the loop.

As explained in Covad’s 1/17/03 Initial Brief, Covad requests that Verizon offer a hybrid form of Line Sharing and Line Splitting, called Line Partitioning, in which end users receive voice services from a reseller of Verizon local service, while Covad offers xDSL over the high frequency portion of the loop.<sup>202</sup> This is similar to Line Splitting and Line Sharing; however, rather than using a UNE-Platform voice service or Verizon as the voice service provider, respectively (which the FCC currently requires with respect to line splitting and sharing) a CLEC other than Covad would be reselling Verizon’s voice line.<sup>203</sup> To be absolutely clear, Covad is not asking that Verizon make the high frequency/xDSL portion of the loop available for resale.<sup>204</sup> Rather, Covad is asking that Verizon make the voice services it provides over the voice grade portion of the loop available on a resale basis at the same time that it makes the high frequency/xDSL portion of the loop available to Covad as a network element via Line Sharing. CLECs have the legal right to resell Verizon’s voice service and Verizon’s refusal to provide basic voice services in these instances is patently unreasonable and discriminatory, which is in violation of the Act and the FCC rules.

The critical underlying question that needs to be answered in determining whether Verizon must offer Line Partitioning is whether resellers are being discriminated against by

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<sup>202</sup> Covad’s 1/17/03 Initial Brief at 109-113.

<sup>203</sup> Covad’s 1/17/03 Initial Brief at 109-110.

<sup>204</sup> Covad’s 1/17/03 Initial Brief at 110.

UNE-P providers and Verizon by not being able to resell Verizon's voice services when another CLEC, such as Covad, provisions DSL over the high frequency portion of the loop? The answer to this question is an unequivocal YES, as Covad's 1/17/03 Initial Brief fully explains.<sup>205</sup> Moreover, Covad's Initial Brief makes it abundantly clear that the Commission has the authority to mandate a resale offering to address this discrimination and Commission precedent supports doing so.

Verizon submits that it is not required to provide line partitioning because the FCC rejected Covad's request in the Virginia 271 Order.<sup>206</sup> However, the FCC, in rendering that decision, never addressed whether Verizon was discriminating against resellers and preferentially treating UNE-P providers by not making voice service available for resale when another carrier is utilizing the HFPL to provide DSL services.<sup>207</sup> Because of this, this Commission must now evaluate the issue of discrimination as it conspicuously appears in this instance and put an end to it. Competition in Pennsylvania is being seriously harmed by Verizon's anti-competitive discriminatory policy that prevents resellers from offering basic voice services in these circumstances.<sup>208</sup>

For the above reasons and for the reasons submitted in Covad's 1/17/03 Initial Brief, the Commission must stop and reverse Verizon's discriminatory policy that disallows voice services from being resold if Covad provides xDSL over the high frequency portion of the loop. The Commission should accordingly order Verizon to make its voice services available for resale, as requested, and adopt Covad's contract language.

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<sup>205</sup> Covad's 1/17/03 Initial Brief at 109-113.

<sup>206</sup> Verizon's 1/17/03 Initial Brief at 34; *see also* Verizon's 1/24/03 Reply Brief at 20.

<sup>207</sup> *Virginia 271 Order* ¶ 151.

<sup>208</sup> Covad's Initial Brief at 111-112.

**Issue 39: What interval should apply to collocation augmentations where a new splitter is to be installed?**

**Summary:** Consistent with this Commission's decision in a prior arbitration order, the Agreements should reflect a thirty business day interval for collocation augmentations where new splitters are installed and Verizon's seventy-six business day interval should be firmly rejected.

Verizon should provision collocation augmentations where new splitters are installed within thirty (30) days. Covad seeks a thirty day (30) interval for collocation augmentations where new splitters are to be installed. Verizon's seeks to change the collocation augment interval to seventy-six (76) business days in direct violation of the Pennsylvania Public Utility Commission's ("Commission") November 15, 2000 Ruling in the Arbitration of Covad and Rhythms.<sup>209</sup> In the *Arbitration Order*, this Commission adopted a thirty (30) business day interval for augmenting collocation arrangements.<sup>210</sup> Covad is not seeking to change this Commission's prior ruling. Although Covad's language matrix states that it wants a thirty (30) "calendar" day interval, Covad is willing to change its proposal to "business" days to be consistent with the *Arbitration Order*.

Verizon approach here typifies its familiar "wear down the regulator" strategy. If it does not get exactly what it wants the first time, then Verizon simply tries a second, third and fourth time. The Commission has already dealt with the augment interval that Verizon proposes in its *Arbitration Order*. Verizon should not be allowed to use this Arbitration for another bite at the

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<sup>209</sup> *Petition of Covad Communications Company for Arbitration Award against Bell Atlantic Pennsylvania, Inc., Implementing the Line Sharing/Unbundling Network Element*, Docket No. A-310696F0002; *Petition of Rhythms Links, Inc. for an Expedited Arbitration Award Implementing Line Sharing*, Docket No. A-310698F0002, Commission Opinion and Order entered November 15, 2000, ("*Arbitration Order*").

<sup>210</sup> *Arbitration Order* at 17.

apple on the collocation augment interval. Covad has also submitted a Complaint in response to the April 11, 2003 filing by Verizon of revisions to its Tariff Pa. P.U.C. – No. 218 - CLEC Collocated Interconnection Service (“Tariff 218”) (“April 11 Tariff Filing”). The April 11 Tariff Filing also attempts to change the collocation augment interval to forty-five (45) business days in direct violation of the *Arbitration Order*. This case has been heard and a ruling establishing a thirty (30) day augment interval has already been issued by this Commission.<sup>211</sup> Verizon should not be allowed to litigate this issue until it receives an outcome it likes.

**Issue 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?**

**Summary:** Consistent with Verizon’s prior position and this Commission’s decision in the Yipes arbitration, the Agreement should require Verizon to make unterminated dark fiber available to Covad.

Verizon’s refusal in this proceeding to make unterminated dark fiber available to Covad as a UNE is inconsistent with Verizon’s own position in the Yipes arbitration and this Commission’s decision in that proceeding. Covad is proposing language that mirrors the language that Verizon agreed to with Yipes. Specifically, Covad proposes the following language, which was adopted by the Commission:

It is Verizon’s standard practice that when a fiber optic cable is run into a building or remote terminal that all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. Should a situation occur in which a fiber optic cable that is run into a building or a remote terminal is found to not have all of its fibers terminated, then Verizon agrees to complete the termination of all fibers in

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<sup>211</sup> *Arbitration Order* at 18 (“For the foregoing reasons, based upon the record before us, we shall direct that the cable augmentation interval for existing collocation arrangements shall be thirty (30) business days.”)

conformance with its standard practices, and to do so as soon as reasonably practicable at the request of Covad.<sup>212</sup>

In fact, Verizon testified in the Yipes arbitration that under Verizon's standard practices "every outside fiber cable has a connectorized cable attached to it and has a patch panel installed with connectors plugged into the patch panel, so there is a complete path ending at the termination point at the fiber patch panel."<sup>213</sup> Accordingly, Judge Weisman determined that Verizon should not be permitted to deviate from its standard practices in serving CLECs and determined that as a general rule, consistent with its alleged standard practices, Verizon was required to terminate all fibers in a building or at a remote terminal at an accessible terminal.<sup>214</sup> Verizon's position in the instant proceeding is inconsistent with the result in Yipes and its own assertions that Verizon's standard practice in Pennsylvania is to terminate all fiber. Thus it appears that either Verizon has changed its so-called standard practices in order to gut the Yipes decision or Verizon is no longer willing to terminate all dark fiber for CLECs. Accordingly, Verizon's position regarding unterminated dark fiber should once again be rejected by this Commission.

In sum, by attempting to exclude unterminated dark fiber from the inventory of dark fiber that is available to CLECs, Verizon hopes to evade its obligation to provide unbundled dark fiber. The Commission should preclude this unlawful conduct by adopting the position of other state commissions that have addressed the issue and clarifying that the definition of unbundled

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<sup>212</sup> *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Verizon Pennsylvania, Inc.*, Docket No. A-310964, Opinion and Order, at 8-9 (Order adopted October 12, 2001) (emphasis added). In the final implementing contract language, the Commission replaced the word "expeditiously" with "in a timely manner in conformance with Verizon's standard practices" at Verizon's urging. *Id.*, at 14.

<sup>213</sup> *Id.*, at 11.

<sup>214</sup> *Id.*, at 11, 13-14.

loop, subloop, and transport dark fiber includes fiber that is deployed in the network but not yet terminated. Verizon should be required to terminate unterminated dark fiber for requesting CLECs.

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

**Summary:** Covad's request for access to dark fiber in any technically feasible configuration is reasonable and consistent with the nondiscrimination provisions of the Telecom Act and FCC rules.

As Covad submitted on pages 120-122 of its 1/17/03 Initial Brief, Covad's proposed language, which permits it to have access to dark fiber in technically-feasible configurations consistent with Applicable Law, is simple, reasonable, and comports with the Act and FCC rules. Section 251(c)(3) of the Act and FCC Rule 51.307(c) specifically provide that ILECs shall provide to a requesting telecommunications carrier for the provision of a telecommunications service, "nondiscriminatory access to network elements on an unbundled basis at *any technically feasible point*" on terms and conditions that just, reasonable, and nondiscriminatory."<sup>215</sup>

Furthermore, Covad's proposed language, which specifies that that "[t]he description of Dark Fiber Loop, Dark Fiber Sub-loop, and Dark Fiber IOF products, does not limit Covad's right to access dark fiber in other technically feasible configurations consistent with Applicable Law," comports with FCC's findings in the *Virginia Arbitration Award*. In its Order, the FCC noted numerous times that contract language that references access to UNEs or interconnection at any technical feasible point is lawful.<sup>216</sup>

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<sup>215</sup> 47 U.S.C. § 251 (c)(3).

<sup>216</sup> See, e.g., *In the Matter of Petition of WorldCom, Inc., Pursuant to Section 252(e) 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*, FCC Dockets No. 00-218, 00-249, 00-251, DA 02-1731, ("*Virginia Arbitration*

**Issue 44:** Should Verizon make available dark fiber that would require a cross connection between two strands of 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?

**Summary:** Consistent with the Virginia Arbitration Award decision, Verizon should route dark fiber transport to two or more intermediate central offices without requiring collocation and be required to provide cross connects or splices to facilitate fiber routing and allow UNE combinations; moreover the Commission should clarify and affirm ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for CLECs on a time and material basis as well as allow Covad to test dark fiber to determine actual transmission characteristics after a dark fiber circuit is provisioned, but prior to completion of the order.

Consistent with *the Virginia Arbitration Award* and Verizon's most recent proposed contract language, the Commission should require Verizon to route dark fiber transport through two or more intermediate central offices for Covad without requiring collocation at the intermediate central offices. Further, the Commission should require Verizon to provide any needed cross connects or splices between such fibers in order to facilitate routing of dark fiber through intermediate central offices and to allow UNE combinations.

As directed by the FCC's in the *Virginia Arbitration Award*,<sup>217</sup> Verizon has proposed contract language that requires Verizon to route dark fiber transport through two or more

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

<sup>217</sup> *Virginia Arbitration Award*, at ¶ 457 (July 17, 2002) ("We reject Verizon's position that connecting fiber routes at central offices may not be required of Verizon . . . Verizon's refusal to

intermediate central offices for Covad. Verizon's language, however, would unduly restrict Covad's access to combinations in accordance with Applicable Law by requiring Covad to access dark fiber loops and IOF via a collocation arrangement in that Verizon premise where that loop of IOF terminates. An additional disputed item in Issue 44 is whether or not Verizon should be required to permit access to existing splice points and splice dark fiber on behalf of Covad, on a time and materials basis in order to provide a continuous dark fiber strand on a route requested by Covad.

As Covad submitted on pages 123-129 of its 1/17/03 Initial Brief, in light of the best practices adopted by these state commissions, the Commission should seize this opportunity to clarify its rules and affirm that ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for requesting CLECs on a time and materials basis in order to provide a continuous fiber strand.

In addition, Covad should be allowed to test the dark fiber to determine the actual transmission characteristics after a dark fiber circuit has been provisioned, but prior to completion of the order. If the dark fiber Verizon provisions is not suitable or does not meet the fiber specifications described in Verizon's filed survey response, Covad should be allowed to cancel the dark fiber circuit. Accordingly, Covad's proposed changes to Section 8.2.19 should be adopted.

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route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311.”).



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

**Summary:** Consistent with federal law, Covad should be provided parity access with Verizon to the same up-to-date pre-ordering information regarding dark fiber UNEs available to Verizon's backoffice systems, data bases and other internal records, excluding but not limited to data from the TIRKS database, fiber transport maps, baseline fiber test data from engineering records or inventory management and field surveys.

As set forth in its Pre-Hearing Brief, Covad merely seeks what federal law already requires. Covad does not seek information that does not reside anywhere within Verizon's records, databases and other sources as alleged by Verizon in its Response and Opening Brief. Further, Covad does not seek a "snapshot" of all dark fiber available across the entire state. Rather, as required by the FCC's decisions, Covad merely seeks parity access to the same up-to-date pre-ordering and ordering information regarding dark fiber UNEs that is available in Verizon's backoffice systems, databases and other internal records, including but not limited to data from the TIRKS database, fiber transport maps, baseline fiber test data from engineering records or inventory management, and field surveys.<sup>218</sup> Verizon cannot, as it has done in the past, limit a CLEC's access to this information simply because it is inconvenient or contrary to Verizon's competitive interest to provide the information.<sup>219</sup>

**Issue 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)?**

**Summary:** Verizon's proposed language would require Covad to "police" its tariff filings and allow unilateral changes in rates not finally approved by regulatory authorities to be imposed; language should be adopted making it clear Verizon can charge only Commission or FCC approved charges, set forth in tariffs.

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<sup>218</sup> Covad's Pre-Hearing Brief at Issue 47; *UNE Remand Order*, at ¶¶ 421, 425, 427.

<sup>219</sup> *UNE Remand Order*, at ¶¶ 421, 425, 427.

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

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

Verizon's proposed language would also give it the ability, through a mere proposed tariff filing, to negate the established and effective Commission approved rates contained or referenced in the Interconnection Agreement. Covad finds this language inappropriate because Covad must be able to rely on the rates specifically established by this Commission and contained or referenced in the Agreement. Otherwise, the Commission's rates and the rates contained or referenced in the Agreement are little more than placeholders, until Verizon determines to propose and thereby impose rates that are different from Commission approved rates. Significantly, in the Virginia Arbitration Award, the FCC's Wireline Bureau stated that "a carrier cannot use tariffs to circumvent the Commission's determinations under section 252."<sup>220</sup>

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<sup>220</sup> *Virginia Arbitration Award* ¶ 602 .

With its proposed contract language, Verizon seeks to do just that and therefore the Commission should reject Verizon's proposed language.

Verizon avers that Covad's concerns are misplaced because "[u]nder Verizon's proposal, only tariffs that this Commission or the FCC has allowed to go into effect can supersede a rate contained in the agreement."<sup>221</sup> Besides the fact that Verizon's proposed contract language is not expressed in this manner and freely allows the pricing attachment to be superceded by any applicable tariff charges,<sup>222</sup> the fact that the Commission has allowed a tariff to go into effect, however, does not mean, *ipso facto*, that the Commission has permanently approved the rates associated with Verizon's tariff filing or has allowed them to go into effect on an interim basis. Nor does it mean that the Commission held that rates provided in previously approved interconnection agreements must be replaced by Verizon's newly proposed rates. Given this, Verizon's proposed language is unduly burdensome and unreasonable because it relegates Covad to being "tariff police" who must scour every tariff filing Verizon makes with the Commission to ensure that Verizon is not trying to prescribe new rates that the Commission has not approved. Arguably, Verizon's language would allow mere tariff filings to supercede currently effective rates prior to the tariff even going into effect or being approved by this Commission.

In addition, Verizon's claim that Covad's proposal permits Covad to "game the system" by seeking to maintain rates that are more favorable than those available to all other CLECs in New York based on an accident of timing is simply wrong.<sup>223</sup> There is no accident of timing - the bottom line is that Verizon should not be allowed to assess any rates that the Commission or the FCC have not yet approved.

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<sup>221</sup> Verizon's Response to Covad's Arbitration Petition, Exhibit B at 22.

<sup>222</sup> Exhibit 1, Revised Proposed Language Matrix at 22.

<sup>223</sup> Verizon's Response to Covad's Arbitration Petition, Exhibit B at 22.

Notably, Appendix A to the Pricing Attachment, the terms of which Covad and Verizon have agreed, references Verizon's tariff throughout it. However, with the language Covad has proposed, the Agreement is clear that Verizon can only assess Commission or FCC approved charges that are set forth in the tariff and nothing else. For the foregoing reasons, the Commission should adopt Covad's proposed contract language.

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

**Summary:** Based on Verizon's track record of not notifying Covad regarding new non-tariffed charges, language should be adopted in the Agreements that require Verizon to provide Covad with advanced written notice of any non-tariff revisions that establish new rates or change existing rates.

This issue has evolved from whether Verizon should provide notice of tariff revisions and rate changes, and based on efforts to settle this issue, the question now is whether Verizon must provide Covad advanced written notice of any non-tariff revisions that serve to establish new rates or change existing rates in Appendix A. Verizon should have this obligations and Covad specifically proposes the following language for section 1.9 of the Pricing Attachment:

Notwithstanding anything to the contrary in Sections 1.1 to 1.7 above, Verizon shall provide advance actual written notice to CLEC of any non-tariffed revisions that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A. Whenever such rate(s) becomes effective, Verizon shall, within 30 days, provide Covad with an updated Appendix A showing all such new or changed rates for informational purposes only.<sup>224</sup>

This language is needed in the Agreement because Verizon has a track record of not notifying Covad regarding a new charge that will be assessed that is non-tariffed and not allowing Covad to agree to the charge. Often, these charges are not supported by Commission decisions and have not been mutually agreed to by the Parties. Section 1.8 of the Pricing Attachment, which

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<sup>224</sup> Exhibit 1, Revised Proposed Language Matrix at 23.

has been agreed upon, provides “In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the parties in writing.”<sup>225</sup> Section 1.8 primarily addresses circumstances in which there is no tariffed rate, no rate in the Appendix A, or Commission-approved rate for a service. As Section 1.8 requires, the parties must *mutually agree in writing* what will be charged for such services.

As mentioned above, Covad requests this language because Verizon has a track record of not notifying Covad regarding a new charge that will be assessed that is non-tariffed and not allowing Covad to agree to the charge.<sup>226</sup> Instead, Verizon begins billing or, to make matters worse, backbills Covad for such charges and thereby places the burden on Covad to “rifle through the thousands of pages” of bills and find the newly assessed charge buried in it.<sup>227</sup> After a charge is uncovered, an extremely prolonged and burdensome billing dispute with Verizon ensues that can be a nightmare for Covad to resolve with Verizon.<sup>228</sup>

During the Technical Conference and in its Initial and Reply Brief, Covad made this point abundantly clear with its example of Verizon’s assessment of Line and Station Transfer charges.<sup>229</sup> Out of nowhere, Covad received a backbill in February 2002 from Verizon for approximately \$19,000 and did not know what it was for.<sup>230</sup> Subsequently, after numerous

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<sup>225</sup> NY 2/4/03 Technical Conference, Tr. at 274:12-275:21.

<sup>226</sup> NY 2/4/03 Technical Conference, Tr. at 262.

<sup>227</sup> NY 2/4/03 Technical Conference, Tr. at 262:22-24.

<sup>228</sup> NY 2/4/03 Technical Conference, Tr. at 266:15.

<sup>229</sup> NY 2/4/03 Technical Conference, Tr. at 262:11- 265:12; Covad’s 1/17/03 Initial Brief at 153.

<sup>230</sup> NY 2/4/03 Technical Conference, Tr. at 263:23-264:1; Covad’s 1/17/03 Initial Brief at 153.

requests, Verizon provided a spreadsheet itemizing only 60% of the charges<sup>231</sup> and Covad has had continuous discussions with Verizon attempting to identify the source of Verizon's charges.<sup>232</sup> After ten months of discussions, Verizon provided a chart identifying that the charges were based on an internal cost study that were submitted in tariff proceedings but were not Commission approved.<sup>233</sup> After Covad researched what Commission approved rate should apply, it discovered there was no tariffed rate or an otherwise Commission approved rate for the service in Pennsylvania.<sup>234</sup>

During the Technical Conference, Verizon explained that in the case of Line and Station Transfers, "it was the result of settlement that the parties negotiated, Covad being a party to that."<sup>235</sup> Verizon further stated that the settlement was set forth in the New York Commission's October 2000 order in the DSL case and that it was part of the settlement.<sup>236</sup> However, contrary to Verizon's contentions, no rate was ever established in the settlement and the Pennsylvania Commission never approved any rate.<sup>237</sup>

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<sup>231</sup> Covad's 1/17/03 Initial Brief at 153 & Exhibit 1 at Issue 38.

<sup>232</sup> Covad's 1/17/03 Initial Brief at 153 & Exhibit 1 at Issue 38.

<sup>233</sup> NY 2/4/03 Technical Conference, Tr. at 264: 22-24; *see also* Covad's 1/17/03 Initial Brief at 153 & Exhibit 1 at Issue 38.

<sup>234</sup> NY 2/4/03 Technical Conference, Tr. 271:16-272:15.

<sup>235</sup> NY 2/4/03 Technical Conference, Tr. at 271:23-272:2.

<sup>236</sup> NY 2/4/03 Technical Conference, Tr. at 272:3-8.

<sup>237</sup> *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case No. 00-C-0127, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, at 25 n.1 & Attachment 2 (N.Y. P.S.C. Oct. 31, 2000); *see also Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case No. 98-C 1357, Order on Unbundled Network Element Rates (N.Y. P.S.C. Jan. 28, 2002) (not addressing or ordering rates for Line and Station Transfers).

Nevertheless, the fact still remains that up until December 2002, Verizon incorrectly maintained that its charges were effective Commission-approved rates.<sup>238</sup> However, had Verizon provided Covad with an updated Pricing Appendix, this problem could have been easily rectified because Covad would have known beforehand that it was Verizon's intent to assess these non-commission approved charges and could have taken the issue up with Verizon at that time rather than after discovering the problem during a prolong, resource draining billing dispute.<sup>239</sup> When all said and done, Verizon should attempt to inform and negotiate a non-tariffed rate with Covad rather than having such charges suddenly and inappropriately appear on Covad's bill.

At bottom, such billing disputes result from the unacceptable nature by which Verizon imposes rates and charges for services that are not *tariffed or otherwise Commission approved*.<sup>240</sup> Given the above, it is evident that one of the major reasons there are billing problems between the parties stems from Verizon's failure to properly inform Covad that it intends to start billing Covad for such services. By providing Covad and possibly Verizon's own billing group with a revised Appendix A that reflects the non-tariffed rates that will be assessed, Verizon would be putting a precautionary measure in place that would potentially serve to correct many of billing problems Covad faces with Verizon or at a minimum ease the potential for billing inaccuracies and prolong billing disputes.<sup>241</sup>

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<sup>238</sup> Covad's 1/17/03 Initial Brief at 153 & Exhibit 1 at Issue 38.

<sup>239</sup> Covad's 1/17/03 Initial Brief at 153 & Exhibit 1 at Issue 38.

<sup>240</sup> See Covad's 1/24/03 Reply Brief at 35.

<sup>241</sup> See also Covad's 1/24/03 Reply Brief at 35.

Given the above and the fact that Verizon does not dispute that it revises its Appendix A on an ongoing and regular basis for interconnection negotiation purposes,<sup>242</sup> it should be no trouble for Verizon to provide Covad, along with its own billing organization, informational updates to Appendix A that include all new, changed, or proposed rates. Doing so would be mutually beneficial because less billing disputes would occur, Verizon would be paid more readily, and the parties would free up many of the resources needed to resolve billing disputes.<sup>243</sup>

For these above reasons, the Commission should adopt Covad's proposed section 1.9.

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<sup>242</sup> See Verizon's 1/24/03 Reply Brief at 30-31; Covad's 1/17/03 Initial Brief at 152; Covad's 1/24/03 Reply Brief at 35.

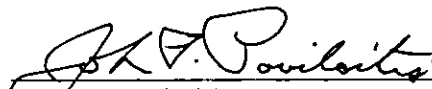
<sup>243</sup> See also Covad's 1/24/03 Reply Brief at 35.



## CONCLUSION

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

Respectfully submitted,



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Dated: June 30, 2003

## PROPOSED CONCLUSIONS OF LAW

1. That the Commission has jurisdiction over the parties and subject matter in this proceeding.
2. That the Commission has full authority and jurisdiction to resolve all issues outstanding between the parties in this arbitration.
3. That the Agreement language adopted in the Initial Recommended Decision is consistent with all applicable state and federal law, including but not limited to, Section 252 of the Telecommunications Act of 1996.

## PROPOSED ORDERING PARAGRAPHS

1. That with respect to Issue No. 1 the language proposed by Covad in Sections 4.7 and 1.5 shall be incorporated into the Agreements.
2. That with respect to Issues Nos. 2 and 9, the language proposed by Covad in Sections 9.1.1 and 9.5, and 48 shall be incorporated into the Agreements.
3. That with respect to Issues Nos. 4 and 5, the language proposed by Covad in Sections 9.3 and 9.4 shall be incorporated into the Agreements.
4. That with respect to Issue No. 7, the language proposed by Covad in Section 14.3 shall be incorporated into the Agreements.
5. That with respect to Issue No. 8, the language proposed by Covad in Section 43.2 shall be incorporated into the Agreements.
6. That with respect to Issue No. 10, the language proposed by Covad in Sections 48 and Glossary Section 2.11 shall be incorporated into the Agreements.
7. That with respect to Issue No. 12, the language proposed by Covad in Sections 8.1.4 and 8.2.3 shall be incorporated into the Agreements.
8. That with respect to Issue Nos. 13, 32, 34 and 38, the language proposed by Covad in Sections 8.2.4, 3.13.5, 3.13.10, 3.14, 4.2 and 4.3 (Verizon North Sections 4.4.3, 4.4.6) shall be incorporated into the Agreements.

9. That with respect to Issue Nos. 19, 24 and 25, the language proposed by Covad in Sections 1.2, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 shall be incorporated into the Agreements.
10. That with respect to Issue No. 22, the language proposed by Covad in Section 1.9 shall be incorporated into the Agreements.
11. That with respect to Issue No. 23, the language proposed by Covad in Sections 3.1, 3.2, 3.3 and 3.4 shall be incorporated into the Agreements.
12. That with respect to Issue No. 27, the language proposed by Covad in Section 3.11 shall be incorporated into the Agreements.
13. That with respect to Issue No. 30, the language proposed by Covad in Section 3.13 shall be incorporated into the Agreement.
14. That with respect to Issue No. 33, the language proposed by Covad in Section 3.13.7 shall be incorporated into the Agreement.
15. That with respect to Issue No. 35, the language proposed by Covad in Section 3.13.4 (Verizon North Section 3.13.12) shall be incorporated into the Agreements.
16. That with respect to Issue No. 37, the language proposed by Covad in Section 4.1 (Verizon North Section 4.2.1) shall be incorporated into the Agreements.
17. That with respect to Issue No. 39, the language proposed by Covad in Section 4.7.2 regarding thirty day intervals for collocation augmentations shall be incorporated into the Agreements.

18. That with respect to Issue No. 42, the language proposed by Covad in Sections 8.2.1 and 8.2.2 shall be incorporated into the Agreements.
19. That with respect to Issue No. 43, the language proposed by Covad in Section 8.1.5 shall be incorporated into the Agreements.
20. That with respect to Issue No. 44, the language proposed by Covad in Sections 8.1.4, 8.2.1, 8.2.2, 8.2.3, 8.2.9 and 8.2.19 shall be incorporated into the Agreements.
21. That with respect to Issue No. 47, the language proposed by Covad in Section 8.2.20.1 shall be incorporated into the Agreements.
22. That with respect to Issue No. 52, the language proposed by Covad in Sections 1.3, 1.4 and 1.5 shall be incorporated into the Agreements.
23. That with respect to Issue No. 53, the language proposed by Covad in Section 1.9 shall be incorporated into the Agreements.

# EXHIBIT 1

**Revised Proposed Language Matrix – Pennsylvania – Verizon PA**

Section	Covad Position	Verizon Position	Associated Issue(s)
Agrmt			
4. App. Law			
4.7	<p><del>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.</del></p> <p>During the pendency of any renegotiation or dispute resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, unless the Commission, the FCC, or a court of competent jurisdiction determines that modifications to this Agreement are required to bring it into compliance with the Act, in which case the Parties shall perform their obligations in accordance with such determination or ruling.</p>	<p>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.</p>	Issue 1
9. Billing			
Proposed 9.1.1	<p><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></p>		Issue 2

Revised Proposed Language Matrix – Pennsylvania – Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
9.3	<p>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.</p> <p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid. The billing Party shall use the claim number, if any, that the billed Party specifies in the notice of the dispute when referencing the Disputed Amounts with the billed Party. <u>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. Where the billing Party’s billing systems permit, the billing Party will provide the claim number specified by the billed Party on the bill to which the adjustment is applied. If the billed Party’s claim number cannot be provided on the bill, then where the billing Party’s billing systems permit, the billing Party will provide its claim number on the bill to which the adjustment is applied.</p>	<p>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.</p> <p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid. The billing Party shall use the claim number, if any, that the billed Party specifies in the notice of the dispute when referencing the Disputed Amounts with the billed Party. A Party’s payment of an amount shall not constitute a waiver of such Party’s right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. <i>Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.</i> If the billing Party determines that the disputed amounts are not owed to it, it must provide to the billed Party information identifying the bill and Bill Account Number (BAN) to which an appropriate credit will be applied. Where the billing Party’s billing systems permit, the billing Party will provide the claim number specified by the billed Party on the bill to which the adjustment is applied. If the billed Party’s claim number cannot be provided on the bill, then where the billing Party’s billing systems permit, the billing Party will provide its claim number on the bill to which the adjustment is applied.</p>	Issue 4
9.4	If the billing Party fails to receive payment for outstanding	If the billing Party fails to receive payment for outstanding	Issue 5



Revised Proposed Language Matrix – Pennsylvania – Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>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 <del>(including any unpaid previously billed late payment charges)</del> 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>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 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.</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 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.</p>	Issue 2
14. Dispute Resolution			
Proposed 14.3	<p><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></p>		Issue 7

Revised Proposed Language Matrix – Pennsylvania – Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
43.2 Termination/ Assignment Upon Sale	<p>Notwithstanding any other provision of this Agreement, Verizon may <u>assign terminate</u> this Agreement to the <u>purchaser of as to</u> 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 termination</u>, which shall be effective upon the date specified in the notice.</p>	<p>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.</p>	Issue 8
48. Waiver	<p><u>Except as provided in Section 9.1.1, a</u> 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> <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) &amp; (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 &amp; 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>	Issue 9 Issue 10

Revised Proposed Language Matrix – Pennsylvania – Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
Glossary, § 2.11 (definition of Applicable Law)	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>	All effective federal and state laws, government regulations and orders (including orders related to merger commitments), applicable to each Party's performance of its obligations under this agreement.	Issue 10
ADD. SVCS. 8.0 (OSS)			
8.1.4	<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>	<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.	Issue 12
8.2 Verizon OSS Services			
Proposed 8.2.3	Verizon, as part of its duty to provide access to the pre-ordering function, <u>must will</u> provide Covad with nondiscriminatory access to the same detailed information about the loop <u>at within</u> the same time and manner that as is available to Verizon and/or its affiliate.	Verizon, as part of its duty to provide access to the pre-ordering function, will provide Covad with nondiscriminatory access to the same detailed information about the loop within the same time interval as is available to Verizon and/or its affiliate.	Issue 12
Proposed 8.2.4	<u>For stand-alone loops, Verizon shall return firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically</u>		Issue 13

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><u>and within seventy-two (72) hours after receiving an LSR that is subject to manual pre-qualification. Verizon shall return firm order commitments for UNE DS1 loops within forty-eight (48) hours.</u></p>		
<p><b>UNE ATTACH.</b></p>			
<p><b>1.2 Combinations of UNEs</b></p>	<p>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 <del>that the</del> 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></p>	<p>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.</p>	<p><b>Issue 19</b></p>
<p><b>1.5</b></p>	<p><del>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 subject to Sections 4.6 and 4.7 of the General Terms and Conditions of this Agreement.</del> 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</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</p>	<p><b>Issue 1</b></p>

Revised Proposed Language Matrix -- Pennsylvania -- Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>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>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>Proposed 1.9</p>	<p>In provisioning loops that require Verizon to dispatch a technician to an end user's premises, Covad may request an appointment window during business hours on the day of the dispatch pursuant to the ordering processes set forth in Verizon's business rules. Any changes to those rules shall be implemented in accordance with the Verizon Change Management process. Verizon shall make good faith efforts to meet that appointment window, but does not guarantee that it will do so and failure to meet an appointment window shall not constitute a missed appointment for purposes of any performance measurements adopted by the state commission. On the day of the dispatch, the Verizon technician shall make good faith efforts to contact the end user upon arriving at the premises. Covad shall not be required to pay the non-recurring dispatch charge for dispatches that do not occur. However, Covad will be required to pay this charge when the Customer contact as designated by Covad is not available on the day of the dispatch, so long as Verizon did not cause the Customer contact to be unavailable.</p> <p><u>If a dispatch does not occur (other than if the Covad end user was not available or upon the request of Covad), Covad may request a new appointment window outside of the normal provisioning interval by contacting Verizon's provisioning center directly and Covad shall not be required to pay the non-recurring dispatch charge for such appointment. Moreover, each additional instance in which the Verizon technician fails to meet the same customer during future scheduled windows, Verizon will pay to Covad the missed appointment fee that will be equivalent to the</u></p>	<p>In provisioning loops that require Verizon to dispatch a technician to an end user's premises, Covad may request an appointment window during business hours on the day of the dispatch pursuant to the ordering processes set forth in Verizon's business rules. Any changes to those rules shall be implemented in accordance with the Verizon Change Management process. Verizon shall make good faith efforts to meet that appointment window, but does not guarantee that it will do so and failure to meet an appointment window shall not constitute a missed appointment for purposes of any performance measurements adopted by the state commission. On the day of the dispatch, the Verizon technician shall make good faith efforts to contact the end user upon arriving at the premises. Covad shall not be required to pay the non-recurring dispatch charge for dispatches that do not occur. However, Covad will be required to pay this charge when the Customer contact as designated by Covad is not available on the day of the dispatch, so long as Verizon did not cause the Customer contact to be unavailable.</p>	<p>Issue 22</p>

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><u>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/DSL 2B1Q line code, as described in ANSI T1.601.1998 and <del>Verizon TR 72575 (as TR 72575 is revised from time to time)</del>. 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. <del>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.</del> 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/DSL 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>Issue 23 Issue 24</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> <del>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, e</del>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>	<p>Issue 23 Issue 24</p>

Revised Proposed Language Matrix – Pennsylvania – Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
3.3 HDSL	<p><del>"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,</del> 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>	Issue 23 Issue 24
3.4 4 wire HDSL	<p><del>"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,</del> 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.</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 T1-417-2001. 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.</p>	Issue 23 Issue 24
3.5 DS-1	<p>"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</p>	<p>"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</p>	Issue 25

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>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. <del>A separate charge will apply for such equipment.</del></p>	<p>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.</p>	
<p>3.6 IDSL</p>	<p>“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.. <u>Verizon will not build new copper facilities except to the extent that it does so for its own customers. Verizon will relieve capacity constraints in the loop network to provide DSL loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers.</u></p>	<p>“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.</p>	<p>Issue 24</p>
<p>3.11</p>	<p>Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.</p> <p>If Covad seeks to deploy over Verizon's network a new loop technology that is not among the loop technologies described in the loop types set forth above (or in the cross-referenced sections of Verizon's tariff), then Covad shall submit to Verizon a written request, citing this sub section 3.6, setting forth the basis for its claim that the new technology complies with the industry standards for one or more of those loop types. Within 45 calendar days of receiving this request, Verizon shall either (a) identify for Covad the loop type that Covad should order when it seeks to deploy that loop technology, or (b) indicate that it does not agree with Covad's claim that the new technology</p>	<p>Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.</p> <p>If Covad seeks to deploy over Verizon's network a new loop technology that is not among the loop technologies described in the loop types set forth above (or in the cross-referenced sections of Verizon's tariff), then Covad shall submit to Verizon a written request, citing this sub section 3.6, setting forth the basis for its claim that the new technology complies with the industry standards for one or more of those loop types. Within 45 calendar days of receiving this request, Verizon shall either (a) identify for Covad the loop type that Covad should order when it seeks to deploy that loop technology, or (b) indicate that it does not agree with Covad's claim that the new technology</p>	<p>Issue 27</p>



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	<p>complies with industry standards. With respect to option (b), if Covad does not agree with Verizon's position, Covad may immediately institute an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction to resolve the dispute, without first pursuing dispute resolution in accordance with Section 14 of the General Terms and Conditions of this Agreement. With respect to option (a), if Verizon subsequently creates a new loop type specifically for the new loop technology, Covad agrees to convert previously-ordered loops to the new loop type, <u>at no cost</u>, and to use the new loop type on a going-forward basis. Verizon will employ good faith efforts to ensure that any such conversions are completed without any interruption of service.</p>	<p>complies with industry standards. With respect to option (b), if Covad does not agree with Verizon's position, Covad may immediately institute an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction to resolve the dispute, without first pursuing dispute resolution in accordance with Section 14 of the General Terms and Conditions of this Agreement. With respect to option (a), if Verizon subsequently creates a new loop type specifically for the new loop technology, Covad agrees to convert previously-ordered loops to the new loop type and to use the new loop type on a going-forward basis. Verizon will employ good faith efforts to ensure that any such conversions are completed without any interruption of service.</p>	
<p>3.13.4</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, <del>and</del> as available, <u>and after obtaining Covad's approval</u>, Verizon will perform a line &amp; station transfer (LST) (as described below) <del>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.</del> 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>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 &amp; 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>Issue 35</p>
<p>3.13.5</p>	<p>If the Loop is not listed in the mechanized database described in Section 3.11.2 <u>or the listing is defective</u>, <del>(i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon</del></p>	<p>If the Loop is not listed in the mechanized database described in Section 3.13.2, (i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon affiliate), Covad</p>	<p>Issue 32</p>

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	<p>affiliate), Covad may submit an <u>Extended Query to Verizon at no additional charge</u>. Covad may also <del>must</del> 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 <del>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</del> <u>three</u> one business days <del>although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</del></p>	<p>must request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, or IDSL 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 consistent with the intervals specified in the Carrier-to-Carrier Guidelines, 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>	Issue 33
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 <del>extending loops provisioning</del></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</p>	Issue 34

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	<p><del>of loops: (1) the interval that Verizon provides to itself, or third parties or; (2) the Commission-adopted interval; or (3) ten business days.</del></p> <p><del>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.</del></p>	<p>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 <del>for line sharing loops, and additional charges shall apply as set forth in the Pricing Attachment.</del></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>	Issue 35
3.13.13	<p><del>In the former Bell Atlantic Service Areas only, Covad may request Cooperative Testing in conjunction with its request for an xDSL Compatible Loop or Digital Designed Loop. "Cooperative Testing" is a procedure whereby a Verizon technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order. When the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge</del></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, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order. When the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge</p>	Issue 30

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	<p>that the Loop is operational.</p> <p><u>Verizon will cooperatively test jointly with a Covad technician (i) all stand alone loops ordered by Covad and provide demarcation information during the cooperative test and (ii) any loop on which Covad has opened a maintenance ticket to close out any loop troubles. Cooperative testing is a procedure whereby a Verizon technician and a Covad technician jointly perform the following tests: (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing. At the conclusion of such testing, Covad will either accept or reject the loop. If Covad rejects the loop, then Verizon shall correctly provision the loop and re-contact the Covad representative to repeat the cooperative test. Verizon shall deliver loops that perform according to the characteristics of the described loop types set forth in Sections 3.1-3.7, above. Covad will make its automated testing equipment ("IVR") available for Verizon technicians to utilize to sectionalize troubles on loops connected to Covad's network, either during provisioning or maintenance activities.</u></p> <p><u>If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Agreement or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards. modify the existing procedures, such procedures shall be effective notwithstanding anything in this section. Any charges for Cooperative Testing are in accordance with Applicable Law and as set forth in Verizon's PSC NY No. 10 Tariff, Section 5.5.2 (under Installation Dispatch).</u></p> <p>Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where</p>	<p>that the Loop is operational. If the Parties mutually agree to modify the existing procedures, such procedures shall be effective notwithstanding anything in this section. Charges for Cooperative Testing are as set forth in the Pricing Attachment.</p> <p>Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned.</p>	

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	<p>tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned.</p> <p><u>Verizon will not bill Covad 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>	Issue 34
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 &amp; 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</u></p>		Issue 36

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	<p><u>("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.</u></p>		
<p>Proposed 4.1 Line Partitioning</p>	<p><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 3<sup>rd</sup> 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></p>		<p>Issue 37</p>
<p>Proposed 4.2</p>	<p><u>The standard provisioning interval in which Verizon should deliver Line Sharing loops shall not exceed the shortest of the following intervals: (a) two (2) business days; (b) the standard provisioning interval for the Line Sharing arrangement that is stated in an applicable Verizon Tariff;</u></p>		<p>Issue 34</p>

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	<u>or, (c) the standard provisioning interval for the Line Sharing arrangement that is required by Applicable Law.</u>		
Proposed 4.3	Verizon will provision Line Sharing collocation augments in an interval of no greater than thirty (30) calendar days <del>accordance with the terms of Verizon's PUC PA No. 218 Tariff, as amended from time to time.</del>	Verizon will provision Line Sharing collocation augments in accordance with the terms of Verizon's PUC PA No. 218 Tariff, as amended from time to time.	Issue 38
8.1.4	<u>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>		Issue 44
8.1.5	Verizon shall provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law.  <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>	Verizon shall provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law.	Issue 43
8.2.1	<del>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Wire Center of Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Wire Center or Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible</del>	Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a	Issue 42 Issue 44

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	<p><del>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.</del></p> <p><u>It is Verizon's standard practice that when a fiber optic cable is run into a building or remote terminal that all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. Should a situation occur in which a fiber optic cable that is run into a building or a remote terminal is found to not have all of its fibers terminated, then Verizon agrees to complete the termination of all fibers in conformance with its standard practices, and to do so as soon as reasonably practicable at the request of Covad. Notwithstanding anything in this section, Verizon shall also be required to combine dark fiber UNEs to the extent required by Applicable Law.</u></p> <p>A Covad demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be reasonably determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise</p>	<p>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 reasonably determined by Verizon.</p> <p>A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).</p>	



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	<p>in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).</p>		
8.2.2	<p><del>Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF, and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad</del></p>	<p>Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF, and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad</p>	<p><b>Issue 42</b> <b>Issue 44</b></p>
8.2.3	<p><del>Except if and, to the extent required by, Applicable Law, Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request or permit Covad to contract a Verizon approved vendor to perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.</del></p>	<p>Except if and, to the extent required by, Applicable Law, Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request</p>	<p><b>Issue 44</b></p>
8.2.9	<p><del>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be</del></p>	<p>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be</p>	<p><b>Issue 44</b></p>

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	accomplished in a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.	accomplished in a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.	
8.2.19	Acceptance Testing: After a dark fiber circuit is provisioned, but prior to completion, Verizon will notify Covad that the dark fiber is available for testing and Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing (as set forth in the Pricing Attachment). If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to cancel disconnect the dark fiber circuit.	Acceptance Testing: After a dark fiber circuit is provisioned, Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing (as set forth in the Pricing Attachment). If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to disconnect the dark fiber circuit.	Verizon: None  Covad: Issue 44
8.2.20.1	<u>Verizon shall provide Covad nondiscriminatory and parity access to fiber maps at the same time and manner that is available to Verizon and/or its affiliate, including any fiber transport maps showing a portion of and/or the entire dark direct and indirect dark fiber routes between any two points specified by the CLEC, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber. Further, within 30 days of Covad's request Verizon shall provide, at a minimum, the following information for any two points comprising a dark fiber route specified by Covad: a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates; the total number of fiber sheaths and strands in between points on the requested routes; the number of strands currently in use or assigned to a pending service order; the number of strands in use by other carriers; the number of strands assigned to maintenance; the number of spare strands; and the number of defective strands. A fiber layout map that shows the streets within a Verizon Wire Center where there are</u>	A fiber layout map that shows the streets within a Verizon Wire Center where there are existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.	Issue 47

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><del>existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.</del></p>		
<p>16. UNE Combinations</p>	<p>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></p>	<p>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.</p>	<p>Issue 19</p>
<p>Pricing Attachment</p>			
<p>1.3</p>	<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>	<p>Issue 52</p>
<p>1.4</p>	<p>In the absence of Charges for a Service established</p>	<p>In the absence of Charges for a Service established</p>	<p>Issue 52</p>

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<del>pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.</del>	pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	
1.5	<del>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.</del>	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.	Issue 52
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 non-tariffed revisions that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A. Whenever such rate(s) becomes effective, Verizon shall, within 30 days, provide Covad with an updated Appendix A showing all such new or changed rates for informational purposes only.</u>		Issue 53

# EXHIBIT 2

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Section	Covad Position	Verizon Position	Associated Issue(s)
<b>AGREEMENT</b>			
<b>4. Applicable Law</b>			
4.7	<p><del>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.</del></p> <p>During the pendency of any renegotiation or dispute resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, unless the Commission, the FCC, or a court of competent jurisdiction determines that modifications to this Agreement are required to bring it into compliance with the Act, in which case the Parties shall perform their obligations in accordance with such determination or ruling.</p>	<p>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.</p>	Issue 1
<b>9. Billing</b>			
Proposed 9.1.1	<p><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></p>		Issue 2

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Section	Covad Position	Verizon Position	Associated Issue(s)
9.3	<p>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.</p> <p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid. The billing Party shall use the claim number, if any, that the billed Party specifies in the notice of the dispute when referencing the Disputed Amounts with the billed Party. <u>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. Where the billing Party's billing systems permit, the billing Party will provide the claim number specified by the billed Party on the bill to which the adjustment is applied. If the billed Party's claim number cannot be provided on the bill, then where the billing Party's billing systems permit, the billing Party will provide its claim number on the bill to which the</p>	<p>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.</p> <p>Notice of a dispute may be given by a Party at any time, either before or after an amount is paid. The billing Party shall use the claim number, if any, that the billed Party specifies in the notice of the dispute when referencing the Disputed Amounts with the billed Party. A Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution. If the billing Party determines that the disputed amounts are not owed to it, it must provide to the billed Party information identifying the bill and Bill Account Number (BAN) to which an appropriate credit will be applied. Where the billing Party's billing systems permit, the billing Party will provide the claim number specified by the billed Party on the bill to which the adjustment is applied. If the billed Party's claim number cannot be provided on the bill, then where the billing Party's billing systems permit, the billing Party will provide its claim number on the bill to which the adjustment is applied.</p>	Issue 4

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Section	Covad Position	Verizon Position	Associated Issue(s)
	adjustment is applied.		
9.4	If the billing Party fails to receive payment for outstanding charges by the Due Date, it is entitled to assess a late payment charge to the billed Party <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 <del>(including any unpaid previously billed late payment charges)</del> 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>	If the billing Party fails to receive payment for outstanding charges by the Due Date, it is entitled to assess a late payment charge to the billed Party. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount (including any unpaid previously billed late payment charges) per month.	Issue 5
9.5	Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, <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.	Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.	Issue 2
<b>14. Dispute Resolution</b>			
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</u>		Issue 7



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Section	Covad Position	Verizon Position	Associated Issue(s)
	<u>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 as to</u> 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> <del>termination</del> , which shall be effective upon the date specified in the notice.	Notwithstanding any other provision of this Agreement, Verizon may terminate this Agreement as to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such termination, which shall be effective upon the date specified in the notice.	Issue 8
48. Waiver	<p><u>Except as provided in Section 9.1.1, 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.</u></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) &amp; (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 &amp; 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>	Issue 9 Issue 10

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Section	Covad Position	Verizon Position	Associated Issue(s)
<b>Glossary</b>			
2.11 Definition of Applicable Law	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>	All effective federal and state laws, government regulations and orders (including orders related to merger commitments), applicable to each Party's performance of its obligations under this agreement.	Issue 10
<b>ADDITIONAL SERVICES ATTACHMENT</b>			
<b>8.0 (OSS)</b>			
8.1.4	<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>	<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.	Issue 12
<b>8.2 Verizon OSS Services</b>			
Proposed 8.2.3	Verizon, as part of its duty to provide access to the pre-ordering function, <del>must will</del> provide Covad with nondiscriminatory access to the same detailed information about the loop <del>at within</del> the same time <del>and manner that as</del> is available to Verizon and/or its affiliate.	Verizon, as part of its duty to provide access to the pre-ordering function, will provide Covad with nondiscriminatory access to the same detailed information about the loop within the same time interval as is available to Verizon and/or its affiliate.	Issue 12
Proposed 8.2.4	<del>For stand-alone loops, Verizon shall return firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically</del>		Issue 13

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><u>and within seventy-two (72) hours after receiving an LSR that is subject to manual pre-qualification. Verizon shall return firm order commitments for UNE DS1 loops within forty-eight (48) hours.</u></p>		
<b>UNE ATTACHMENT</b>			
<p>1.2 Combination of UNEs</p>	<p>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 <del>such UNE or Combination, and the equipment and that the facilities</del> 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 <del>or equipment</del> 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>Verizon shall be obligated to combine UNEs that are not already combined in Verizon's network only to the extent required by Applicable Law. Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to this Agreement only to the extent such UNE or Combination, and the equipment and facilities necessary to provide such UNE or Combination, are available in Verizon's network (even if they do not have telecommunications services currently transmitted over them or are not currently transmitted over them or are not currently being utilized by Verizon, 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.</p>	<p>Issue 19</p>
<p>1.5</p>	<p><del>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 subject to Sections 4.6 and 4.7 of the General Terms and Conditions of this Agreement.</del> 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</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</p>	<p>Issue 1</p>

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>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>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>Proposed 1.9</p>	<p>In provisioning loops that require Verizon to dispatch a technician to an end user's premises, Covad may request an appointment window during business hours on the day of the dispatch pursuant to the ordering processes set forth in Verizon's business rules. Any changes to those rules shall be implemented in accordance with the Verizon Change Management process. Verizon shall make good faith efforts to meet that appointment window, but does not guarantee that it will do so and failure to meet an appointment window shall not constitute a missed appointment for purposes of any performance measurements adopted by the state commission. On the day of the dispatch, the Verizon technician shall make good faith efforts to contact the end user upon arriving at the premises. Covad shall not be required to pay the non-recurring dispatch charge for dispatches that do not occur. However, Covad will be required to pay this charge when the Customer contact as designated by Covad is not available on the day of the dispatch, so long as Verizon did not cause the Customer contact to be unavailable.</p> <p><u>If a dispatch does not occur (other than if the Covad end user was not available or upon the request of Covad), Covad may request a new appointment window outside of the normal provisioning interval by contacting Verizon's provisioning center directly and Covad shall not be required to pay the non-recurring dispatch charge for such appointment. Moreover, each additional instance in which the Verizon technician fails to meet the same customer</u></p>	<p>In provisioning loops that require Verizon to dispatch a technician to an end user's premises, Covad may request an appointment window during business hours on the day of the dispatch pursuant to the ordering processes set forth in Verizon's business rules. Any changes to those rules shall be implemented in accordance with the Verizon Change Management process. Verizon shall make good faith efforts to meet that appointment window, but does not guarantee that it will do so and failure to meet an appointment window shall not constitute a missed appointment for purposes of any performance measurements adopted by the state commission. On the day of the dispatch, the Verizon technician shall make good faith efforts to contact the end user upon arriving at the premises. Covad shall not be required to pay the non-recurring dispatch charge for dispatches that do not occur. However, Covad will be required to pay this charge when the Customer contact as designated by Covad is not available on the day of the dispatch, so long as Verizon did not cause the Customer contact to be unavailable.</p>	<p>Issue 22</p>

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><u>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>		
<b>3. Loop Transmission Types</b>			
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 <del>and Verizon TR 72575 (as TR 72575 is revised from time to time)</del>. 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. <del>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.</del> 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>Issue 23 Issue 24</p>
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> <del>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.</del></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>	<p>Issue 23 Issue 24</p>

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Section	Covad Position	Verizon Position	Associated Issue(s)
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. <del>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</del> 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>	Issue 23 Issue 24
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. <del>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</del> 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.</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 T1-417-2001. 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.</p>	Issue 23 Issue 24
3.5 DS-1	<p>"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.</p>	<p>"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.</p>	Issue 25

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	<p>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. <del>A separate charge will apply for such equipment.</del></p>	<p>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.</p>	
<p>3.6 IDSL</p>	<p>“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. Verizon will relieve capacity constraints in the loop network to provide DSL loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers.</u></p>	<p>“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.</p>	<p>Issue 24</p>
<p>3.11</p>	<p>Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.</p> <p>If Covad seeks to deploy over Verizon's network a new loop technology that is not among the loop technologies described in the loop types set forth above (or in the cross-referenced sections of Verizon's tariff), then Covad shall submit to Verizon a written request, citing this sub section 3.6, setting forth the basis for its claim that the new technology complies with the industry standards for one or more of those loop types. Within 45 calendar days of receiving this request, Verizon shall either (a) identify for Covad the loop type that Covad should order when it</p>	<p>Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services.</p> <p>If Covad seeks to deploy over Verizon's network a new loop technology that is not among the loop technologies described in the loop types set forth above (or in the cross-referenced sections of Verizon's tariff), then Covad shall submit to Verizon a written request, citing this sub section 3.6, setting forth the basis for its claim that the new technology complies with the industry standards for one or more of those loop types. Within 45 calendar days of receiving this request, Verizon shall either (a) identify for Covad the loop type that Covad should order when it</p>	<p>Issue 27</p>

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	<p>seeks to deploy that loop technology, or (b) indicate that it does not agree with Covad's claim that the new technology complies with industry standards. With respect to option (b), if Covad does not agree with Verizon's position, Covad may immediately institute an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction to resolve the dispute, without first pursuing dispute resolution in accordance with Section 14 of the General Terms and Conditions of this Agreement. With respect to option (a), if Verizon subsequently creates a new loop type specifically for the new loop technology, Covad agrees to convert previously-ordered loops to the new loop type, <u>at no cost</u>, and to use the new loop type on a going-forward basis. Verizon will employ good faith efforts to ensure that any such conversions are completed without any interruption of service.</p>	<p>seeks to deploy that loop technology, or (b) indicate that it does not agree with Covad's claim that the new technology complies with industry standards. With respect to option (b), if Covad does not agree with Verizon's position, Covad may immediately institute an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction to resolve the dispute, without first pursuing dispute resolution in accordance with Section 14 of the General Terms and Conditions of this Agreement. With respect to option (a), if Verizon subsequently creates a new loop type specifically for the new loop technology, Covad agrees to convert previously-ordered loops to the new loop type and to use the new loop type on a going-forward basis. Verizon will employ good faith efforts to ensure that any such conversions are completed without any interruption of service.</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, <del>and as available, and after obtaining Covad's approval,</del> Verizon will perform a line &amp; station transfer (LST) (as described below) <del>subject to applicable charges</del> <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>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 &amp; 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>	Issue 35



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Section	Covad Position	Verizon Position	Associated Issue(s)
3.13.5	<p><del>In the former GTE Service Areas only, in those cases where Verizon does not have the ability to provide electronic prequalification information for a particular loop (or group of loops) to itself or to a Verizon affiliate, Covad may request loop makeup information for that loop (or those loops) through a manual process, by submitting a query form, prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, or IDSL Loop. Verizon will complete such a request within the same intervals that Verizon completes such requests for itself or a Verizon affiliate in the former GTE Service Area. In general, Verizon will provide the requested loop qualification information within five (5) business days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</del></p> <p>If the Loop is not listed in the mechanized database available from Verizon North or the listing is defective, Covad may request a manual loop qualification at no additional charge prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. Verizon will complete a manual loop qualification request within one business day.</p>	<p>In the former GTE Service Areas only, in those cases where Verizon does not have the ability to provide electronic prequalification information for a particular loop (or group of loops) to itself or to a Verizon affiliate, Covad may request loop makeup information for that loop (or those loops) through a manual process, by submitting a query form, prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, or IDSL Loop. Verizon will complete such a request within the same intervals that Verizon completes such requests for itself or a Verizon affiliate in the former GTE Service Area. In general, Verizon will provide the requested loop qualification information within five (5) business days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.</p>	Issue 32
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 prequalification <del>finding requirement</del> 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>	Issue 33

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Section	Covad Position	Verizon Position	Associated Issue(s)
	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) <u>ten business days</u>.</p> <p><del>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.</del></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>	Issue 34
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, and additional charges shall apply as set forth in the Pricing Attachment.</u></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>	Issue 35
3.13.13	<p><del>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</del></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</p>	Issue 30

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order. When the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge that the Loop is operational.</p> <p><u>Verizon will cooperatively test jointly with a Covad technician (i) all stand alone loops ordered by Covad and provide demarcation information during the cooperative test and (ii) any loop on which Covad has opened a maintenance ticket to close out any loop troubles. Cooperative testing is a procedure whereby a Verizon technician and a Covad technician jointly perform the following tests: (1) Loop Length Testing; (2) DC Continuity Testing; (3) Foreign Battery/Conductor Continuity Testing; (4) AC Continuity Testing; and (5) Noise Testing. At the conclusion of such testing, Covad will either accept or reject the loop. If Covad rejects the loop, then Verizon shall correctly provision the loop and re-contact the Covad representative to repeat the cooperative test. Verizon shall deliver loops that perform according to the characteristics of the described loop types set forth in Sections 3.1-3.7. above. Covad will make its automated testing equipment ("IVR") available for Verizon technicians to utilize to sectionalize troubles on loops connected to Covad's network, either during provisioning or maintenance activities.</u></p> <p><u>If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Agreement or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards. modify the existing procedures, such procedures shall be effective notwithstanding anything in</u></p>	<p>technician, either through Covad's automated testing equipment or jointly with a Covad technician, verifies that an xDSL Compatible Loop or Digital Designed Link is properly installed and operational prior to Verizon's completion of the order. When the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge that the Loop is operational. If the Parties mutually agree to modify the existing procedures, such procedures shall be effective notwithstanding anything in this section. Charges for Cooperative Testing are as set forth in the Pricing Attachment.</p> <p>Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned.</p>	

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	<p><del>this section. Any charges for Cooperative Testing are in accordance with Applicable Law and as set forth in Verizon's PSC NY No. 10 Tariff, Section 5.5.2 (under Installation Dispatch).</del></p> <p>Where a technician is dispatched to provision a loop, the Verizon technician shall provide clear and precise circuit identification by tagging the demarcation point. Where tagging is deemed an unnecessary method of identifying a demarcation point because the demarcation is a customer distribution frame or a terminal with clearly labeled/stenciled/stamped terminations (such as cable and pair or jack and pin) or by another mutually agreed upon method, the appropriate cable and pair information or terminal identification shall be provided to Covad. Where a technician is not dispatched by Verizon, Verizon will provide Covad with the demarcation information Verizon possesses regarding the location of the circuit being provisioned.</p> <p><u>Verizon will not bill Covad 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; 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>	Issue 34
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 &amp; 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</u></p>		Issue 36

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	<p><u>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); and (b) allow Covad to connect any of its technically compatible equipment to such facilities.</u></p>		
<b>4. Line Sharing</b>			
<p><b>Proposed 4.2.1</b> <b>Line Partitioning</b></p>	<p><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 3<sup>rd</sup> 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)</u></p>		<p><b>Issue 37</b></p>

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	<p><u>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></p>		
4.4.3	<p>If the Loop is prequalified by Covad using Verizon's loop prequalification tools, and if a positive response is received and followed by receipt of Covad's valid, accurate and pre-qualified service order for Line Sharing, Verizon will return an LSR confirmation <del>in accordance with applicable industry-wide performance standards within two (2) business hours (weekends and holidays excluded).</del></p>	<p>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.</p>	Issue 38
4.4.6	<p>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 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) <del>six (6)</del> <u>two (2)</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> <del>arrangement shall commence only once any requested engineering and conditioning tasks have been completed.</del> 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</p>	<p>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 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</p>	Issue 34

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	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. .	offered to Covad be longer than the interval offered to any similarly situated Affiliate of Verizon.	
4.7.2	Where a new splitter is to be installed as part of an existing Collocation arrangement, or where the existing Collocation arrangement is to be augmented (e.g., with additional terminations at the POT Bay or Covad's collocation arrangement to support Line Sharing), the splitter installation or augment may be ordered via an application for Collocation augment. Associated Collocation charges (application and engineering fees) apply. Covad must submit the application for Collocation augment, with the application fee, to Verizon. <del>Unless a different interval is stated in Verizon's applicable Tariff, a</del> An interval of <del>seventy-six (76) no greater than thirty (30) calendar business days shall apply.</del>	Where a new splitter is to be installed as part of an existing Collocation arrangement, or where the existing Collocation arrangement is to be augmented (e.g., with additional terminations at the POT Bay or Covad's collocation arrangement to support Line Sharing), the splitter installation or augment may be ordered via an application for Collocation augment. Associated Collocation charges (application and engineering fees) apply. Covad must submit the application for Collocation augment, with the application fee, to Verizon. Unless a different interval is stated in Verizon's applicable Tariff, an interval of seventy-six (76) business days shall apply.	Issue 39
<b>8. Dark Fiber</b>			
8.1.4	<u>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>		Issue 44
8.1.5	Verizon shall provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law.  <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>	Verizon shall provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law.	Issue 43
8.2.1	<del>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop</del>	Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop	Issue 42 Issue 44

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>terminates at a Verizon Accessible Terminal in Verizon's <u>Wire Center of Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office</u> and the other end terminates at the Customer premise. <del>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's <u>Wire Center or Central Office that can be cross-connected to 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 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.</del></p> <p><u>It is Verizon's standard practice that when a fiber optic cable is run into a building or remote terminal that all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. Should a situation occur in which a fiber optic cable that is run into a building or a remote terminal is found to not have all of its fibers terminated, then Verizon agrees to complete the termination of all fibers in conformance with its standard</u></p>	<p>terminates at a Verizon Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure. A Covad demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be reasonably determined by Verizon.</p> <p>A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise in writing or as</p>	



Revised Proposed Language Matrix – Pennsylvania – Verizon North

Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><u>practices, and to do so as soon as reasonably practicable at the request of Covad. Notwithstanding anything in this section, Verizon shall also be required to combine dark fiber UNEs to the extent required by Applicable Law.</u></p> <p>A Covad demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be reasonably determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).</p>	<p>required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).</p>	
8.2.2	<p><del>Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF. and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad</del></p>	<p>Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF, and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad</p>	<p>Issue 42 Issue 44</p>
8.2.3	<p><del>Except if and, to the extent required by, Applicable Law,</del></p>	<p>Except if and, to the extent required by, Applicable Law,</p>	<p>Issue 44</p>

Revised Proposed Language Matrix – Pennsylvania – Verizon North

Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><del>Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request or permit Covad to contract a Verizon approved vendor to perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.</del></p>	<p>Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.</p>	
8.2.9	<p><del>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be accomplished in a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.</del></p>	<p>Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be accomplished in a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.</p>	Issue 44
8.2.19	<p>Acceptance Testing: After a dark fiber circuit is provisioned, <u>but prior to completion, Verizon will notify Covad that the dark fiber is available for testing and Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing (as set forth in the Pricing Attachment). If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to <u>cancel</u> disconnect the dark fiber circuit.</u></p>	<p>Acceptance Testing: After a dark fiber circuit is provisioned, Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing (as set forth in the Pricing Attachment). If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to disconnect the dark fiber circuit.</p>	<p>Verizon: None  Covad: Issue 44</p>
8.2.20.1	<p><u>Verizon shall provide Covad nondiscriminatory and parity access to fiber maps at the same time and manner that is available to Verizon and/or its affiliate, including any fiber transport maps showing a portion of and/or the entire dark direct and indirect dark fiber routes between any two points specified by the CLEC, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber. Further, within 30 days of Covad's request</u></p>	<p>A fiber layout map that shows the streets within a Verizon Wire Center where there are existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.</p>	Issue 47

Revised Proposed Language Matrix – Pennsylvania – Verizon North

Section	Covad Position	Verizon Position	Associated Issue(s)
	<p>Verizon shall provide, at a minimum, the following information for any two points comprising a dark fiber route specified by Covad: a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available) and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates; the total number of fiber sheaths and strands in between points on the requested routes; the number of strands currently in use or assigned to a pending service order; the number of strands in use by other carriers; the number of strands assigned to maintenance; the number of spare strands; and the number of defective strands. A fiber layout map that shows the streets within a Verizon Wire Center where there are existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.</p>		
<b>PRICING ATTACHMENT</b>			
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>	Issue 52

Revised Proposed Language Matrix – Pennsylvania – Verizon North

Section	Covad Position	Verizon Position	Associated Issue(s)
1.4	<del>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.</del>	In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	Issue 52
1.5	<del>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.</del>	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.	Issue 52
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 non-tariffed revisions that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A. Whenever such rate(s) becomes effective, Verizon shall, within 30 days, provide Covad with an updated Appendix A showing all such new or changed rates for informational purposes only.</u>		Issue 53

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIECA Communications, Inc.	:	
t/a Covad Communications Company	:	
	:	
Petition For Arbitration of Interconnection	:	
Rates, Terms and Conditions And Related	:	Docket Nos.
Arrangements with Verizon Pennsylvania Inc.	:	A-310696F7000
and Verizon North Inc. Pursuant to Section 252(b)	:	A-310696F7001
of the Communications Act of 1934	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA UPS OVERNIGHT MAIL

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SECRETARY'S BUREAU  
JUN 30 3:17 PM '03

Dated: June 30, 2003

  
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Counsel for  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISISON**

DIECA Communications, Inc. :  
t/a Covad Communications Company :  
 :  
Petition For Arbitration of Interconnection :  
Rates, Terms and Conditions And Related : Docket Nos.  
Arrangements with Verizon Pennsylvania Inc. : A-310696F7000  
and Verizon North Inc. Pursuant to Section 252(b) : A-310696F7001  
of the Communications Act of 1934 :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

~~VIA UPS OVERNIGHT MAIL~~

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Dated: June 30, 2003

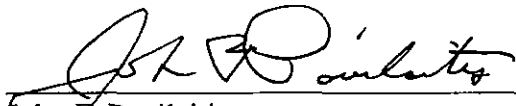
**DOCKETED**

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