

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Case Nos. A-310696F7000,
A-310696F7001

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BRIEF ON THE MERITS OF
VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC.

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**BRIEF ON THE MERITS OF
VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC.**

Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”), collectively “Verizon,” by counsel and pursuant to the direction of the Administrative Law Judge (“ALJ”), submit this Brief addressing Issues 1-2, 4-5, 7-10, 12-13, 19, 22-25, 27, 30, 32-35, 37, 38/39,¹ 38 (Verizon North petition only), 42-44, 47, and 52-53 in the Petitions for Arbitration (“Petitions”) filed by DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) on September 10, 2002.²

I. INTRODUCTION AND SUMMARY

When Covad filed its petitions for arbitration, it presented this Commission with a total of 111 open issues for resolution. Through continued negotiations between the parties and a technical conference presided over by the ALJ, the parties have resolved nearly half of those issues and have substantially narrowed the scope of their disputes with respect to most of the remaining issues. The open issues left for the Commission to resolve in this proceeding

¹ This issue is raised in both of Covad’s petitions, but has different issue numbers.

² The parties have resolved the other issues raised in Covad’s petitions for arbitration, with the exception of Issue 36, with respect to which the parties agreed to defer consideration until completion of the New York Public Service Commission’s (“PSC”) proceedings in Case 00-C-0127.

generally pertain to two areas. First, there are issues related to the parties' business relationship — ordering, billing, and other logistics. Second, there are issues related to the scope of Covad's right to access to Verizon's network.

With respect to both sets of issues, Covad's positions are without merit. First, the accommodations that Covad seeks are unauthorized by the federal Telecommunications Act of 1996 ("1996 Act" or "Act") and inconsistent with this Commission's policies. Indeed, in many cases, the issues raised are clearly resolved by federal and state law in a manner contrary to Covad's proposed language. For these issues, absent an agreement between the parties, this Commission lacks authority to adopt Covad's proposals. *See, e.g.*, 47 U.S.C. § 252(a)(1), (c). Second, Covad seeks to relitigate in this bilateral proceeding matters that have already been resolved — or are being resolved — through this Commission's *multilateral* processes. With respect to these issues, Covad has shown no unique circumstances that distinguish it from other competitive local exchange carriers ("CLECs") and that could justify the creation of Covad-specific rules that differ from those generally applicable rules that apply to all other CLECs in Pennsylvania.

Indeed, throughout this proceeding, Covad has identified virtually no facts or circumstances specific to Pennsylvania at all, particularly with respect to Verizon North's territory in Pennsylvania. Instead, Covad's claims relate to Verizon PA's territory or to other former Bell Atlantic jurisdictions (which Verizon North's territory is not). For example, although Covad included five issues related to billing in its petition for arbitration — three of which are still open — Covad has provided documentary evidence with respect to only two bills issued for services in Verizon PA's territory and none in Verizon North's territory. Similarly, Covad's complaints about Verizon's provision of loop qualification information pertain

exclusively to the LiveWire database, which Verizon has repeatedly explained is used only in the former Bell Atlantic jurisdictions and not by Verizon North. And, with respect to Covad's claims regarding Verizon's provisioning of dark fiber, the record demonstrates that, despite its complaints, Covad has never attempted to order dark fiber in Pennsylvania, and has not attempted to order dark fiber from Verizon in any state since 2001. In short, the record contains no facts that support the Covad-specific rules that it seeks to have apply in Pennsylvania.

Finally, as noted above, this proceeding involves separate petitions for arbitration of interconnection agreements between Covad and Verizon PA and Verizon North. Although Verizon PA and Verizon North are affiliated companies, they are separate entities. Verizon PA, formerly Bell Atlantic-Pennsylvania, Inc., is both an incumbent local exchange company ("ILEC") in Pennsylvania and a Bell Operating Company ("BOC") under the 1996 Act. Verizon North is also an ILEC in Pennsylvania, but was previously part of GTE and is not a BOC under the 1996 Act. This difference is relevant in two respects here — one related to the companies' operations, the other related to applicable regulatory requirements. First, as a result of their history as separate companies, Verizon PA and Verizon North do not currently utilize the same underlying systems and processes for every order that CLECs, such as Covad, submit. For example, while both companies offer CLECs nondiscriminatory access to loop qualification information, they do so in different ways.³

³ The FCC has held that different ILEC systems and processes can equally satisfy the requirements of the 1996 Act. *See, e.g.,* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶ 228 (1999) ("*New York 271 Order*"), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd 18354, ¶¶ 109, 257 (2000).

The regulatory difference is that, because Verizon North is not a BOC under the 1996 Act, it was not required to demonstrate compliance with the requirements of 47 U.S.C. § 271 in order to provide long-distance service in Pennsylvania. *See Pennsylvania 271 Order*⁴ ¶¶ 8, 134. As a result, regulatory efforts to ascertain whether Verizon PA complied with the requirements of section 271 — such as the Commission’s development of a comprehensive set of performance measurements (“Carrier-to-Carrier Guidelines”) or a performance assurance plan — were unnecessary for Verizon North.⁵ This bilateral arbitration provides no reason for this Commission to ignore these practical and regulatory differences, or to alter its prior practice of treating Verizon PA and Verizon North as the separate companies that they are.

II. ISSUE-BY-ISSUE ARGUMENT

A. Change of Law

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

Consistent with the nondiscrimination principles of the 1996 Act, change of law provisions should enable a rapid and smooth transition when a legal obligation imposed on Verizon has been eliminated; in no circumstance should the change of law language permit the eliminated obligation to remain in effect indefinitely.

This issue involves the extent to which the parties’ agreement can obligate Verizon to continue providing Covad with access to any UNE or other service, payment, or benefit once applicable law no longer requires Verizon to provide such access. Under federal law, this

⁴ Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001) (“*Pennsylvania 271 Order*”), appeal pending, *Z-Tel Communications, Inc. v. FCC*, No. 01-1461 (D.C. Cir.).

⁵ Verizon North, however, reports its performance in Pennsylvania under a set of measurements established as a condition of the FCC’s approval of the Bell Atlantic-GTE merger (“*Merger Guidelines*”). *See Abesamis/Raynor Decl.* ¶ 11.

Commission is required to resolve open issues in an interconnection agreement arbitration in accordance with federal law as it currently exists. *See* 47 U.S.C. § 252(c). Because the requirements of federal law have changed over time with the issuance of FCC orders and judicial decisions, interconnection agreements arbitrated at different times may have different provisions, imposing inconsistent obligations, with respect to the same UNE or other service. Consistent with the nondiscrimination provisions of the 1996 Act, such inconsistencies should be eliminated as soon as possible, so that all CLECs stand on an equal footing.

Under Verizon's proposed language, once there is an effective order eliminating a prior obligation, Verizon "may discontinue immediately the provision of any arrangement" pursuant to that obligation, except that Verizon will maintain existing arrangements for 45 days, or for the period specified in the order or another source of applicable law (including, among other things, the agreement, a Verizon tariff, or state law). Revised Proposed Language Matrix – Verizon PA at 1, 6-7 (Agreement § 4.7; UNE Attach. § 1.5).⁶ This language strikes a reasonable balance between Verizon's right to have its obligations under the agreement remain consistent with the terms of applicable law and the interest, shared by Verizon and Covad, in ensuring a smooth transition to the new legal regime.

In contrast, under the language Covad currently proposes, Verizon could be required to continue providing Covad with access to a UNE or other service *indefinitely*, even though the legal obligation to provide that access had long since disappeared. Indeed, notwithstanding the title Covad provided for this issue, Verizon's obligation to continue providing that access could

⁶ This matrix, along with a similar matrix regarding the issues raised in the Verizon North petition, updates the disputed language matrices submitted with Covad's petition for arbitration and Verizon's response, and was jointly prepared by the parties. Copies are attached to this brief. Where the parties have proposed the same language for both the Verizon PA and Verizon North agreements, only the Verizon PA matrix is referenced in the brief.

continue long after “there is a final and non-appealable change in law eliminating any such requirements.”⁷ Covad’s proposed language is thus inconsistent with this Commission’s recent decision approving an Administrative Law Judge’s conclusion that “[I]f a change in law is effective, the parties’ agreement should recognize it.”⁸ The New York PSC has also recognized that “[w]hether to maintain the status quo following a judicial, legislative, or regulatory decision is the prerogative of those decisionmakers” and should not be changed through an interconnection agreement, without the consent of both parties. *GNAPs New York Order* at 21. The Florida Public Service Commission has likewise agreed that it would be “inconsistent with logic, as well as any known practice within our legal system,” for a change in law not to be “implemented when it[] takes effect.”⁹

⁷ Numerous state commissions, including this Commission, have previously rejected language, such as that Covad originally proposed with respect to this issue (*see, e.g.*, Covad Petition Attach. A at 1 (Agreement § 4.7)), that would require Verizon to wait until the entry of a final and nonappealable order before taking advantage of a change in law. *See* Opinion and Order, *Petition of Global NAPs South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000, at 66 (Pa. PUC entered Apr. 21, 2003) (“*GNAPs Pennsylvania Order*”); *see also, e.g.*, Order Resolving Arbitration Issues, *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York Inc.*, Case 02-C-0006, at 21 (N.Y. PSC May 22, 2002) (“*GNAPs New York Order*”); Order, *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration To Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, D.T.E. 02-45, at 79 (Mass. DTE Dec. 12, 2002); Arbitration Award, *Petition by Global Naps, Inc., for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware Inc.*, PSC Docket No. 02-235, at 41 (Del. PSC Dec. 18, 2002), *aff’d*, Order, PSC Docket No. 02-235 (Del. PSC Mar. 17, 2003).

⁸ *GNAPs Pennsylvania Order* at 66, *aff’g in pertinent part*, Recommended Decision, *Petition of Global NAPs South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000, at 30 (Pa. PUC filed Oct. 10, 2002).

⁹ Staff Memorandum, *Petition by Global NAPs, Inc., for Arbitration Pursuant to 47 U.S.C. 252(b) of Interconnection Rates, Terms and Conditions with Verizon Florida Inc.*, Docket No. 011666-TP, at 71 (Fla. PSC filed June 5, 2003), *approved*, Vote Sheet, Docket No. 011666-TP (Fla. PSC June 17, 2003).

Nonetheless, under Covad's proposal, before Verizon could obtain the benefit of an effective order (even a final and non-appealable order) eliminating, for example, the requirement to provide a particular UNE, Verizon would first have to negotiate with Covad for a thirty-day period following the effective date of the order. If, after thirty days, the parties had not arrived at mutually acceptable revisions to the agreement to implement that effective order, Verizon would then be required to seek a ruling from this Commission, the FCC, or a court of competent jurisdiction confirming that Verizon was, indeed, entitled to the benefit of the effective order eliminating Verizon's obligation. *See* Verizon Response Attach. E at 3 (Agreement § 4.6); Revised Proposed Language Matrix – Verizon PA at 1 (Agreement § 4.7). During all this time, Verizon would be required to continue providing access to that UNE, even though it no longer had any obligation under applicable law to do so. *See* Revised Proposed Language Matrix – Verizon PA at 1 (Agreement § 4.7). Only after Verizon prevailed in the administrative or legal proceeding, and this Commission, the FCC, or a court “determine[d] that modifications to this Agreement are required to bring it into compliance with the Act” would Verizon *finally* be permitted to cease providing access to the UNE. *Id.*

Covad's proposed language contains no limitation on the length of time this process could take, and Covad would have every incentive to drag out the proceedings in order to continue obtaining access to the UNE at issue. The protracted, and potentially indefinite, delay possible under Covad's proposed language goes well beyond what is conceivably necessary to protect any interest Covad has in preventing “disrupt[ions to its] business operations and the service it provides to end users in Pennsylvania.” Covad Petition Attach. C at 1. At the same time, Covad's proposed language provides no protection for Verizon's right to have its obligations under the agreement remain consistent with the terms of applicable law.

This dispute takes on increased importance in light of the impending release of the FCC's *Triennial Review Order*¹⁰ and the numerous appeals that are sure to follow. This agreement will almost certainly take effect after that order becomes effective, but before any court has the opportunity to pass on the lawfulness of the FCC's order. Thus, as a result of this fortuity of timing, the agreement will implement the requirements of federal law as set forth in the *Triennial Review Order*. If any judicial decisions subsequently eliminate obligations imposed in the *Triennial Review Order*, Verizon will be required to continue to provide Covad with access to UNEs or other services consistent with that now-eliminated obligation — for as long as it takes to complete the multiple proceedings contemplated by Covad's language — even though Verizon would have no such obligation with respect to interconnection agreements with other CLECs that take effect after such a judicial decision is issued.¹¹

B. Billing Issues

The three remaining billing issues in this proceeding involve Covad's proposals (1) to limit Verizon's right to bill Covad to a period shorter than that set forth in the generally

¹⁰ See News Release, *FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers*, CC Docket No. 01-338 (rel. Feb. 20, 2003) ("*Triennial Review News Release*")

¹¹ Verizon recognizes that the FCC's Wireline Competition Bureau, in arbitrating interconnection agreements for Virginia, rejected change-of-law language similar to that Verizon proposes here. That decision, however, was "[b]ased upon the record in [that] proceeding" and provides no useful guidance here, especially as the decision was by a subdivision of the FCC and not the FCC itself. Memorandum Opinion and Order, *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*, 17 FCC Rcd 27039, ¶ 717 (Wireline Comp. Bur. 2002) ("*Virginia Arbitration Order*"). In any event, the Bureau expressly recognized that FCC orders "terminat[ing] existing obligations" "routinely specify effective dates." *Id.* Nothing in the Bureau's decision to reject Verizon's language suggests that it contemplated that CLECs would be able to gain access to a UNE or other service after the effective date specified in an order terminating an obligation. Yet, as Verizon has explained, Covad's proposed language would require Verizon to continue providing access to a UNE or other service long after the effective date of the order terminating the obligation.

applicable statute of limitations; (2) to hold Verizon to performance standards in resolving Covad billing disputes that differ from those this Commission has established for the industry as a whole; and (3) to prevent Verizon from collecting late payment charges from Covad consistent with this Commission's regulations. With each of these issues, Covad seeks a rule that differs from the rule that applies to all other CLECs. Covad's requests for special treatment should be rejected.

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

The four-year statute of limitations in 42 Pa. Cons. Stat. § 5525(a)(8) (2002) governs the parties' right to assess previously unbilled charges for services rendered; no modification to the anti-waiver provisions of the agreement is necessary.

As Verizon has explained, the only result consistent with federal and state law is that the four-year Pennsylvania statute of limitations applies to any claim for charges properly assessed under an interconnection agreement, unless the parties to a specific interconnection agreement *voluntarily* agree to a different arrangement. *See* Verizon Opening Br. at 5-6; Verizon Reply Br. at 4-5. This statute of limitations applies to billing under contractual relationships between businesses generally, and with respect to utilities in particular. *See* 42 Pa. Cons. Stat. § 5525(a)(8) (2002); *Cefalo v. Pennsylvania Gas & Water Co.*, 69 Pa. PUC 265, 268 (1989). The 1996 Act does not authorize this Commission to devise a novel limitations period to apply solely to interconnection agreements. *See* 1996 Act § 601(c)(1) (1996 Act "shall not be construed to modify, impair, or supersede . . . State . . . law unless expressly so provided in [the Act]"), *reprinted at* 47 U.S.C. § 152 note.

Moreover, the record contains no facts that would support the creation of such a period. Covad has identified only *one* instance, which occurred nearly two years ago, when it received a bill for services rendered by Verizon PA — not Verizon North — more than one year prior to the billing date. *See* Covad Opening Br. at 16-17 & Exh. 2. Even then, the majority of the charges were for states other than Pennsylvania and no charge was more than 14 months old; indeed, the bill was primarily for services rendered within one year of the bill date. *See id.*; Geller Decl. ¶ 6. Covad has raised this same, lone example of backbilling in regulatory proceedings before the FCC and the New York PSC. The FCC, in approving Verizon’s section 271 application in Virginia, rejected Covad’s claim that this one instance of backbilling “denie[d] it a meaningful opportunity to compete.” *Virginia 271 Order*¹² ¶ 50. The FCC also found that “Verizon and Covad agreed . . . that . . . billing for this product would be delayed until prices were set and the billing system could be programmed.” *Id.*; *see also* Geller Decl. ¶ 5. The New York PSC, reviewing the same evidence, stated that it “is not, at this time, convinced that backbilling is a substantial problem” and declined to “formulate a generic limit for backbilling.” Secretarial Letter, Case 00-C-1945 (N.Y. PSC Feb. 5, 2003).

Covad’s inability to identify any other incident of backbilling of charges more than one year old — let alone any recent incident or any incident at all involving Verizon North — demonstrates that there is no need for Covad’s proposed language. Indeed, Verizon has every incentive to send bills as promptly as possible in order to collect the amounts owed to it. Thus,

¹² Memorandum Opinion and Order, *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, 17 FCC Rcd 21880 (2002) (“*Virginia 271 Order*”).

the only question here is when Verizon's right to collect lawful rates for services actually rendered will be extinguished — *i.e.*, at what point Covad gets a windfall.¹³

In its initial brief, Covad offered a number of reasons why a period shorter than the six-year, generally applicable statute of limitations should apply to its interconnection agreement. None has merit. For example, Covad relies on the decision of the FCC's Common Carrier Bureau ("Bureau") in *AmNet*,¹⁴ where the Bureau interpreted 47 U.S.C. § 415(a),¹⁵ not 42 Pa. Cons. Stat. § 5525(a)(8) (2002). The Bureau concluded that § 415(a) did not establish the period in which a carrier could submit a backbill to another carrier. *See Amnet*, 4 FCC Rcd at 552, ¶ 19. In contrast, this Commission has concluded that § 5525(a)(8), which provides a four-year period for any "action upon a contract," sets forth the relevant period in which one utility can backbill another. *See Cefalo*, 69 Pa. PUC at 268; *see also Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213, 217 (1990) (applying to commercial customers the Commission regulations, 52 Pa. Code §§ 56.35, 56.83(7), providing a four-year period for backbilling residential utility customers). Backbilling clearly fits within the text of the statute: Covad does not — and cannot — deny that, having purchased services from Verizon, it is contractually obligated to pay for those services.¹⁶

¹³ In Issue 9, Covad has proposed to modify the anti-waiver provisions of the agreement to conform to its proposed addition of a one-year limitation on the parties' right to backbill. Because Issue 2 should be resolved in Verizon's favor, there is no need to modify the anti-waiver provision.

¹⁴ Memorandum Opinion and Order, *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, 4 FCC Rcd 550 (Comm. Carr. Bur.) ("*AmNet*"), *recon. denied*, 4 FCC Rcd 8797 (Comm. Carr. Bur. 1989).

¹⁵ Section 415(a) states that "[a]ll 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." 47 U.S.C. § 415(a).

¹⁶ Covad's reliance on the Bureau's decisions in Memorandum Opinion and Order, *The People's Network, Inc. v. AT&T Corp.*, 12 FCC Rcd 21081 (Comm. Carr. Bur. 1997), and

Covad also accuses Verizon of taking inconsistent positions in this proceeding and in the Performance Assurance Plan (“PAP”) proceeding before the New York PSC (Case 99-C-0949), where Verizon argued for a six-month limitation on CLECs’ ability to challenge the monthly reports of PAP data and bill credits. *See* Covad Opening Br. at 26-27. But the PAP is not a contract — rather, it is a voluntary, regulatory undertaking by Verizon — and it therefore is not subject to a statute of limitations that applies to contracts. Although the limitation period for challenges with respect to the PAP is thus irrelevant to the limitation period under a written contract such as an interconnection agreement, the New York PSC recently adopted a two-year limitation period for such challenges. *See* Order Amending Performance Assurance Plan, Case 99-C-0949, at 4 (N.Y. PSC Jan. 24, 2003). This Order thus provides no support for Covad’s proposed one-year limitation.

Finally, the record does not substantiate the purported harms — with respect to setting charges for its end-user customers and filing reports with the SEC — that Covad claims result from backbilling. *See* Covad Opening Br. at 17-18. First, even though Covad acknowledges that backbilling does not prevent it from billing its end-user customers, Covad suggests that backbilling impairs its ability to set its rates. *See* New York Transcript at 192:8-14. Yet, with respect to the single instance of backbilling Covad identifies — where Covad was receiving payment from its customers for as many as 14 months before paying Verizon anything for the line-shared loops it had ordered — Covad never claims that the backbilling affected the rates that

Memorandum Opinion and Order, *Brooten v. AT&T*, 11 FCC Rcd 13343 (Comm. Carr. Bur. 1997), is also misplaced. As Covad recognizes, those cases involved AT&T’s billing of end-user customers, not other carriers. *See* Covad Opening Br. at 24-26. As noted above, under this Commission’s regulations, as under the general statute of limitations, a utility has a four-year period in which to bill customers for services rendered. *See* 52 Pa. Code §§ 56.35, 56.83(7). Covad offers no reason why CLECs should have the benefit of a shorter backbilling period than the period that applies to residential end-user customers.

it set. Second, Covad also never claims that the single instance of backbilling caused material errors in its SEC filings requiring the restatement of those filings. In fact, in the Form 10-K it filed shortly before receiving that bill, Covad expressly noted that, even though it had “begun provisioning new orders for consumer-grade services over line-shared telephone wires,” “in many instances the permanent rates, terms and conditions of line sharing access have not yet been [set by] . . . state commissions.”¹⁷ The record in this proceeding, therefore, provides no basis for this Commission to depart from its prior decisions and create a limitation period that differs from the generally applicable four-year statute of limitations that governs all other commercial contracts.

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?

The standards that Covad proposes are unreasonable and are contrary to the performance measurements that this Commission has adopted for Verizon PA.

Through the Carrier-to-Carrier Guidelines, this Commission has already adopted performance measurements that establish time frames in which Verizon PA must respond to CLECs’ billing disputes. The Carrier Working Group in New York — in which Covad is an active participant — is currently considering final language for those performance measurements, which will be presented to this Commission for its approval, after which those final rules will apply to Verizon PA’s interactions with all CLECs in Pennsylvania. See Verizon Opening Br. at 10; Abesamis/Raynor Decl. ¶¶ 14-16; Verizon Reply Br. at 8. This Commission has established a schedule for the Pennsylvania Carrier Working Group to consider the New York PSC’s decision to include the final versions of the measurements in the Performance

¹⁷ Covad Communications Group, Inc., Form 10-K, at 43 (SEC filed May 23, 2001).

Assurance Plan, which, if adopted, would subject Verizon PA to remedy payments if it does not meet the performance standards set forth in those final rules.¹⁸ Because these issues are being discussed and resolved in these collaborative proceedings, and will apply to all CLECs, they should bind Covad, consistent with this Commission's "preference for a collaborative approach to refinements" to the performance measurements.¹⁹

Even though this issue is being resolved on an industry-wide basis through the Carrier Working Group, Covad has asserted that it "needs a better assurance of performance" with respect to the acknowledgement and resolution of billing disputes than the standard that applies to all other CLECs operating in Verizon PA's territory in Pennsylvania. Covad Reply Br. at 10. Covad has not shown any unique circumstances that distinguish it from other CLECs with respect to billing disputes that could justify the creation of a standard to apply to its claims alone. Nonetheless, Covad has proposed language that would provide it with a unique (and significantly different) performance standard. Covad's proposal sets forth intervals in which Verizon must acknowledge and respond to billing claims, but these do not track the intervals in the interim measurements. *See Revised Proposed Language Matrix – Verizon PA at 2 (Agreement § 9.3).*²⁰

¹⁸ *See* Final Secretarial Letter from James J. McNulty, Pa. PUC, to Ronald F. Weigel, Director – Government Relations, Verizon Pennsylvania, Inc., No. M-00011468 (*PMO II – Compliance Filing*), at 1 (Pa. PUC Mar. 6, 2003).

¹⁹ Final Opinion and Order on Performance Measures and Remedies for Wholesale Performance for Verizon Pennsylvania Inc. (*PMO II*), *Performance Measures Remedies*, Docket No. M-00011468, at 11 (Pa. PUC entered Dec. 10, 2002) ("*PMO II Order*").

²⁰ Covad's proposal would provide Verizon PA with 2 business days to acknowledge the dispute, but only 30 calendar days *from receipt of the dispute* in which to provide a substantive response. *See Revised Proposed Language Matrix – Verizon PA at 2 (Agreement § 9.3)*. The interim measurements require Verizon to acknowledge a claim within 2 business days and to respond 28 calendar days *after sending the acknowledgement*. *See Verizon Opening Br. at 9-10; Abesamis/Raynor Decl. ¶ 4*. As a result, under the measurements, Verizon PA may have more than 30 days after it receives a dispute in which to respond. To take a simple example, if a dispute were submitted on a Friday before a holiday weekend, Verizon PA would have 32

Moreover, Covad's language does not include the 95% on-time performance standard this Commission has established; nor does it include any of the other rules, definitions, or exclusions in the measurement. *See* Verizon Opening Br. at 9-10. Finally, the 30-day interval Covad has proposed for responding to billing claims is unreasonable for disputes of older bills, as the FCC and five state commissions have recognized. *See id.* at 10; Abesamis/Raynor Decl. ¶¶ 16-17.

Nor would there be any reason to copy the text of the relevant performance measurements into the parties' interconnection agreement — something that, although it was discussed at the technical conference, Covad has not proposed. Covad has no legitimate concerns about unilateral changes to either the performance measurements or the PAP. Both can be changed only by an order of this Commission. Verizon PA, however, has legitimate concerns about the inclusion of the text of the existing measurements in the agreement. If those measurements are included as provisions in the agreement, Verizon PA would continue to be held to those performance standards even after this Commission modifies the measurements, pending amendment of the agreement itself. The inclusion of a provision requiring instantaneous updating of the agreement to track changes to the measurements would alleviate this concern, but not the concern that Covad seeks to include these measurements in the agreement to provide a basis for a future breach of contract claim based on Verizon PA's performance in acknowledging and resolving billing claims. Assuming this Commission follows the New York PSC in including the billing dispute resolution performance measurements in the PAP, Verizon will be required to make remedy payments to CLECs if it does not meet the standards established in the final rules. There is no evidence in the record that warrants creating potential additional remedies for these measurements. *See* Verizon Reply Br. at 8.

calendar days in which to respond. Therefore, Covad's proposal adopts intervals different from and shorter than those in the Carrier-to-Carrier Guidelines.

At the technical conference in New York, Covad raised a concern about whether the Commission-established performance measurements include billing disputes with respect to a circuit that a CLEC initially purchased as a special access circuit but later converted to UNEs. *See* New York Transcript at 211:4-13.²¹ As a result of the business process established for conversions through another collaborative proceeding, those circuits are identified in Verizon PA's systems as special access even after their conversion to UNEs; therefore, Verizon PA's performance in responding to such billing disputes will not be captured in the measurements, as currently written. *See* New York Transcript at 211:14-212:7, 213:1-10. Covad, or any other CLEC, can propose modifications to those measurements to address this issue during the ongoing discussions regarding the final business rules for the measurements. If Verizon PA and the CLECs do not reach consensus on such a change, it can be presented to the Commission for its resolution.

Covad has provided no reason why it should be permitted to litigate this issue in this proceeding, rather than in the Carrier Working Group. Nor has it offered any basis for establishing a rule for its billing claims that is different than the rule adopted by the Commission for all CLECs. For example, there is no evidence in the record indicating that Covad has ever raised any billing claims with respect to converted circuits, let alone that it raises such claims substantially more often than other CLECs and thus has a greater need of a measurement of Verizon PA's performance in resolving them. Instead, the only record evidence with respect to such claims demonstrates that the same Verizon PA personnel process billing disputes for both UNEs and converted circuits, without any distinction between the two types of claims. *See id.* at

²¹ The parties jointly stipulated to the admission of this transcript as a late-filed exhibit in this proceeding. *See* Letter from Scott H. Angstreich to James J. McNulty, Pa. PUC, Docket Nos. A-310696F7000 & A-310696F7001 (Pa. PUC filed Mar. 10, 2003).

224:10-18. As a result, in processing claims related to converted circuits, the Verizon PA personnel will be “striving for this metric,” even if the performance is not captured in the measurement results. *Id.* For these reasons, if the final rules that the Commission adopts for these billing measurements exclude disputes related to converted circuits, the interconnection agreement should not contain any contrary provision.

Finally, Covad has proposed the same language for its interconnection agreement with Verizon North, which is unreasonable as applied to Verizon North for all of the reasons described above — among other things, the proposed language contains no performance standard, no exclusion for disputes of older bills, and none of the specification inherent in a fully developed performance measurement. Even if Covad’s proposed language were reasonable, performance measurements should not be adopted on an interconnection-agreement-by-interconnection-agreement basis. Not only are such agreements not easily modified “to reflect accurately the experiences by the industry in the marketplace,” *PMO II Order* at 85, but also doing so can result in an unworkable process as different timeliness standards apply to disputes raised by different CLECs.

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?**

Consistent with this Commission’s rules, when a Covad billing dispute is resolved in Verizon’s favor, Covad should be required to pay late fees on its entire unpaid balance, for the duration that the balance is unpaid.

Under Verizon’s proposal, in the event that a billing dispute is resolved in Verizon’s favor, Covad would be required to pay compounded late-payment charges on the amount it is found to owe for the entire period in which the amount was unpaid; this is the same rule that this

Commission has adopted. *See* Verizon Opening Br. at 12; Geller Decl. ¶ 12.²² Accordingly, Verizon’s language should be adopted here.

At the technical conference in New York, Covad repeatedly discussed what its own witness described as a “unique” example where, after nine months of negotiations, a dispute was partially resolved in Covad’s favor, but Covad was found to owe Verizon a substantial sum. New York Transcript at 236:19; *see id.* at 230:16-231:13. In that case, Verizon did not require Covad to pay the late-payment charges that would normally have been due, demonstrating that Verizon makes reasonable allowances for unique circumstances. *See id.* at 231:19-22, 232:3-5. Although Covad’s witnesses suggested that its proposal is designed to account for such circumstances, its proposed language is not limited in this respect. Instead, Covad would prevent Verizon from recovering late-payment charges on *every* dispute where Verizon does not provide a response within 30 calendar days. Covad’s position is based on the mistaken premise that any delays in providing such a response necessarily are Verizon’s fault. But, as Verizon has explained, such delays can be the result of Covad providing insufficient information on its billing claim or disputing charges many months (or years) after they were billed. *See* Verizon Opening Br. at 12; Geller Decl. ¶ 14.

²² Covad does not owe late payment charges on disputed amounts if the dispute is resolved in its favor. *See* Geller Decl. ¶ 12; New York Transcript at 230:9-15, 235:16-18. Although late payment charges with respect to disputed amounts will continue to appear on subsequent bills, the disputed charges and associated late payments “are separate on the bill, where it shows [the] total amount disputed, [and] late payment charges assessed,” and Covad need not file separate disputes regarding those charges during the pendency of the dispute. New York Transcript at 246:13-18; Verizon Reply Br. at 9.

Covad’s claim that late-payment charges with respect to amounts that are subject to dispute should not continue to appear on a bill, *see* Evans/Clancy Decl. ¶ 25, is not properly part of this arbitration. Under the 1996 Act, this Commission must “limit its consideration of any [arbitration] petition . . . to the issues set forth in the petition and in the response.” 47 U.S.C. § 252(b)(4)(A). Covad’s petition for arbitration contains no mention of this question, nor does Verizon’s response. *See, e.g.,* Covad Petition Attach. C at 2; *id.* Attach. E at 6 (Agreement § 9.4).

Moreover, if Covad wants to avoid paying late payment charges — which compensate Verizon for, among other things, the time value of money, *see* New York Transcript at 243:2-5; Geller Decl. ¶ 13 — it can pay the bill and then file its claim, with a right to recoup any overpayment. But if Covad withholds payment while disputing a valid bill, it should be required to pay late payment charges for the entire period that it was receiving service while withholding payment. Verizon is not a bank and should not have to finance its competitors' ongoing business operations by providing interest-free, forced loans whenever a competitor files a billing dispute. Accordingly, Verizon's language should be adopted here.

C. Dispute Resolution

With respect to each of these issues, Covad's proposals exceed its rights under federal and state law. First, Covad seeks language that would compel Verizon to participate in binding arbitration, even though a necessary predicate to the validity of binding arbitration is the consent of the parties. Second, Covad seeks to prevent Verizon from terminating its obligations under the agreement in the event that it sells an exchange in Pennsylvania, even though Verizon's obligation under federal law to enter into an interconnection agreement is limited to areas in which it is the ILEC. Third, Covad seeks language reserving its right to assert causes of action against Verizon for purported violations of 47 U.S.C. § 251, when federal courts have uniformly held that Covad has no such right and the language has no place in this agreement in any event.

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?**

Under federal and state law, Verizon cannot be required to submit a dispute to be resolved through binding arbitration.

Although federal law protects parties' right to *choose* to resolve their disputes through binding arbitration, *see* 9 U.S.C. §§ 1 *et seq.*, no provision of federal law or state law authorizes

this Commission to *require* Verizon to give up its right to seek resolution of any dispute before an appropriate forum. As both the United States Supreme Court and the Pennsylvania state courts have made clear, arbitration is “a matter of consent, not coercion.” *Volt Info. Scis., Inc. v. Board of Trustees*, 489 U.S. 468, 479 (1989); *see, e.g., Brown v. D. & P. Willow Inc.*, 454 Pa. Super. 539, 546, 686 A.2d 14, 18 (1996) (forcing parties to submit, without their consent, to binding arbitration of a dispute is “violative of common law and statutory principles prevailing in this Commonwealth”). Indeed, “arbitrators derive their authority to resolve disputes *only because the parties have agreed* in advance to submit such grievances to arbitration.” *AT&T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648-49 (1986) (emphasis added). For these reasons, this Commission cannot impose upon Verizon the language that Covad has proposed — but to which Verizon has not agreed — that would require the parties to conduct binding arbitration of certain disputes. *See* Revised Proposed Language Matrix – Verizon PA at 3 (Agreement § 14.3).

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

Under federal law, Verizon cannot be required to condition any sale of its operations on the purchaser consenting to an assignment of the parties’ agreement.

Although the agreement permits Verizon (or Covad), with the prior written consent of the other party, to assign the agreement to a third party, *see, e.g.,* Verizon Response Attach. E at 4 (Agreement § 5), no provision of federal law *requires* Verizon to condition any sale of its operations on the purchaser consenting to an assignment of this agreement. Indeed, once Verizon sells an exchange or territory, it is no longer the ILEC for that service area and has no obligations under the interconnection provisions of the 1996 Act. *See* 47 U.S.C. § 252(a) (obligating ILECs to enter into interconnection agreements); *id.* §§ 251(h), 252(j) (defining ILEC

for purposes of § 252). Moreover, no provision of the 1996 Act obligates the new purchaser — that is, the new ILEC — to assume the agreement Verizon entered into with Covad. Instead, that new ILEC would have the right to enter into its own agreement with Covad, assuming that carrier is not a rural carrier that is exempt from that obligation. *See* 47 U.S.C. § 251(f); *see* Verizon Opening Br. at 14. Requiring a new ILEC to assume Verizon’s agreements would likely reduce the price that Verizon could receive for a sale, and Covad has not offered to compensate Verizon for any potential loss in the value of Verizon’s assets that results from this condition.

In any event, adopting the language that Covad has proposed would not prevent Verizon from terminating its obligations under the agreement if it sells an exchange but does not assign the agreement to a purchaser. Covad’s proposed language states only that Verizon “may assign” the agreement. Revised Proposed Language Matrix – Verizon PA at 4 (Agreement § 43.2). Despite the fact that Covad’s language thus places no limitation on Verizon’s right to terminate the agreement following the sale of an exchange, this Commission should reject that language because it is mere surplusage — as explained above, another section of the agreement already authorizes Verizon to assign the agreement.

Finally, if Verizon were to sell an exchange or territory in Pennsylvania, Covad could protect any rights and interests it has by participating in the Commission’s proceeding regarding the sale. *See* 66 Pa. Cons. Stat. § 1103 (2002); *City of York v. Pennsylvania Pub. Util. Comm’n*, 449 Pa. 136, 295 A.2d 825 (1972); *see also* Order Resolving Arbitration Issues, *Joint Petition of AT&T Communications of New York, Inc., et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case 01-C-0095, at 23-25 (N.Y. PSC July 30, 2001) (any interests a CLEC has “in the continuing performance of the terms in the agreement in the event of a transfer

. . . are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets").

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

Whether Covad can bring a future action against Verizon for violation of § 251 of the Act is not within this Commission's jurisdiction, and the agreement should not contain language addressing this issue.

Contrary to the implication Covad seeks to leave from the title it has given to this issue, no terms in the agreement preclude Covad from asserting future causes of action against Verizon for violation of § 251 of the Act. Instead, it is Covad that is seeking to insert provisions into the agreement in an attempt to preserve its right to raise such claims in the future. *See, e.g.*, Revised Proposed Language Matrix – Verizon PA at 48 (Agreement § 48). Covad claims (Petition Attach. C at 4) that this language is necessary “to deal with” the Second Circuit’s decision in *Law Offices of Curtis V. Trinko, LLP v. Bell Atlantic Corp.*, 305 F.3d 89 (2d Cir. 2002), *cert. granted on other grounds sub nom. Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 123 S. Ct. 1480 (2003) (No. 02-682), where that court concluded that, “[a]fter the state commission approves . . . an [interconnection] agreement, the Telecommunications Act intends that the ILEC be governed directly by the specific agreement rather than the general duties described in subsections (b) and (c) of section 251.” *Id.* at 102.

This Commission should not include in the agreement language that purports to “deal with” — that is, overrule — a decision of a court of appeals. Whether this Commission’s approval of an interconnection agreement affects any right that a CLEC might have to bring a suit under §§ 206 or 207 based on claimed violations of § 251 in the absence of such an

agreement²³ is a question that is not within this Commission's jurisdiction. *See* 47 U.S.C. § 206 (referring to authority of "the court"); *id.* § 207 (referring to filing of complaints with "the [Federal Communications] Commission" or "in any district court of the United States"). Instead, that question should be addressed by a court of competent jurisdiction if and when it arises.

In any event, language inserted into a particular interconnection agreement could not overrule the Second Circuit's decision, which was based on its interpretation of the 1996 Act.²⁴ However, the suggestion contained in Covad's proposed language that neither party "waives [its] rights . . . under . . . 47 U.S.C. §§ 206 & 207" by entering into the interconnection agreement — rights that uniform federal court authority holds that neither party has²⁵ — could potentially serve to impede Verizon's ability to defend against such a cause of action should Covad ever assert one.

D. Operations Support Systems

These issues pertain to three aspects of Verizon's obligations with respect to its operations support systems: loop qualification information, order confirmation notices, and manual processes for obtaining loop qualification information. As to the first, Verizon's proposed language tracks the requirements of federal law precisely, while Covad's proposed language has no basis in the 1996 Act or the FCC's regulations or orders. As to the second,

²³ *See Trinko*, 305 F.3d at 105 n.10 (declining to decide "whether a plaintiff can bring suit for a violation of the duties under section 251 when there is no [interconnection] agreement").

²⁴ Contrary to Covad's implication, the Second Circuit did not hold in *Trinko* — a case in which an end user, not a CLEC, brought suit against Verizon — that a CLEC waives its right to bring suit under §§ 206 and 207 to obtain remedies for violations of § 251 by entering into an interconnection agreement. Indeed, the words "waive" and "waiver" are nowhere to be found in the court's opinion. Instead, the court held that a CLEC with an interconnection agreement has no right to waive. *See Trinko*, 305 F.3d at 102.

²⁵ *See, e.g., Trinko*, 305 F.3d at 102; *Building Communications, Inc. v. Ameritech Servs., Inc.*, No. 97-CV-76336 (E.D. Mich. June 21, 2001); *Intermedia Communications, Inc. v. BellSouth Telecomms., Inc.*, 173 F. Supp. 2d 1282 (M.D. Fla. 2000).

Covad's proposed language would materially alter the uniform performance standards this Commission adopted for Verizon PA in the Carrier-to-Carrier Guidelines and that currently apply to Verizon North in the FCC Merger Guidelines. As to the third, Covad's proposal is contrary to federal law because it would provide Covad with better performance than Verizon provides to itself.

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?

The Commission should adopt Verizon's proposed language, which tracks verbatim the FCC's rules governing an ILEC's provision of loop qualification information.

The dispute here is not over whether Verizon must provide Covad with nondiscriminatory access to loop qualification information. Both parties agree that, pursuant to federal law, Verizon must provide Covad "with access to all of the same detailed information about the loop that is available to [Verizon]," "within the same time intervals it is provided to [Verizon's] retail operations." *Maryland/DC/West Virginia 271 Order*²⁶ App. F ¶ 35. The agreement already contains provisions that implement this obligation, including one that states explicitly that "Verizon shall provide access to loop qualification information in accordance with, but only to the extent required by, Applicable Law." Verizon Response Attach. E at 65 (UNE Attach. § 3.13.3).²⁷ And, in these arbitrations, Verizon has proposed additional language that would make Verizon's obligation to comply with applicable law even more explicit. *See*

²⁶ Memorandum Opinion and Order, *Application by Verizon Maryland Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC Rcd 5212 (2003) ("*Maryland/DC/West Virginia 271 Order*").

²⁷ *See also* Verizon Response Attach. E at 48 (Additional Services Attach. § 8.1.1) ("The pre-ordering function includes providing Covad nondiscriminatory access to the same detailed information about the loop that is available to Verizon and its affiliates."); *id.* at 49 (Additional Services Attach. § 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").

Revised Proposed Language Matrix – Verizon PA at 5 (Additional Services Attach. § 8.2.3) (“Verizon . . . 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.”).

In contrast, Covad’s proposed language is inconsistent with the requirements of federal law. That language purports to regulate the *manner* in which Verizon provides loop qualification information, instead of simply regulating the type of information and the time interval within which it must be provided. *See, e.g.*, Revised Proposed Language Matrix – Verizon PA at 5 (Additional Services Attach. § 8.1.4) (“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.”) (emphases added). The language that Covad has proposed has no basis in the 1996 Act or in any FCC rule or order implementing that Act with respect to the provision of loop qualification information. Although the FCC, in the context of loop qualification information, has regulated the amount of information an ILEC provides and the time frames in which that information is provided, it has not adopted rules regarding the manner in which it is provided.

Finally, to the extent Covad has discussed in this proceeding any supposed problems it has experienced obtaining loop qualification information, it is only with respect to the systems and processes used in the former Bell Atlantic jurisdictions, including Verizon PA. *See* Covad Opening Br. at 52-53. Covad has never discussed, let alone asserted that it has experienced any issues with, the loop qualification information available from Verizon North. *See* White Decl. ¶¶ 9-10. Thus, Covad’s claims are irrelevant to its petition for arbitration with Verizon North and, with respect to its petition for arbitration with Verizon PA, are wrong. The FCC has

repeatedly rejected Covad's claims and found that Verizon's provision of loop qualification information in the former Bell Atlantic jurisdictions, including in Pennsylvania, satisfies the requirements of federal law. *See, e.g., Virginia 271 Order* ¶¶ 29-37; *Pennsylvania 271 Order* ¶ 47; *Massachusetts 271 Order*²⁸ ¶¶ 60-67; *Rhode Island 271 Order*²⁹ ¶¶ 61-65; *Connecticut 271 Order*³⁰ ¶ 54.³¹

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

Covad's proposals should be rejected because they are inconsistent with the intervals under which Verizon is currently required to return order confirmation notices and, in any event, because such requirements should not be established on an interconnection-agreement-by-interconnection-agreement basis.

This Commission has established the intervals in which Verizon PA must return Local Service Request Confirmations ("LSRCs"), formerly known as FOCs, in its orders adopting and modifying the Carrier-to-Carrier Guidelines; the performance measurements established in the

²⁸ Memorandum Opinion and Order, *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (2001), *aff'd in part, dismissed in part, and remanded in part, WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002).

²⁹ Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, 17 FCC Rcd 3300 (2002).

³⁰ Memorandum Opinion and Order, *Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, 16 FCC Rcd 14147 (2001).

³¹ Verizon PA offers CLECs access to loop qualification information in Pennsylvania in the same manner as in the other former Bell Atlantic jurisdictions. *See Virginia 271 Order* ¶ 32.

*Bell Atlantic/GTE Merger Order*³² contain similar standards for Verizon North's return of LSRCs for Covad's stand-alone UNE loop orders (Issue 13) and for its line-sharing orders (Issue 38). See Verizon Opening Br. at 15-18; Abesamis/Raynor Decl. ¶¶ 18-22. Those Guidelines, however, contain more than simply the interval (e.g., 24 hours, excluding weekend and holiday hours) in which Verizon must return an LSRC for a particular Covad order. They are extremely detailed and also contain, among other things, performance standards (95% on time), exclusions (e.g., orders submitted on a project basis), and definitions (e.g., how to calculate the elapsed time for rejected orders that a CLEC resubmits).³³ In addition, if Verizon fails to meet the performance standards contained in the Guidelines, it can be required to make remedy payments to CLECs under the terms of the PAP or to the United States Treasury under the *Bell Atlantic/GTE Merger Order*. Verizon cannot change either set of guidelines or the remedy plans unilaterally; instead, any changes — even consensus changes agreed to by the entire industry — must be adopted by this Commission or the FCC in order to be effective. See, e.g., New York Transcript at 170:17-171:3.

Although Covad has claimed that it “is not seeking to change the industry-wide performance standards,” *id.* at 168:16-17, its proposed language would do so. First, Covad has not accurately copied the intervals in either the Carrier-to-Carrier Guidelines or the Merger Guidelines. For example, the two-hour interval in both sets of guidelines applies only to pre-

³² Memorandum Opinion and Order, *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, 15 FCC Rcd 14032 (2000) (“*Bell Atlantic/GTE Merger Order*”).

³³ A copy of the current version of the Verizon PA LSRC timeliness measurement (OR-1) can be found at pages 26-32 of the Guidelines, which is available at http://www.verizon.com/wholesale/clecsupport/east/performance_assurance/attachments/PA_C2C_Guidelines_0603_compliance.doc. A copy of the current version of the Verizon North LSRC timeliness measurements (OR-1) can be found at pages 5-6 of the Merger Guidelines, which is available at http://www.verizon.com/wholesale/clecsupport/perf_meas_ug/FCC_West_052902_Blackline.doc.

qualified UNE orders that “flow through”³⁴; if a pre-qualified UNE order does not flow through, the applicable interval under is 24, 48, or 72 hours. *See* Abesamis/Raynor Decl. ¶¶ 19, 21. Covad, however, has proposed that a two-hour interval apply to all pre-qualified UNE orders, whether or not they flow through. *See* Revised Proposed Language Matrix – Verizon PA at 5-6 (Additional Services Attach. § 8.2.4). Similarly, the 48-hour interval in the Carrier-to-Carrier Guidelines applies only to UNE DS1 loop orders that are submitted using a local (as opposed to an access) service request and for which Verizon does not perform a check for available facilities before returning the LSRC; otherwise, the interval is 72 hours. Covad, however, has proposed that a 48-hour interval apply to all UNE DS1 loop orders, no matter how they are submitted and regardless of whether a facility check is required. *See id.*

Second, even if Covad had copied the intervals correctly from the Carrier-to-Carrier Guidelines and Merger Guidelines, its proposed language would materially change those intervals. When determining whether an LSRC was returned on time, certain hours are excluded in calculating the elapsed time between Verizon’s receipt of an order and the sending of the LSRC. For flow-through orders, hours when Verizon’s service order processor is off-line are not counted; for orders that do not flow through, weekend and holiday hours are not counted. Thus, if Covad submitted a UNE loop order requiring manual prequalification (a 72-hour interval under the Carrier-to-Carrier Guidelines) at 4:59 p.m. on a Friday, under Covad’s proposed language the LSRC would be due by 4:59 p.m. on Monday, because that language apparently includes all hours in the week. *See id.* Under the Guidelines, however, the LSRC would be considered timely if it were delivered by 7:59 a.m. on Thursday (or 7:59 a.m. on Friday if the

³⁴ An order flows through when Verizon’s “operations support systems generate a mechanized order confirmation or rejection notice automatically (*i.e.*, without human intervention).” *New York 271 Order* ¶ 160.

Monday was a holiday). Again, Covad's failure to replicate the intervals changes them substantively.

But even if Covad were to correct these issues, Covad has not proposed to incorporate all aspects of the LSRC timeliness measurements in the parties' interconnection agreements. The failure to include the performance standard, exclusions, and definitions contained in the measurement materially changes the level of performance required. Most obviously, although both sets of guidelines contain a 95% on-time standard, Covad's proposed language is silent as to the applicable performance standard and apparently would require 100% on-time performance by Verizon. *See id.*; *see also* Verizon Opening Br. at 16-17. Covad has also failed to include the exclusions and definitions that this Commission and the FCC have adopted with respect to the LSRC timeliness measurements, which has the effect of further changing the existing performance standards. For example, if Covad's language were adopted, then the intervals set forth in the agreement would apply to orders submitted on a project basis, even though the Guidelines this Commission and the FCC have approved exclude such orders from the LSRC timeliness measurements.

Because Covad has shown no reason why the Commission should establish unique LSRC intervals for Covad's orders — and Covad itself disclaims any entitlement to performance standards different from those that apply to all CLECs — Covad's proposed language should be rejected.³⁵

³⁵ As explained above with respect to the billing dispute resolution measurements, including the full text of the LSRC timeliness measurements in the agreement would further no legitimate interests of Covad. *See supra* p. 15. However, Verizon has legitimate concerns that any measurements included in the agreement would not automatically keep pace with any changes to the Guidelines and could be used by Covad in an attempt to obtain breach of contract remedies that go beyond the remedies contained in the Commission-approved PAP. *See id.*

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

Verizon PA's and Verizon North's proposed language, which provide Covad with access to loop qualification on a manual basis in the time intervals that this Commission has established for Verizon PA and that Verizon North provides to itself, and at the same rates that apply to all CLECs, complies with federal law, should be adopted.

As explained above, Verizon PA and Verizon North provide loop qualification information to CLECs in Pennsylvania using different electronic databases and different manual processes. *See* White Decl. ¶¶ 9-10. Although Covad initially proposed the same language for both Verizon PA and Verizon North, which was based on systems and processes that Verizon utilizes only in the former Bell Atlantic jurisdictions, Covad has recently modified its proposed language for Verizon North for this issue to remove references to those systems and processes. *Compare* Covad Petition Attach. B at 13-14 (UNE Attach. § 3.13.5) *with* Revised Proposed Language Matrix – Verizon North at 12 (UNE Attach. § 3.13.5).

Nonetheless, Covad's proposed language differs from both Verizon PA's and Verizon North's in two material respects, and, in each case, this Commission should adopt Verizon's language instead of Covad's. First, Covad has proposed that Verizon should be required to provide a response to Covad's requests for loop qualification obtained through a manual process in one business day. *See* Revised Proposed Language Matrix – Verizon PA at 11-12 (UNE Attach. § 3.13.5). This Commission, however, has already established the interval in which Verizon PA must respond to a manual loop qualification request — 95% within 48 hours (excluding weekend and holiday hours). *See* Abesamis/Raynor Decl. ¶ 27.³⁶ Covad's proposal

Covad has introduced no evidence demonstrating that any such additional remedies are warranted.

³⁶ As Verizon has explained, "Extended Query" is simply the name for a manual loop qualification request submitted at the pre-ordering stage. *See* White Decl. ¶ 9.

is thus inconsistent with the Guidelines that this Commission adopted for Verizon PA; if Covad wishes to change those standards, it should seek to do so through the multilateral processes this Commission adopted in the *PMO II Order*, not through a bilateral arbitration. *See PMO II Order* at 86-88.

Although the Merger Guidelines do not contain comparable measurement for the manual process that Verizon North offers for the provision of loop qualification information, because Verizon North provides this same process to itself, *see* White Decl. ¶ 10, the appropriate standard under the 1996 Act is parity, *see Maryland/DC/West Virginia 271 Order* App. F ¶ 35 (Verizon must provide CLECs with loop qualification information “within the *same time intervals* it is provided to [Verizon’s] retail operations”) (emphasis added). Consistent with federal law, Verizon’s proposed language states that “Verizon will complete such a request within the same intervals that Verizon completes such requests for itself,” which, “[I]n general,” is “within five (5) business days.” Revised Proposed Language Matrix – Verizon North at 12 (UNE Attach. § 3.13.5). Covad is not entitled to obtain this information in a shorter time period.

Second, Covad has proposed to include language that expressly states that, in certain circumstances, Covad may utilize the manual process that Verizon PA and Verizon North provide to CLECs and to themselves for obtaining loop qualification information at no charge. *See* Revised Proposed Language Matrix – Verizon PA at 11-12 (UNE Attach. § 3.13.5); Revised Proposed Language Matrix – Verizon North at 12 (UNE Attach. § 3.13.5). There is no merit to Covad’s claim that it has a right to use those processes for free whenever Verizon PA’s or Verizon North’s electronic databases do not contain information on a loop or the information that is contained is “defective.” Indeed, under federal law, Covad has no right to use these manual processes (or any other Verizon operations support system function) for free. *See* 47 U.S.C.

§ 252(d). In any event, as the FCC has held, because Verizon's retail representatives use those same databases, *see* White Decl. ¶¶ 9-10, "any inaccuracies or omissions in [that] database are not discriminatory," because "they are provided in the exact same form to both retail and wholesale customers." *Virginia 271 Order* ¶ 34. Therefore, Covad has no right to use Verizon PA's or Verizon North's manual processes for free whenever the electronic databases are not 100% accurate.³⁷ Finally, Covad has introduced no evidence with respect to the accuracy of Verizon's electronic databases; and, as noted above, the FCC has consistently rejected Covad's challenges to the adequacy Verizon's provision of loop qualification information in the former Bell Atlantic jurisdictions.

E. Unbundled Network Elements

All of the issues addressed here pertain to Verizon's provision of unbundled network elements. In each case, Covad has sought access to Verizon's network that exceeds its rights under applicable law. Indeed, in many instances, the same arguments that Covad raises here have been considered and rejected by this Commission and the FCC in other proceedings.

³⁷ Although Verizon North currently does not charge CLECs for use of the manual process that it offers, if Verizon North were to establish a generally applicable rate for this process, whether through the filing of a tariff or other means, Covad, like all other CLECs in Verizon North's territory in Pennsylvania, should be required to pay this rate.

19. **Should Verizon be obligated to provide Covad nondiscriminatory access to UNEs and UNE combinations consistent with Applicable Law?**
24. **Should Verizon relieve loop capacity constraints for Covad to the same extent as it does so for its own customers?**
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?**

Under federal law, Verizon is not required to build facilities in order to provision Covad's UNE orders, and Verizon's bona fide request process satisfies its obligations to permit CLECs to order new UNE combinations.

Despite the titles of these issues, they are not about nondiscriminatory access to UNEs. Instead, they raise two distinct questions about the scope of Verizon's obligation to provide unbundled access to its network. The first is whether Verizon is required to build facilities in order to provision Covad's UNE orders when the necessary facilities are not available. The second pertains to the terms on which Verizon provides Covad with access to new UNE combinations.

With respect to the first issue, Verizon has already set forth its position regarding the state of the law prior to the FCC's adoption of the *Triennial Review Order*. See Verizon Opening Br. at 22-24; Verizon Reply Br. at 14. Under federal law, as interpreted by the FCC and the federal courts, an ILEC is not required to construct facilities to provide a CLEC with unbundled access to its network, even if it would perform such construction for its retail customers. See, e.g., *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 593 (6th Cir. 2002) ("[t]he Act does not forbid [an ILEC] from discriminating between a CLEC requesting unbundled network elements and [the ILEC's] own retail customers"). Nonetheless, as Verizon's witness explained, Verizon "will provision or connect any existing inventory parts of a loop to provide a UNE to a location, and that would include cross connects, line cards, [and] any existing inventory piece." New York Transcript at 79:2-5. Thus, Verizon goes beyond its unbundling

obligations to provide loops even in situations where all of the necessary facilities are not yet available. The FCC has repeatedly found that Verizon's provisioning policies comply with the requirements of the Act, and has rejected arguments identical to those Covad has raised here. *See, e.g., Virginia 271 Order* ¶ 141.

Accordingly, Covad's proposed language, which would require Verizon to construct new facilities, must be rejected. As an initial matter, Covad has introduced no evidence specific to either Verizon PA or Verizon North to support its claim that it is "losing customers" as a result of Verizon's application of its provisioning policies — indeed, it has introduced no evidence at all with respect to Pennsylvania on these issues. *See Evans/Clancy Decl.* ¶ 34 (discussing actions purportedly taken by Verizon in New York nearly one year ago). Even aside from the fact that there is absolutely no factual support for its proposed language, Covad's proposals are based on a misunderstanding of the requirements of federal law: as the Sixth Circuit held, the fact that Verizon would build facilities in order to provision service to a retail customer does not mean that Verizon must do the same work in order to make the facilities available to a competitor on an unbundled basis. *See Michigan Bell*, 305 F.3d at 593. Instead, as Verizon has explained, Verizon satisfies its obligation to provide nondiscriminatory service by offering to build facilities for CLECs pursuant to its special access tariff — that is, on the same terms and conditions that it offers to all of its access service customers. *See Bragg/Kelly Decl.* ¶ 6. All access service requests — whether from CLECs, long-distance carriers, or end users — are handled in the same manner, precluding any claim of discriminatory conduct. *See id.* Nor is Covad correct that Verizon's obligation to "condition" UNE loops includes an obligation to add new facilities in order to provision such a loop. *See Covad Reply Br.* at 16. The FCC's rules expressly define conditioning as "the *removal* from the loop" of certain devices. 47 C.F.R.

§ 51.319(a)(3)(i) (emphasis added). Nothing in this definition, or in any of the FCC decisions Covad cites, suggests that an ILEC, in conditioning loops, must *add or attach* new facilities to that loop.

In the FCC's recently adopted, but as yet unreleased, *Triennial Review Order*, the FCC adopted further rules regarding this issue. *See Triennial Review News Release Attach.* at 3-4. Although the content of those rules is currently unknown, unless stayed or vacated by a court of competent jurisdiction, they will form the basis for any language contained in the parties' agreement with respect to this issue. In the event the FCC has changed its prior rules, Verizon reserves the right to propose new language in light of those rules and will address this issue further in its Reply Brief on the Merits or in a supplemental filing.

With respect to the second issue, the FCC has found that the availability of Verizon's bona fide request ("BFR") process for the ordering of new UNE combinations satisfies Verizon's requirements under federal law. *See Verizon Opening Br.* at 25; *Verizon Reply Br.* at 14-15. Although Covad has proposed language that appears designed to permit it to order a new UNE combination without utilizing the BFR process, *see Revised Proposed Language Matrix – Verizon PA* at 21 (UNE Attach. § 16), it has provided no basis for exempting it from a process that applies to all other CLECs operating in Pennsylvania. For this reason, Covad's proposed language should be rejected.

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

Covad's proposed language, which could require Verizon to perform dispatches for Covad for free and could require Verizon to pay penalties to Covad even when Verizon provides Covad with superior service, should be rejected, because it is vague and contrary to federal law.

Following the filing of Covad's petitions for arbitration, it became clear that "Verizon's current practice [with respect to appointment windows] is satisfactory to Covad." New York

Transcript at 113:14-15; *see id.* at 94:15-95:6, 96:10-98:19 (describing process); Bragg/Kelly Decl. ¶ 11. Pursuant to that practice, Verizon offers CLECs and its retail customers the opportunity to request an appointment window: a.m., p.m., or first or last appointment. Verizon makes good faith efforts to meet those windows, but does not guarantee the appointment window for either retail customers or CLECs. Through this process, which is set forth in Verizon's business rules, Verizon provides CLECs with parity service, as required by the 1996 Act. Verizon and Covad have each proposed a paragraph containing identical language describing this process, which the Commission should adopt. *See Revised Proposed Language Matrix – Verizon PA at 7 (UNE Attach. § 1.9).*

Covad, however, has proposed an additional paragraph, which addresses three separate issues, and which the Commission should reject because it is ambiguous and contrary to federal law. First, Covad proposes that, where it is Verizon's fault that an initial appointment date was missed, Covad should have the right to "request a new appointment window outside of the normal provisioning interval by contacting Verizon's provisioning center directly." *Id.* Verizon's understanding is that Covad, through this language, actually seeks the ability in these circumstances to request a guaranteed appointment window (during normal provisioning hours), in exchange for accepting a provisioning interval longer than the standard interval for the product. Because Verizon does not offer guaranteed appointment windows to its retail customers in these (or any) circumstances, Covad has no right to such a guarantee. *See New York Transcript at 94:15-24, 96:17-97:18.* In any event, even assuming Verizon correctly understands

Covad's intent, the language Covad has proposed is vague and subject to numerous interpretations.³⁸

Second, Covad proposes that, if it makes the request described above, "Covad shall not be required to pay the non-recurring dispatch charge for such appointment." Revised Proposed Language Matrix – Verizon PA at 7 (UNE Attach. § 1.9). The non-recurring dispatch charge is set forth in Appendix A to the Pricing Attachment in each of the agreements. *See, e.g.*, Verizon Response Attach. E at 96 (rates for premises visit); Verizon Response Attach. F at 103 (loop facility charge).³⁹ Verizon's proposed language provides that Covad must pay this charge — to which Covad has raised no objection here — when a Verizon technician is dispatched and provisions the order, even if Verizon missed the initial appointment date. *See* Revised Proposed Language Matrix – Verizon PA at 7 (UNE Attach. § 1.9). Covad's proposed language, however, would require Verizon, in certain circumstances, to perform a dispatch for Covad for free when Verizon would charge other CLECs in identical circumstances. Consistent with the nondiscrimination principles in the 1996 Act, the same rules should apply to all CLECs.

Finally, Covad has proposed that, if Verizon misses two appointments for a particular customer, then in "each additional instance in which the Verizon technician fails to meet [that] customer during future scheduled windows, Verizon will pay to Covad [a] missed appointment fee," equal to the non-recurring dispatch charge. *Id.* at 7-8. This provision is flawed in

³⁸ For example, it is not clear what it means for an appointment window (that is, a specific time of day) to be "outside" the provisioning interval (that is, a specific day). Further, it is not clear whether Covad's reference to "contacting Verizon's provisioning center directly" means to relieve it of the obligation to submit a supplemental local service request in such a situation.

³⁹ The rates listed in Appendix A to both the Verizon PA and Verizon North agreements are the standard rates that Verizon offers to all CLECs, which reflect Verizon's attempt to conform the rates to the requirements of applicable law, including this Commission's UNE rate orders. Covad did not seek to negotiate different rates. *See also infra* Issue 52.

numerous respects. First, the penalty applies when Verizon fails to meet an appointment *window* (not an appointment *date*), even though, as the record clearly establishes, Verizon does not offer guaranteed appointment windows to retail or wholesale customers. Second, the penalty would apply whenever Verizon fails to meet an appointment window, even if that failure is the fault of Covad or its end-user customer. *See* Verizon Opening Br. at 26-27; *see also* Covad Reply Br. at 19 (disclaiming any right to impose penalties on Verizon in such circumstances). Third, the PAP that this Commission has adopted for Verizon PA, like the Merger Guidelines that apply to Verizon North, already requires Verizon to make remedy payments if it misses a higher percentage of appointments for CLEC customers than for retail customers. *See* Abesamis/Raynor Decl. ¶ 25. There is no evidence in the record demonstrating any need for penalties to supplement the PAP or the Merger Guidelines in this, or any other, respect. Finally, because the applicable legal standard with respect to missed appointments is parity — which requires Verizon to meet substantially the same percentage of provisioning appointments for comparable retail and wholesale orders, *see, e.g., Massachusetts 271 Order* ¶ 137 — a penalty provision that could apply even when Verizon’s overall performance for Covad is better than Verizon’s performance for its own customers is contrary to federal law.

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

The agreement should reference both industry standards and Verizon’s technical documents, as Verizon’s technical documents define the characteristics of the loops in Verizon’s network, which are the loops available to both CLEC and retail end-user customers.

Verizon and Covad agree that the sections of the agreement at issue here should make reference to industry standards. The parties disagree, however, about whether those sections should also make reference to the Verizon technical documents, which are available on Verizon’s web site, that define loop characteristics specific to Verizon’s network. *See*

Pennsylvania Transcript at 179:5-25. Although Verizon revises its technical documents from time to time to remain current with industry standards, it is ultimately Verizon's documents — and not the industry standards — that define the loops that Verizon provides both to CLECs and to Verizon's retail customers. *See* Clayton Decl. ¶ 4. As Verizon's witnesses explained, the Verizon technical documents are consistent with the industry standards but “go the next step, and that is the definition of the loop and how those standards would apply to the loop.” Pennsylvania Transcript at 164:17-165:6; *see also id.* at 167:12-168:22, 171:24-172:6.⁴⁰ Because Covad is entitled to obtain unbundled access only to Verizon's existing network, the agreement should reference the Verizon technical documents as well as industry standards.

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 the loop type categories?

Because Covad benefits in multiple ways from the creation of a new loop type when it deploys a new loop technology, the Commission should reject Covad's proposed language, which would require Verizon to process the orders to convert Covad's loops from one loop type to another without any compensation.

As a result of the parties' discussions at the New York technical conference, the parties' disputes with respect to this issue have been almost entirely resolved. Indeed, each party has proposed virtually identical language. *See* Revised Proposed Language Matrix – Verizon PA at 10-11 (UNE Attach. § 3.11). Pursuant to this language, the parties agree to “follow Applicable Law governing spectrum management and provisioning of xDSL services.” *Id.* at 10. The

⁴⁰ Although Covad asserts that referencing Verizon's technical documents “creates the potential for conflicts” between those documents and industry standards, Covad Opening Br. at 83, Covad does not identify a single instance in which it claims any such conflict has occurred. Indeed, when pressed at the technical conference to identify an instance in which Verizon's technical references prevented Covad from providing services to its customers, Covad was unable to do so. *See* Pennsylvania Transcript at 169:10-170:21, 176:7-17.

parties further agree that, if Covad seeks to deploy a new loop technology, “Covad shall submit to Verizon a written request . . . setting forth the basis for its claim that the new technology complies with the industry standards for one or more of th[e] loop types” listed in the agreement or Verizon’s tariff, and Verizon shall respond in 45 days. *Id.* In its response, Verizon will “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.” *Id.* Although Verizon thus enables Covad to deploy new loop technologies using existing loop types, Verizon may subsequently develop a new loop type specifically for the new loop technology. If Verizon does so, Covad has agreed “to convert previously-ordered loops to the new loop type . . . and to use the new loop type on a going-forward basis.” *Id.* at 11.

The sole dispute remaining between the parties is whether Covad must pay the generally applicable, TELRIC-based rate that applies when it submits a local service request to convert a loop from one loop type to another,⁴¹ or whether Verizon must perform those conversions at no cost to Covad. *See Revised Proposed Language Matrix – Verizon PA at 10-11 (UNE Attach. § 3.11).* A “loop type” is the code that is used to order the physical facility over which Covad will deploy a technology. *See New York Transcript at 43:8-14, 53:9-20 (Hrg. Tr. Exh. 2).* Verizon does not develop new loop types unilaterally; instead, the necessary codes are developed collaboratively by national, industry-wide bodies. *See id.* at 46:12-47:3. Therefore, whether or not there exists a loop type that is specifically designed for a new loop technology that Covad seeks to deploy is independent of whether Verizon is also offering that technology. *See*

⁴¹ That rate is the “service order” charge, which is set forth in Appendix A to the pricing attachment in both agreements. *See, e.g., Verizon Response Attach. E at 96; id. Attach. F at 103.* Because Covad has not objected to this charge, it is binding on the parties. *See infra* Issue 52.

Pennsylvania Transcript at 167:17-18 (“our retail [offerings] ha[ve] nothing to do with the products out there”).

Each loop type has “testing procedures associated with [it]” and imposes “obligations on [Verizon’s] part to maintain that loop” according to standards specific to the technology or technologies for which it was designed. New York Transcript at 43:8-14. In addition, Verizon uses the loop types as a spectrum management tool. Therefore, the creation of a new loop type ensures that Covad’s new loop technology will not be identified and treated as though it had the interference properties of an older loop technology, which “would be doing it a disservice.” *Id.* at 36:15-17; *see also id.* at 51:9-22 (explaining that, from a spectrum management perspective, loop technologies should not be grouped in a single loop type “just . . . because they are industry standards”). Furthermore, the loop type informs Covad of the particular advanced service that a customer seeking to switch to Covad currently receives, which helps ensure a smooth transition when a customer migrates from one DSL provider to another.

Therefore, Covad benefits in multiple ways from the creation of a new loop type. Furthermore, processing the orders to convert Covad’s loops from one loop type to another imposes costs on Verizon, for which Covad is the cost-causer — particularly if the new loop type was created at its request. For these reasons, Covad should pay the Commission-established, TELRIC-based rates for the conversion orders.⁴²

⁴² The creation of new product offerings, such as new loop types, to meet a specific CLEC’s request to deploy a new technology similarly imposes costs on Verizon. Because Covad is the cost-causer in this instance as well, it should pay for the OSS development involved in creating the new product offering.

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

With respect to Verizon North, Covad's proposals should be rejected because they are inapplicable to Verizon North's operations in Pennsylvania; Covad's proposals should also be rejected because they are overly detailed and would require Verizon PA and Verizon North to use an inefficient manual process where an automated process is available.

Covad proposes to add language to the agreement that specifies, in great detail, a manual cooperative testing process that Covad would require Verizon's technicians to follow when they provision an xDSL-capable loop ordered by Covad. *See Revised Proposed Language Matrix – Verizon PA at 13-15 (UNE Attach. § 3.13.13)*. The process described in Covad's proposed language was developed in the former Bell Atlantic jurisdictions, through a DSL collaborative proceeding that commenced in New York in August 1999. *See White Decl. ¶ 5*. This procedure, however, is not employed in Verizon's former GTE jurisdictions, such as Verizon North's territory in Pennsylvania; Bell Atlantic and GTE were separate companies at the time this process was developed. *See id. ¶ 6*. For this reason, Covad's proposed language with respect to Verizon North should be rejected and Verizon's proposed language should be adopted.⁴³ Covad has provided no evidence supporting the need for such a process to be instituted in Verizon North's territory in Pennsylvania. Indeed, as with nearly all the other issues in this arbitration,

⁴³ Verizon North's proposed language addressing cooperative testing begins, "[i]n the former Bell Atlantic Service Areas only." *Revised Proposed Language Matrix – Verizon North at 13 (UNE Attach. § 3.13.13)*. Although the language in this paragraph therefore does not apply in Verizon North's territory, Verizon North proposed including it in the parties' agreement because of the condition in the *Bell Atlantic/GTE Merger Order* that Verizon make interconnection agreements in one Verizon jurisdiction available for adoption in other Verizon jurisdictions. *See Bell Atlantic/GTE Merger Order ¶¶ 300-305*.

Covad's prior filings pertain exclusively to the former Bell Atlantic jurisdictions and make no mention of Verizon North. *See, e.g.*, Evans/Clancy Reply Decl. ¶¶ 46-51.⁴⁴

Even if there were reason to implement a cooperative testing process in Verizon North's territory, detailed processes such as Covad proposes for both Verizon North and Verizon PA should not be set forth in interconnection agreements, because the cooperative testing of loops is an operational matter that is subject to change over time. Those changes would be operationally difficult if parties had to amend their interconnection agreements each time they sought to modify the process. *See* White Decl. ¶ 5; New York Transcript at 135:13-18. For this reason, the language that Verizon PA has proposed describes the cooperative testing process at a reasonable level of generality,⁴⁵ while also providing that the parties may, by mutual agreement, augment, replace, or eliminate the existing testing requirement without having to amend the agreement. *See* Revised Proposed Language Matrix – Verizon PA at 13-14 (UNE Attach. § 3.13.13). In contrast, Covad has proposed much more detailed language and states only that the parties may “negotiate terms and conditions” for “additional testing . . . not covered by this

⁴⁴ The language that Covad currently proposes for both Verizon North and Verizon PA should also be rejected to the extent that it purports to require Verizon to perform cooperative testing on “any loop on which Covad has opened a maintenance ticket to close out any loop troubles.” Revised Proposed Language Matrix – Verizon PA at 14 (UNE Attach. § 3.13.13). Covad did not raise this issue in its petitions for arbitration or in the negotiations between the parties preceding the filing of the petition. Indeed, both the title of Issue 30 and the language Covad initially proposed are expressly limited to the cooperative testing of loops at the time Verizon provisions them. *See* Covad Petition Attach. A at 17-20 (UNE Attach. § 3.13.13); *id.* Attach. C at 13. Accordingly, this issue is not properly before this Commission. *See* 47 U.S.C. § 252(b)(4)(A) (“[t]he State commission shall limit its consideration of any [arbitration] petition . . . to the issues set forth in the petition and in the response”).

⁴⁵ Specifically, Verizon PA's proposed language clearly states that Verizon PA will perform a cooperative test when it provisions an xDSL loop. *See* Revised Proposed Language Matrix – Verizon PA at 13-14 (UNE Attach. § 3.13.13). Cooperative testing is then defined as “a procedure whereby a Verizon technician, either through Covad's automated testing equipment or jointly with a Covad technician,” verifies that an xDSL loop “is properly installed and operational prior to Verizon's completion of the order.” *Id.* at 13.

Agreement,” implying that those detailed procedures will apply throughout the life of the agreement and that any additional procedures must be incorporated into the interconnection agreement via an amendment. *Id.* at 14.

Finally, Covad’s language should be rejected because it would require Verizon to conduct inefficient and burdensome manual testing, even when mechanized testing of the loop is available. As the record in this proceeding demonstrates, Covad has developed, and Verizon is using, automated testing equipment, known as the Interactive Voice Response (“IVR”) unit. The IVR provides for the “same kind of work and functionality” as the manual testing process developed through the DSL Collaborative during the “early stages of deploying DSL” when automated testing equipment was not available. New York Transcript at 119:17-24, 121:12-18; *see* White Decl. ¶ 9 (“an automated testing process . . . mak[es] the labor intensive cooperative testing process unnecessary”). The automated test, however, is more efficient than the manual process. While the automated test takes “a couple of minutes,” New York Transcript at 131:19-20, a manual test could last as long as 30 minutes — up to 15 minutes for Covad’s technician to answer the phone and begin the test and up to 15 minutes to complete the testing, *see* Covad Petition Attach. E at 15 (UNE Attach. § 3.13.13).

Covad, however, seeks language that would obligate the parties, for the next three years, to perform cooperative testing manually rather than through the IVR. *See* Revised Proposed Language Matrix – Verizon PA at 14 (UNE Attach. § 3.13.13). Covad proposes that use of the IVR be limited to “sectionaliz[ing] troubles on loops connected to Covad’s network.” *Id.* That is, Verizon’s technician would use the IVR to isolate the location of any trouble that might exist on a loop, rather than calling Covad to have a Covad technician initiate a test for that purpose. The record in this proceeding, however, demonstrates that the IVR conducts the exact same test

as a manual cooperative test, but does so in a far more efficient manner. Thus, there is no reason, related to any need to test the quality of the loops that Verizon has provisioned, for performing a manual cooperative test when the IVR is available. As Verizon's witness explained, "the IVR becomes a useless piece of information" if Verizon may only use it for "pretesting." New York Transcript at 132:15-17.

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

Although Covad may dispute Verizon's determination that particular loops do not have the necessary technical specifications to handle one or more xDSL services, Covad should not be permitted to eliminate the agreed-upon requirement that it prequalify its orders for xDSL-capable loop types.

As described above with respect to Issue 12, both Verizon PA and Verizon North provide Covad with access to the same loop qualification information that Verizon uses to determine whether a loop possesses the appropriate technical capabilities to handle a particular advanced service. The parties have agreed that Covad will use this loop qualification information to "prequalif[y]" its orders for xDSL loop types. *See* Revised Proposed Language Matrix – Verizon PA at 12 (UNE Attach. § 3.13.7). That is, Covad has agreed to use the methods of accessing loop qualification information that Verizon PA and Verizon North provide in Pennsylvania before it submits an order for an xDSL loop.

To address the rare circumstances where Verizon's databases contain inaccuracies, Verizon's proposed language provides that Covad may dispute Verizon's qualification *information* with respect to a particular loop or group of loops. *See id.* Covad, however, seeks the broader right to challenge the prequalification *requirement* itself. *See id.* Covad has claimed that it seeks only "to reserve its right to contest any requirement that such orders must pass

prequalification,” in the event that “Covad uncovers significant and pervasive problems with Verizon’s prequalification tool for an order or sets of order[s].” Covad Petition Attach. C at 13.

Covad’s proposed language should be rejected. First, Covad’s assertion that it needs to reserve this right because “Verizon’s prequalification tool has proven to be unreliable on certain order types” (*id.*) is entirely unsubstantiated in the record. As explained above, Covad has introduced no evidence with respect to the loop qualification database that Verizon North uses in Pennsylvania, instead exclusively repeating complaints — which the FCC has repeatedly rejected — about the database Verizon uses in its former Bell Atlantic jurisdictions, including in Verizon PA’s territory in Pennsylvania. *See supra* pp. 25-26. In any event, the FCC “has never required incumbent LECs to ensure the accuracy of their loop qualification databases,” instead requiring only that the same information be made available to both Verizon and the CLECs, so that any “inaccuracies . . . would affect both Verizon and competitive carriers alike.” *Virginia 271 Order* ¶ 34.

Second, Covad’s proposed language is not merely a reservation of rights. Instead, it affirmatively states that the “Parties agree” that Covad has such rights — and Verizon does not agree. *See Revised Proposed Language Matrix – Verizon PA at 12 (UNE Attach. § 3.13.7)* (emphasis added). Nor has Covad ever explained why any reservation of rights language — if that were what Covad actually proposed — would be necessary.

34. In what interval should Verizon provision loops?

Covad’s proposed language should be rejected because it is contrary to federal law, which requires Verizon to provision loops in the interval that it provides to itself or in the Commission-established interval; Covad is not entitled to a shorter interval.

Under federal law, Verizon must provision loops that CLECs order “in substantially the same time and manner as it provisions orders for its own retail customers.” *Virginia 271 Order*

App. C ¶ 37. Consistent with that standard, Verizon has proposed that, for Covad’s loop orders, it will perform any conditioning or loop extension work, as well as any provisioning work, in the shorter of the following intervals: (1) the interval that Verizon provides to itself, or third parties, or (2) the Commission-adopted interval. *See* Revised Proposed Language Matrix – Verizon PA at 12-13, 15 (UNE Attach. §§ 3.13.10, 3.14). Covad, however, has proposed to add a third option to that list: ten business days for loop orders where Covad requests conditioning or loop extensions, and five business days for stand-alone loops where it does not request such work. *See id.* This proposed language — to the extent that it has any independent significance⁴⁶ — conflicts with the requirements of federal law and this Commission’s decisions. First, Verizon would be required to provision Covad’s loops in shorter intervals than it provisions analogous retail loops. As noted above, federal law requires only that Verizon provision Covad’s loops in “substantially the same time and manner” as it provisions analogous retail loops — it does not entitle Covad to shorter intervals. Second, where this Commission has established provisioning intervals, Verizon would be required to provision Covad’s loops in intervals shorter than those that this Commission has adopted for all CLECs. With respect to those products, therefore, Covad is asking this Commission to make an exception to its generally applicable rule for Covad’s benefit alone. Covad has offered no justification for such special treatment. For these reasons, Covad’s proposed language must be rejected.

Furthermore, Covad’s proposed language would dramatically change the manner in which Verizon North assigns due dates for UNE loops. Verizon PA offers numerous UNE loops on a standard interval basis — that is, where a CLEC can obtain a due date a specific number of business days after the submission of its order, as set out in Verizon PA’s Product Interval

⁴⁶ Where these intervals are longer than either the interval that Verizon provides to itself or the Commission-adopted interval, this additional language has no effect.

Guide, irrespective of Verizon PA's available work force and work load. *See* Bragg/Kelly Decl. ¶ 11. In contrast, Verizon North provisions all but one of the UNE loop types that CLECs order using a labor force management system, which assigns due dates to orders based on Verizon's available work force and the work load.⁴⁷ Therefore, not only could Covad's proposed language provide Covad with provisioning intervals better than those Verizon North provides to itself and to other CLECs, but also it would impose substantial costs on Verizon North by changing the way that Verizon North currently calculates due dates for these orders. Covad has provided no justification or evidentiary support for any purported need to restructure Verizon North's provisioning intervals in this manner.

As part of this issue, Covad has also proposed to change the provisioning interval for its orders for line-shared loops. Although both Verizon PA and Verizon North offer a standard interval of three business days for line-shared loops that require neither conditioning nor a dispatch — which applies to orders by CLECs and by Verizon's retail broadband group — Covad has proposed to reduce the interval for its orders to two business days. *See* Revised Proposed Language Matrix – Verizon PA at 16 (UNE Attach. § 4.2); Revised Proposed Language Matrix – Verizon North at 17 (UNE Attach. § 4.4.6). The Commission should reject this proposal. First, as explained above, Covad has no legal entitlement to provisioning intervals shorter than those Verizon provides to itself for comparable products, and Verizon provisions retail orders using a three-business-day standard interval. The 1996 Act does not “mandate that requesting carriers receive superior quality access to network elements.” *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁴⁷ The one exception is for orders for line-shared loops that require neither conditioning nor a dispatch, which is discussed below.

Second, Covad's proposed language is inconsistent with the performance measurement that this Commission adopted for Verizon PA, which requires Verizon to provision within three business days the same percentage of CLEC and retail orders. *See Abesamis/Raynor Decl.* ¶ 26. In fact, the Commission-established standard for Verizon PA goes beyond parity and also requires that Verizon PA provision at least 95% of CLEC line-sharing orders within three days, even if that is better than the performance that Verizon PA provides to its retail broadband group. *See id.* If Covad wishes to change those standards, it should seek to do so through the multilateral processes this Commission adopted in the *PMO II Order*, not through a bilateral arbitration. *See PMO II Order* at 86-88. Indeed, the existing three-business-day interval was established and reaffirmed through such industry-wide proceedings, under the auspices of the New York PSC.⁴⁸ If Covad's proposed language were adopted, however, the two-day interval would apply to its orders alone, which is inconsistent with the 1996 Act's strong policy in favor of equal treatment for all industry participants.

Finally, while the record in this proceeding demonstrates that Verizon would face substantial burdens if forced to comply with a two-day provisioning interval, there is no evidence in the record demonstrating that a two-day interval is necessary to provide Covad with a

⁴⁸ *See* Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case 00-C-0127, Opinion No. 00-12, at 6-7 (N.Y. PSC Oct. 31, 2000) ("*New York DSL Order*"); Order Modifying Existing and Establishing Additional Inter-Carrier Service Quality Guidelines, *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139, at 17-18 (N.Y. PSC Oct. 29, 2001). Covad misrepresents the New York PSC's orders, suggesting that the PSC sought to reduce the interval to two days or even one day. *See Evans/Clancy Decl.* ¶ 32. Although the participants in the New York proceeding may have discussed such reductions — because that was what Covad proposed — the New York PSC rejected Covad's proposal and, instead, established an initial interval of four days, to be reduced to three days by March 2001, with no further planned reductions. *See New York DSL Order* at 5-7.

meaningful opportunity to compete.⁴⁹ Because line-shared loops are offered on a standard-interval basis, Verizon is not permitted to adjust the due dates for these orders based on its workload and available work force. *See New York Transcript* at 153:7-19. The three-day interval provides Verizon with the time that is necessary for it to reallocate its work force to meet spikes in demand for both line-shared loops and all of the other wholesale and retail products and services that Verizon must provision in its central offices each day. *See id.* at 153:20 - 154:2, 156:19-23, 162:8-17, 162:24 - 163:3. If the interval were reduced to two days, Verizon would “have no ability to react effectively” to the fluctuations in demand in this manner. *See id.* at 154:16-21.⁵⁰

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

LSTs should be conducted pursuant to the process developed in New York and to which Covad agreed; because Covad’s proposed language is inconsistent with that agreed-upon process and should be rejected.

Through negotiations in the Digital Subscriber Line (“DSL”) collaborative, which operated under the auspices of the New York PSC, Verizon and interested CLECs — including Covad — “reached agreement” on a process for line and station transfers (“LSTs”). *New York DSL Order* at 25 n.1. Where a customer is currently served by digital loop carrier, which cannot

⁴⁹ Although Covad has pointed to the fact that BellSouth has a two-day line-sharing provisioning interval — an interval that, Verizon notes, also applies to BellSouth retail orders — Verizon’s witness explained that there are numerous potential differences between Verizon and BellSouth, including the volume of orders received, geography (*i.e.*, whether the territory is urban or rural and, thus, likely to have a lower or higher percentage of unmanned central offices), and the types of equipment in central offices, that could account for the different intervals. *See New York Transcript* at 155:3-23.

⁵⁰ Covad claims that Verizon can meet a two-day interval based on its understanding of the manner in which Verizon provisions hot cuts. *See Evans/Clancy Decl.* ¶ 33. However, as Verizon’s witness explained, and contrary to Covad’s belief, line-sharing orders are “more complicated” than hot cut orders and “there are more wires run for line sharing than there are for hot cuts.” *New York Transcript* at 157:11-22.

handle the copper-wire-based xDSL services that Covad orders, and there is a spare loop that meets the necessary technical specifications for that service, Verizon will perform an LST — that is, will rearrange the loops — in order to “provide[] a copper loop for DSL provisioning purposes.” *Id.* The parties’ agreement was adopted by, and codified in, an order of the New York PSC (*see id.*), which provided:

A Pair Swap or Line and Station Transfer done in conjunction with a Line Share Arrangement request 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. This new process *will be applied to all cases* where Verizon encounters the customer on DLC and where Verizon can automatically reassign the customer to a spare copper facility. This effort *involves additional installation work* including a dispatch and *will require an additional charge.*

Id. Attach. 2 (emphases added; footnote omitted). Verizon’s proposed language makes clear that it currently “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.” Revised Proposed Language Matrix – Verizon PA at 13 (UNE Attach. § 3.13.12).⁵¹

Covad, however, has proposed changes to each of the three italicized portions of the agreed-upon process set forth above. Each of Covad’s proposed changes is contrary to the terms of that process and should be rejected; Verizon’s proposed language should be adopted instead.

First, Covad has proposed that Verizon should not perform LSTs in all circumstances where there is a spare copper facility, but only “upon request of Covad” or “after obtaining Covad’s approval.” Revised Proposed Language Matrix – Verizon PA at 11, 13 (UNE Attach. §§ 3.13.4, 3.13.12). Even though the settlement agreement, to which Covad was a party and

⁵¹ Contrary to Covad’s claim, the LST process approved by the New York PSC applies only to xDSL loop orders and not to orders for T1s. *See* Covad Petition Attach. C at 15.

which the New York PSC approved, provided that Verizon would perform LSTs in “all cases,” Verizon is in the process of developing, in collaboration with Covad and other CLECs, a uniform process by which CLECs would indicate, on an order-by-order basis, whether they wish to have an LST performed. Until that new process has been implemented, however, Covad should remain bound to the terms of the agreement reached through the DSL collaborative and approved by this Commission, which does not permit Covad to request LSTs for particular orders.

Second, Covad proposes to add language with respect to the intervals in which Verizon must provision xDSL loops that require an LST. Specifically, Covad proposes to permit Verizon additional time, beyond the standard interval, where an LST is required to provision a line-shared loop, but no additional time beyond the standard interval for any other xDSL-capable loop. *See Revised Proposed Language Matrix – Verizon PA at 13 (UNE Attach. § 3.13.12)*. Yet, as part of the agreement reached through the DSL collaborative in New York, Covad and other CLECs acknowledged that performing an LST “involves additional installation work.” *New York DSL Order Attach. 2.*⁵² The agreement does not distinguish in any way between the “additional . . . work” required for line-shared loops and other xDSL-capable loops. Here, as well, Covad should not be permitted to renege on its prior agreement.

Third, even though Covad agreed that LSTs “will require an additional charge,” *id.*, Covad now seeks to require Verizon to perform LSTs for free. *See Revised Proposed Language Matrix – Verizon PA at 11, 13 (UNE Attach. §§ 3.13.4, 3.13.12)*. This Commission should reject Covad’s attempt to renege on its agreement.

⁵² In many instances, the work required for an LST involves the rearrangement of facilities currently used to provide service to other Verizon customers, so that a copper facility can be freed up for use by Covad. This process therefore involves working with existing services, swapping them from copper to fiber facilities, and providing the copper facilities to Covad. These activities require more time than a simple installation or even an LST to a spare (*i.e.*, vacant) copper facility.

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)?

Under federal law, Verizon has no obligation to provide Covad with so-called “line partitioning” — i.e., unbundled access to the high-frequency portion of the loop when a reseller provides voice service on that loop.

The FCC has conclusively held that Verizon has no obligation to provide Covad with unbundled access to the high-frequency portion of the loop when a reseller provides voice service on a loop. *See, e.g., Virginia 271 Order* ¶ 151 (rejecting Covad’s arguments); *see also* Verizon Opening Br. at 34. There is no reason to permit Covad to relitigate this issue here, especially in light of the FCC’s recent conclusion that “the high frequency portion of the loop (HFPL) is not an unbundled network element” in any circumstance. *Triennial Review News Release Attach.* at 2.

In an attempt to avoid this clear precedent rejecting its claimed right to engage in line partitioning, Covad has recast its argument and now claims that Verizon discriminates against resellers, because Verizon supposedly will not “make the voice services it provides . . . available on a resale basis at the same time that it makes the high frequency[] portion of the loop available to Covad as a network element.” Covad Opening Br. at 110 (emphasis omitted). Even aside from the fact that Covad, which is not a reseller, has no standing to complain on their behalf,⁵³ the FCC has previously rejected Covad’s claim that “Verizon discriminates against . . . resale voice providers,” noting that “Verizon does permit the resale of its DSL service over resold voice lines so that customers purchasing resold voice are able to obtain DSL services from a provider

⁵³ *See, e.g., Pennsylvania Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288-89 (3d Cir.) (“third-party standing requires the satisfaction of three preconditions,” including that “the third party must face some obstacles that prevent it from pursuing its own claims”) (citation omitted), *cert. denied*, 123 S. Ct. 102 (2002).

other than Verizon.” *Virginia 271 Order* ¶ 151. This service is offered pursuant to the Verizon Telephone Companies’ FCC Tariff No. 20, Part III, § 5.2 (Verizon DSL Over Resold Lines).⁵⁴

Furthermore, the fact that Covad is providing DSL service on a line, either through line sharing or a line-splitting arrangement, is no impediment to a customer switching voice service from Verizon or a UNE-P CLEC to a reseller. Indeed, Covad points to no instances — because there are none — where Verizon has refused to accept an order from a reseller because a CLEC is providing DSL service.⁵⁵ However, once the reseller provides the voice service, Verizon is no longer the voice provider on the line, and Covad is no longer entitled, under federal law, to have access to the high-frequency portion of the loop as a UNE. *See Virginia 271 Order* ¶ 151. Thus, no matter how Covad packages its claim, it is seeking the exact same right — access to the high-frequency portion of the loop as a UNE when a reseller is providing voice service over that loop — that the FCC has repeatedly held that Covad does not have.

⁵⁴ A copy of the tariff is available through <https://retailgateway.bdi.gte.com:1490/>.

⁵⁵ Nothing in the record supports Covad’s claim that “as many as 25% (?) [sic] of the requests” for xDSL service it receives in Pennsylvania could be provisioned through so-called line partitioning. *Evans/Clancy Decl.* ¶ 52. Even if true — and Covad apparently has its doubts — that claim would be irrelevant given that Verizon has no legal obligation to engage in line partitioning, and this Commission must resolve open issues in accordance with federal law.

F. Collocation

38/39. What interval should apply to collocation augmentations where a new splitter is to be installed?⁵⁶

The collocation augment interval is set forth in Verizon's tariff, and Covad should not be permitted, in its interconnection agreement, to modify that generally applicable interval or to insulate itself from future changes to that tariff that would apply to all other CLECs.

In its petitions for arbitration, and throughout this proceeding, Covad proposed language stating that an interval of no greater than 45 days will apply to its collocation augment requests where a new splitter is to be installed. *See* Covad Petition Attach. A at 22 (UNE Attach. § 4.3); *id.* Attach. B at 20 (UNE Attach. § 4.7.2). Pursuant to its filed tariffs, Verizon PA and Verizon North will perform augmentation of physical and cageless collocation within 45 days of receiving a completed collocation application. *See* Verizon Pennsylvania Inc., Pa. PUC Tariff No. 218, § 2(B)(2)(d); Verizon North Inc., Pa. PUC Tariff No. 9, § 19.4.1. Both Verizon PA's and Verizon North's proposed language incorporate the interval contained in the tariff. Therefore, Covad will receive the 45-day interval that it initially sought. *See* Revised Proposed Language Matrix – Verizon PA at 17 (UNE Attach. § 4.3); Revised Proposed Language Matrix – Verizon North at 18 (UNE Attach. § 4.7.2).

Furthermore, under Verizon's proposed language, if this Commission were to approve an amendment to Verizon's tariff, that new interval — whether it is longer or shorter than the existing interval — will apply to Covad's augment requests, just as it will apply to all other CLECs' requests. In contrast, Covad's proposal would apparently allow it to take advantage of

⁵⁶ Although the parties anticipated being able to resolve this issue through a global settlement agreement, *see* Pennsylvania Transcript at 160:1-161:22, that did not occur. The settlement discussions were (and are) confidential; therefore, it is not proper for Verizon to comment further on the content of those discussions.

any tariff amendment that shortens the applicable interval,⁵⁷ while ensuring that it is not subject to any longer interval that this Commission might approve in the future. Covad should not be permitted to play this heads-I-win, tails-you-lose game; the tariffed interval should apply to all CLECs, including Covad.

Now, however, Covad has changed its position in these arbitrations,⁵⁸ and proposes that the interval for its collocation augment requests where a new splitter is to be installed should be no greater than 30 days. See Revised Proposed Language Matrix – Verizon PA at 17 (UNE Attach. § 4.3); Revised Proposed Language Matrix – Verizon North at 18 (UNE Attach. § 4.7.2). While Covad’s proposed interval is consistent with the interim interval required by orders this Commission issued in 2000 and 2001 in proceedings involving Verizon PA (but not Verizon North) pending a collaborative on the issue,⁵⁹ the exact question of which interval should apply on a permanent basis is currently pending before this Commission in *Pennsylvania Public Utility Commission, Covad Communications v. Verizon Pennsylvania Inc.*, Docket Nos. R-00038348 & R-00038348C0001. In that proceeding, Covad is challenging Verizon PA’s recent filing of tariff language for line sharing collocation augments that is identical to Verizon’s New York tariff and that contains a 45-day interval. That proceeding, where Covad is also arguing for a 30-day

⁵⁷ Covad’s proposed language does not state where the collocation interval is to be found, just that it shall be no longer than a specified number of days.

⁵⁸ However, as Verizon has noted, Covad did not object to the application of the 45-day interval for line sharing collocation augments in the petition for arbitration it filed in New York. See Verizon Opening Br. at 51. Covad also sought a 45-day interval for such augments in the arbitration that it filed in Florida.

⁵⁹ See Opinion and Order, *Pennsylvania PUC v. Verizon Pennsylvania Inc.; Rhythms Links, Inc. v. Verizon Pennsylvania Inc.*, Docket Nos. R-00994697 & R-00994697C0001 (Pa. PUC adopted May 24, 2001) (“2001 Collocation Order”); Opinion and Order, *Petition of Covad Communications Co. for an Arbitration Award Against Bell Atlantic-Pennsylvania, Inc., Implementing the Line Sharing Unbundled Network Element; Petition of Rhythms Links, Inc., for an Expedited Arbitration Award Implementing Line Sharing*, Docket Nos. A-310696F0002 & A-310698F0002 (Pa. PUC entered Nov. 15, 2000).

interval, not this one, provides the appropriate forum in which to resolve this dispute, particularly because Verizon's proposed language states that the outcome of the tariff proceeding will control here. There is no reason for this Commission to adjudicate this issue twice, or to pre-judge its ruling in the tariff proceeding, which, unlike this bilateral proceeding, applies to all CLECs and not just to Covad.⁶⁰

In addition, Verizon notes that this Commission, in its 2001 order, determined that it was "not prepared to rule on the cable-only augment provisioning issue at this time." *2001 Collocation Order* at 48. Verizon is unaware of any other state commission to have adopted a 30-day interval for such augments. Numerous state commissions, however, have concluded that a 45-day interval is appropriate. *See New York DSL Order* at 7-10 (rejecting Covad's proposed 30-day interval and adopting 45-day interval); Order No. 76488, *Arbitration of Rhythms Links, Inc. and Covad Communications Company v. Bell Atlantic-Maryland, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 8842, Phase I, at 10 (Md. PSC Oct. 6, 2000) (same); *see also* Order Addressing Collocation Issues, *Provisioning of Collocation Space*, Docket No. P-100, Sub 133j, at 19, 297 (N.C. Utils. Comm'n Dec. 28, 2001) (adopting 45-day interval); Order, *Implementation of District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Formal Case No. 962, Order No. 12608, at 44-48 (D.C. PSC Dec. 3, 2002) (same); Final Order on Collocation Guidelines, *Petition of Competitive Carriers for Commission Action To Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory; Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for Generic Investigation To Ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated Comply with Obligation To*

⁶⁰ The tariff proceeding has been assigned to the same presiding officer as this arbitration, and the parties are currently engaged in settlement negotiations.

Provide Alternative Local Exchange Carriers with Flexible, Timely, and Cost-Efficient Physical Collocation, Docket Nos. 981834-TP & 990321-TP, Order No. PSC-00-0941-FOF-TP, at 35 (Fla. PSC May 11, 2000) (same).

For these reasons, this Commission should reject both the old and new language that Covad has proposed and should adopt the language that Verizon PA and Verizon North have proposed.

G. Dark Fiber

Since the filing of the Petition, Verizon and Covad have been able to resolve six of the ten original dark fiber issues in Covad's Petition. With respect to the four remaining open issues, the Commission should reject Covad's proposals because they go beyond the requirements of federal law. Moreover, Covad's proposals reflect its unfamiliarity with Verizon's current dark fiber practices in Pennsylvania, where Covad has never attempted to order dark fiber UNEs from Verizon. Indeed, the record demonstrates that Covad has not attempted to order dark fiber from Verizon in any state since 2001.

In addition to the four open issues, Covad seeks to insert a new issue into this proceeding concerning "acceptance testing" of dark fiber. In particular, in the Revised Proposed Language Matrix, Covad has proposed changes to § 8.2.19 of the UNE Attachment concerning the terms under which Verizon will test dark fiber after provisioning of the dark fiber circuit is completed.⁶¹ Verizon's proposed language with respect to § 8.2.19 has not changed, and Covad did not raise any dispute with respect to that language in its Petition, representing instead that it agreed with those terms. As a result, it is too late in the proceeding for Covad to shoehorn a new issue into the arbitration because, as the 1996 Act expressly states, this Commission must "limit

⁶¹ Such testing is not the same as the "field survey" that was part of Issue 47 and that has been resolved by the parties.

its consideration of any [arbitration] petition . . . to the issues set forth in the petition and in the response.” 47 U.S.C. § 252(b)(4)(A).⁶²

In any event, Covad’s proposed changes to § 8.2.19 are improper. In particular, Covad is seeking the right to “cancel” a dark fiber order after it has been provisioned (rather than submitting an order to “disconnect” the circuit), thereby avoiding payment of the applicable charges that compensate Verizon for provisioning the circuit for Covad. In essence, Covad is seeking a guarantee from Verizon that the dark fiber will meet certain transmission characteristics.⁶³ Verizon, however, provides dark fiber on an “as is” basis and does not guarantee the transmission quality of the fiber, nor does it have any legal obligation to do so. As the FCC’s Wireline Competition Bureau held, CLECs “may not hold Verizon’s dark fiber to a given standard of transmission capacity. The inclusion of dark fiber within the definition of the loop and transport UNEs gives [CLECs] access to the best spare fiber that Verizon has readily available, but it does not permit [them] to specify a standard of transmission capacity that

⁶² See *MCI Telecomms., Inc. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 793 (E.D. Mich. 1999) (state commission acted unlawfully by imposing limitation of liability provision when the issue of limitations on liability was not properly raised by either party in the petition or response); Order Granting Extension of Time, *Petition by Global NAPS, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Relief of Proposed Agreement with Bellsouth Telecom., Inc.*, No. 991220-TP, Order No. PSC-01-1423-FOF-TP (Fla. PSC July 2, 2001) (holding that belatedly-raised issues “were not identified in either Global NAPS’ petition for arbitration or BellSouth’s response” and therefore “we do not find it appropriate [under section 252(b)(4)(A)] to address [them] in this proceeding); Commission Decision, *Petition of Metro One Telecomms., Inc. for Arbitration*, No. ARB 100, Order No. 99-242 (Or. PUC Mar. 29, 1999) (same); Commission Decision, *Petition of Western Wireless Corp. for Arbitration*, No. ARB 8, Order No. 97-034 (Or. PUC Jan. 24, 1997) (same).

Covad asserts that this dispute is part of Issue 44, which addresses splicing, cross-connects, and intermediate office routing, not acceptance testing. Even if Covad were correct that accepting testing fits within the description of Issue 44 — and it is not — its failure to raise any objections it has to the language in § 8.2.19 in its Petition precludes this Commission from considering those objections now.

⁶³ Section 8.2.19 would not apply to a dark fiber circuit that does not pass light at all; Verizon tests the circuit itself to ensure that it passes light before completing provisioning.

exceeds the current capacity of the available fiber.” *Virginia Arbitration Order* ¶ 468 (footnote omitted). For this reason, Covad’s proposed language should be rejected.

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?

Under federal law, Verizon’s obligation to provide dark fiber is limited to fiber that is fully constructed, is physically connected to its facilities, and is easily called into service; Verizon is not required to construct new network elements for CLECs.

Verizon’s proposed language is consistent with the FCC’s regulations and orders defining dark fiber and should be adopted. Specifically, the *UNE Remand Order* defines dark fiber as “unused loop capacity that *is physically connected to facilities* that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by [CLECs] *without installation by the incumbent.*” *UNE Remand Order*⁶⁴ ¶ 174 n.323 (emphases added). “Unterminated” fiber⁶⁵ — *i.e.*, fiber that has not been installed between two accessible terminals in Verizon’s network (for example, between two end offices or between an end office and a customer premises) — does not meet this definition because it is *not* physically connected to facilities used to provide service and cannot be used *by anyone* without installation by Verizon. Indeed, the FCC expressly held that dark fiber must “connect[] two points within the incumbent LEC’s network” to be fully installed and available as a UNE. *UNE Remand Order* ¶ 325. Fiber that does not extend from one accessible terminal to another does not *connect* any point in the

⁶⁴ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”), *petitions for review granted*, *United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

⁶⁵ “Unterminated” is Covad’s term, not Verizon’s. Verizon does not endorse the use of this term as it implies that Verizon has intentionally left fiber in an “almost complete” state in an effort to “hide” it from CLECs, which is not true. Shocket/White Decl. ¶ 14.

network to any other point in the network. Such fiber, therefore, does not fall within the FCC's definition of a network element: it is neither "physically connected to the incumbent's network [nor] *easily called into service*." *Id.* ¶ 328 (emphasis added). Consistent with the FCC's definition, Verizon's proposed language states:

Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF [interoffice facilities] 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.

Revised Proposed Language Matrix – Verizon PA at 19 (UNE Attach. § 8.2.2).

Covad, however, has proposed to strike this language, even though "unterminated" fiber is not a UNE, based on its claim that terminating fiber at an accessible terminal is "an inherently simple and speedy task," and that Verizon supposedly would "protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility." Covad Petition Attach. C at 18. Covad has no basis for making this statement. There is no evidence whatsoever in the record that Verizon has ever deliberately left fiber "unterminated" for the purpose of "protecting" it from lease as a UNE anywhere in its footprint — let alone in Pennsylvania, where Covad has never attempted to order dark fiber. *See* Pennsylvania Transcript at 102:24-104:8.

In fact, the record demonstrates that the opposite is true. Verizon does not construct new fiber optic facilities to the point where the *only* remaining work item required to make them available and attached end-to-end to Verizon's network is to terminate the fibers onto fiber distributing frame connections at a Verizon central office or at the customer premises. *See* Shocket/White Decl. ¶ 19. Rather, if fiber strands have not been terminated on both ends, they

are not yet fully constructed in the network and thus do not “go anywhere.” *See id.*⁶⁶ Additional construction work, including pulling new lengths of fiber cable and splicing fiber end-to-end, would be required to complete the fiber route and terminate the fibers at both ends at accessible terminals. It is *not* simply a matter of terminating fibers at the accessible terminal, as Covad would have this Commission believe. *See* Shocket/White Decl. ¶ 19.

The law is clear that Verizon is not required to construct transmission facilities so that CLECs may access them at UNE rates, and thus it has no obligation under the 1996 Act to perform the splicing and other construction work to terminate fibers for Covad. The FCC’s Wireline Competition Bureau held, in the *Virginia Arbitration Order*, that “the Act does not require [Verizon] to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for . . . other carriers.” *Virginia Arbitration Order* ¶ 468. In doing so, the Bureau noted that Verizon is not required “to splice new routes in the field” for a CLEC, rejecting the same arguments presented by Covad here. *Id.* ¶ 457.

Nevertheless, Covad has attempted to add new language to § 8.2.1 of the UNE Attachment to compel Verizon to accelerate its construction of fiber facilities at Covad’s request. That language reads:

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

⁶⁶ Indeed, Covad’s proposed language contradicts the testimony of its own witness. On the one hand, Covad continues to insist that Verizon terminate fibers for Covad in response to a UNE request, and has proposed specific language requiring Verizon to splice fibers end-to-end to terminate them at an accessible terminal. On the other hand, Covad’s technical witness, Mr. Clancy, claimed that Covad does *not* want access to this “unterminated” fiber in Verizon’s network:

The fiber that [Verizon witness] John [White] described . . . that is laying in this building or laying in the manhole and I can’t use it because it doesn’t go anywhere? I don’t want that fiber.

Pennsylvania Transcript at 132:2-5.

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.

Revised Proposed Language Matrix – Verizon PA at 18 (UNE Attach. § 8.2.1). Covad has lifted this language from a proposal made two years ago in an arbitration proceeding between Verizon and Yipes Transmission, Inc. (“Yipes”) before this Commission. In doing so, however, Covad changed the language of the Yipes proposal in significant respects and omitted substantial portions of the language that the Commission *ordered* the parties to adopt, which expressly relieves Verizon of any duty to perform construction at Yipes’ request.

Indeed, the language in the Commission’s order was the result of a larger compromise between Verizon and Yipes. As part of the compromise, Yipes made no demand that Verizon splice new cable routes or otherwise perform construction on demand for Yipes, or that Verizon accelerate its own construction schedule for new fiber facilities. In fact, Yipes accepted language that limited dark fiber UNEs to “continuous” dark fiber strands, and agreed that Verizon would not be obligated to splice fiber end-to-end to complete a fiber route for Yipes. Most importantly, the language that the Commission ultimately adopted to implement the parties’ compromise “expressly relieves Verizon of a duty to accelerate construction at Yipes[’] request”⁶⁷ — the polar *opposite* of what Covad is demanding in this arbitration.⁶⁸ Covad has no

⁶⁷ Opinion and Order, *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon Pennsylvania, Inc.*, Case No. A-310964, at 14 (Pa. PUC Oct. 12, 2001). The language ultimately adopted by the Commission stated, *inter alia*, that “Verizon will not, at Yipes[’] request, perform or accelerate the performance of any fiber construction.” *Id.* at 13.

⁶⁸ As the Revised Proposed Language Matrix shows, Covad is insisting on several provisions that would require Verizon to perform splicing to create new fiber routes for Covad. See Revised Proposed Language Matrix – Verizon PA at 17 (UNE Attach. § 8.1.4) (demanding that Verizon “splice strands of Dark Fiber IOF together wherever necessary, including in the

right to demand, for its agreement with Verizon, only *portions* of compromise language between Verizon and Yipes. Therefore, the Commission should reject Covad's proposed addition to § 8.2.1.

Finally, Covad has proposed to strike language in § 8.2.2 of the UNE Attachment that requires Covad to access dark fiber UNEs at hard termination points (*i.e.*, accessible terminals), and prevents Covad from obtaining access to dark fiber at splice points. Verizon's proposed language conforms to applicable law. *See* Revised Proposed Language Matrix – Verizon PA at 19 (UNE Attach. § 8.2.2). A fiber that is accessed at a point other than an accessible terminal in a central office is a "subloop," not a "loop" or "IOF." The FCC's definition of the subloop network element prohibits access to dark fiber directly at splice points. *See* 47 C.F.R. § 51.319(a)(2) ("The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable *without removing a splice case to reach the wire or fiber within.*") (emphasis added). The FCC's Wireline Competition Bureau recently confirmed that CLECs may obtain access to dark fiber only at hard termination points, not splice points. *Virginia Arbitration Order* ¶¶ 451-453 (holding that access to dark fiber at splice points is not technically feasible and is not required under the FCC's rules).

Indeed, as a result of a collaborative Technical Workshop in 2001 in Docket Nos. R-00005261 and R-00005261C0001, this Commission adopted the Commission Staff's recommendation that access to dark fiber directly at splice points is not technically feasible.

outside plant network, to create a continuous Dark Fiber IOF strand between two Accessible Terminals"); *id.* at 19 (UNE Attach. § 8.2.3) ("Verizon will perform splicing 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.").

Rather, access to dark fiber must take place at an accessible terminal using fiber optic connectors. *See Order, Report to the Pennsylvania Public Utility Commission Regarding the Technical Workshop on Access to Dark Fiber at Existing and New Splice Points*, Docket Nos. R-00005261 & R-00005261C0001, at 3 (Pa. PUC entered June 3, 2002) (“*Splice Point Order*”). As a result, the Commission directed Verizon to amend its tariff to include terms and conditions for creating accessible terminals adjacent to existing splice points — at the CLEC’s expense on a time and materials basis — so that the CLEC may access dark fiber at the accessible terminal (not at the splice point itself). *Id.* at 4.⁶⁹ The Commission declined to require Verizon to create *new* splice points for CLECs.

Verizon’s proposed language is consistent with the Commission’s *Splice Point Order*. Verizon’s proposed §§ 8.2.2 and 8.2.3 require Covad to access dark fiber at accessible terminals in Verizon’s network, but provide that Verizon will open existing splice points to accommodate a request for Covad “if and, to the extent required by, Applicable Law.” Revised Proposed Language Matrix – Verizon PA at 19 (UNE Attach. §§ 8.2.2 & 8.2.3). Applicable Law in Pennsylvania requires that, pursuant to the terms of its dark fiber tariff, Verizon open existing splice points to create adjacent accessible terminals, where technically feasible, at the expense of a requesting CLEC. Thus, under Verizon’s proposed language, Covad may take advantage of the terms and conditions in Verizon’s tariff to obtain access to dark fiber at accessible terminals adjacent to splice points. Covad’s language, on the other hand, is overreaching, since it would require Verizon to provide access to dark fiber *directly* at splice points, and would require Verizon to create *new* splice points at Covad’s request — something that this Commission

⁶⁹ Verizon’s tariff includes other terms and conditions for ordering dark fiber at newly created accessible terminals, including minimum term and volume commitments. *See Splice Point Order* at 3.

determined that Verizon is *not* required to do. For these reasons, Covad's proposed changes to § 8.2.1 and § 8.2.2 should be rejected, and Verizon's proposed language should be adopted.

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

Covad's proposed language should be rejected because it attempts to expand Covad's right to dark fiber network elements beyond those required under Applicable Law.

Covad has proposed language that purports to entitle it to obtain unbundled access to dark fiber in any "technically-feasible configuration[]," regardless of whether such a dark fiber "configuration" is one of the enumerated network elements that must be unbundled under the FCC's rules. Revised Proposed Language Matrix – Verizon PA at 17 (UNE Attach. § 8.1.5). Covad's proposal is contrary to federal law and must be rejected by this Commission.

Under the FCC's rules, "dark fiber" is not a separate, stand-alone UNE. Rather, dark fiber is available to a CLEC *only* to the extent that it falls within the definition of one of the specifically designated UNEs set forth in 47 C.F.R. § 51.319(a) and (d) — in particular, the loop network element, subloop network element, or IOF.⁷⁰ Verizon's proposed language allows Covad to obtain access to dark fiber loops, dark fiber subloops, and dark fiber IOF, as the FCC defined those network elements. That is all that applicable law requires.

Nevertheless, Covad claims that even where dark fiber is not a loop, subloop, or IOF network element — though Covad offers no explanation as to what other unbundled network element it seeks to obtain — Verizon is compelled to provide access to that dark fiber whenever it is technically feasible to do so. To support its claim, Covad relies on language in § 251(c)(3)

⁷⁰ Section 51.319(a)(1) lists "dark fiber" as a "feature[], function[], and capabilit[y]" of the local loop network element. *See* 47 C.F.R. § 51.319(a)(1). Section 51.319(d)(1)(ii) designates "dark fiber transport" as an "interoffice transmission facility" network element. *See id.* § 51.319(d)(1)(ii). There is no mention of any other dark fiber network elements in the FCC's rules.

requiring “access to network elements on an unbundled basis at any technically feasible point.” Covad Pre-Hearing Brief at 121 (internal quotation marks and emphasis omitted). Covad puts the cart before the horse. Before an ILEC has an obligation to provide unbundled access to a particular network element under § 251(c)(3), the FCC must first determine *which* network elements must be unbundled, applying the “necessary” and “impair” standards under § 251(d)(2). Only then does the question of *where* a CLEC may access those network elements (*i.e.*, at a “technically feasible point”) come into play. Indeed, the Supreme Court has rejected the same argument that Covad advances here, holding that ILECs are *not* required to provide unbundled access to a network element merely because it is “technically feasible” to do so. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391-92 (1999).

In an attempt to allay Covad’s concerns, Verizon has agreed to include in § 8.1.5 of the UNE Attachment language stating that it will “provide Covad with access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law.” Revised Proposed Language Matrix – Verizon PA at 16 (UNE Attach. § 8.1.5). This language ensures that Covad’s right to access dark fiber under the Interconnection Agreement is coextensive with Applicable Law — which is all Covad is entitled to in an interconnection agreement arbitration under § 252 — but neither expands nor contracts either party’s legal rights.

44. Should Verizon make available dark fiber that would require a cross connection between two strands of dark fiber in the same Verizon central office or splicing in order to provide a continuous dark fiber strand on a requested route? Should Covad be permitted to access dark fiber through intermediate central offices?

Under federal law, Verizon is not required to splice fiber strands at a CLEC's request; however, the parties have agreed to terms for cross-connecting two terminated dark fiber IOF strands at intermediate central offices, and Verizon has agreed to provide combinations of network elements in accordance with Applicable Law.

This issue, as initially presented, raised two distinct issues: (1) whether Verizon is required to splice new end-to-end fiber routes for Covad, and (2) whether Verizon will provide fiber optic cross-connects between two separate dark fiber network elements at an accessible terminal in a Verizon central office without requiring Covad to collocate in that central office. With respect to the first issue, the law is clear that Verizon is not required to splice new fiber routes for a CLEC, for the reasons set forth above in the discussion on Issue 42. If fiber optic strands must be spliced together end-to-end to create a continuous, uninterrupted transmission path, that fiber route is not yet fully constructed and does not meet the definition of dark fiber. *See Virginia Arbitration Order* ¶¶ 451-453 (noting that Verizon is not required to splice new fiber routes for CLECs).

With respect to the second issue, however, Verizon *will* cross-connect dark fiber IOF strands at intermediate central offices for Covad, and the parties have agreed to language to accommodate such a request. This aspect of Issue 44 is resolved. As Covad's witness stated at the technical conference, "most of [Covad's] demand [for dark fiber] is going to be inter-office," Pennsylvania Transcript at 98, and thus the agreed-upon language should resolve the vast majority of Covad's need for fiber optic cross-connects in central offices.

However, during negotiations, Covad proposed language that would require Verizon to combine dark fiber IOF network elements with dark fiber loops by cross-connecting them at a Verizon central office (thus creating a dark fiber version of an enhanced extended loop, or “EEL”). Yet it is not clear that Verizon has an obligation to provide such combinations to CLECs under the FCC’s rules, nor does Verizon currently have a standard product offering of dark fiber IOF transport combined with dark fiber loops.

Federal law does not compel Verizon to provide UNE combinations under all circumstances.⁷¹ For example, the FCC has established local use restrictions that a CLEC must meet before it may order a UNE loop and transport combination and has held that these restrictions apply to combinations of dark fiber loops and dark fiber IOF.⁷² In addition, as the Supreme Court explained, an ILEC must combine elements for a CLEC *only* when the CLEC is unable to do the combining itself, and must provide only the “functions necessary to combine” the elements, not necessarily the actual, completed combination. *Verizon Communications*, 535 U.S. at 535 (citing 47 C.F.R. § 51.315(c)-(d)). Covad’s proposed language, however, would entitle Covad to obtain dark fiber combinations even when it does not satisfy the local use restrictions, and effectively eliminates *any* obligation on Covad’s part to combine the network elements itself, even where Covad *already* has a collocation arrangement at which it easily could

⁷¹ See *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 535 (2002) (“The duties imposed under the [combining] rules are subject to restrictions limiting the burdens placed on the incumbents.”).

⁷² Memorandum Opinion and Order, *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, 17 FCC Rcd 26303, ¶ 369 (2002). The FCC’s local use restriction prevents a carrier from substituting combinations of unbundled loop and transport network elements for special access services, unless such combinations are used to provide a significant amount of local exchange service. Supplemental Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760, ¶ 2 (1999).

combine the loop and IOF. Covad's proposed language thus clearly conflicts with the requirements of federal law and should be rejected.

Verizon proposes a better approach. The parties have already agreed to language that permits Covad to request that Verizon combine two or more network elements, which includes the dark fiber network elements, "to the extent . . . required by Applicable Law." Revised Proposed Language Matrix – Verizon PA at 21 (UNE Attach. § 16). Verizon's proposed language with respect to dark fiber expressly refers to § 16, as well as to § 8.1.5 and § 13,⁷³ thus making clear that Covad may request combinations of dark fiber network elements wherever it is entitled to do so under applicable law, which includes, among other things, the local use restrictions and the limitation on Verizon's obligation to combine elements for a CLEC, discussed above. Thus, Verizon's proposed language is coextensive with the requirements of applicable law, and neither expands nor contracts either party's legal rights.

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

Under federal law, Verizon is required to, and does, provide Covad with only that dark fiber information it actually possesses; the language Covad has proposed requests information that Verizon does not (and, likely, cannot) possess.

As explained by Verizon's witnesses, Verizon provides fiber information to CLECs in three different ways — wire center fiber maps (which show street-level information on Verizon's loop fiber routes within a wire center), dark fiber inquiries (which show specific dark fiber availability between particular points, known as "A" and "Z" points, on the maps at a given point

⁷³ Section 8.1.5 states that Verizon will "provide Covad with access to Dark Fiber in accordance with . . . Applicable Law," and § 13 includes agreed-upon provisions that apply when Covad seeks to order a UNE combination, like a dark fiber combination, for which Verizon does *not have a standard product offering, but which Verizon is required to provide pursuant to applicable law*. Revised Proposed Language Matrix – Verizon PA at 17 (UNE Attach. § 8.1.5); Verizon Response Attach. E at 74-76 (UNE Attach. § 13).

in time), and field surveys (which test the transmission characteristics of the fiber and physically verify the availability of specific fiber pairs). These three methods, in combination, are more than sufficient to permit Covad to determine dark fiber availability, and they mirror the process that Verizon uses to determine fiber availability for its own lit fiber services. Indeed, Verizon uses the same back office information to process dark fiber inquiries and field surveys that Verizon uses to assign fibers to Verizon's own lit fiber optic systems. *See* Shocket/White Decl. ¶ 32. Moreover, the FCC has expressly held that the three types of dark fiber information described above satisfy Verizon's requirements under the 1996 Act.⁷⁴

Although Covad initially sought arbitration on the language that Verizon has proposed relating to dark fiber inquiries and field surveys, the parties have subsequently reached agreement on those provisions. Therefore, the only disputed provision at issue here is § 8.2.20.1, which describes the type of fiber maps that Verizon will provide to Covad. In its original proposed language, Covad sought "maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction." Covad Petition Attach. A at 28 (UNE Attach. § 8.2.6.1). As Verizon indicated in its pre-filed testimony and at the technical conference, however, Verizon does not maintain such "maps" for its own use, and thus cannot provide such nonexistent "maps" for the cost of "reproduction." Shocket/White Decl. ¶ 30; Pennsylvania Transcript at 88. Rather, Verizon agreed to provide fiber layout maps by wire center that would show the location of fiber facilities, which could be used in conjunction with dark fiber inquiries and field surveys to determine actual availability of dark fiber on a particular route. This language is reflected in

⁷⁴ *See Maryland/DC/West Virginia 271 Order* ¶ 125 (holding that "Verizon's provision of information allows competitors to construct dark fiber networks in a nondiscriminatory fashion" and that "the three types of information that Verizon makes available allow [CLECs] to do long range planning, check the availability of dark fiber and perform detailed engineering"); *Virginia 271 Order* ¶ 147.

Verizon's proposed § 8.2.20.1. *See* Revised Proposed Language Matrix – Verizon PA at 20 (UNE Attach. § 8.2.20.1).

Covad, however, has now ratcheted up its demands for dark fiber information, importing bits and pieces of irrelevant language from proceedings in another state, and demanding information that Verizon does not have and that Covad does not need.

For example, Covad's proposed language in § 8.2.20.1 seeks "field survey test data," *id.*, which Covad can already obtain pursuant to agreed-upon language that permits it to request field surveys for a time and materials charge. In addition, Covad seeks access to "fiber transport maps . . . between any two points specified by the CLEC." *Id.* Verizon's proposed language, however, already provides Covad with access to fiber layout maps that show the street locations with fiber optic cable network. A "map" of IOF fiber would be nothing more than a "stick diagram" showing a line between two central offices. Pennsylvania Transcript at 101-02. Verizon generally does not create such "stick diagrams" for its own use. Moreover, such "maps" are unnecessary under the parties' agreed-upon language with respect to routing dark fiber through intermediate central offices. Covad need only provide Verizon with its desired A-to-Z locations in a dark fiber inquiry; Verizon will then search its records and provide to Covad the most efficient dark fiber route available between those two points, even if the route must go through intermediate central offices along the way. And, if no route is available on either a direct or indirect route, Verizon will identify for Covad the routes searched and the location of the first blocked segment along each route. Therefore, Verizon *already* provides Covad the

information that it needs to obtain dark fiber between “any two points specified by” Covad.

Creating superfluous “stick maps” of IOF fiber facilities on demand would serve no purpose.⁷⁵

The bottom line is that Covad has never requested information about Verizon’s dark fiber facilities in Pennsylvania, and it has not requested dark fiber *anywhere* in the Verizon footprint since 2001. Since the last time Covad placed a dark fiber order, however, Verizon has implemented substantial changes to its dark fiber inquiry and provisioning processes, which have been found by the FCC and other state commissions to comply with the requirements of the 1996 Act. There is no evidence in the record that the information that Verizon provides to CLECs in Pennsylvania — which is the same as in other states — is insufficient to permit Covad to determine the location and availability of dark fiber in Verizon’s network. Therefore, the Commission should reject Covad’s proposed language for § 8.2.20.1 of the UNE Attachment and adopt Verizon’s proposal.

⁷⁵ In the same vein, Covad has added new contract language to the second sentence of its proposed § 8.2.20.1, which purportedly would require Verizon to provide, within 30 days of a request from Covad, maps and an additional litany of information about routes between any two points specified by Covad. *See* Revised Proposed Language Matrix – Verizon PA at 20 (UNE Attach. § 8.2.20.1). Covad apparently lifted some of this language from conditions imposed by the Maine Public Utilities Commission (“Maine PUC”) in Verizon’s § 271 proceeding in that state, but also added terms that were *not* imposed by the Maine PUC. In particular, Covad demands information about “the most direct and two alternative routes (where available)” for any two points specified by Covad within 30 days of a request, without any requirement that it first submit (and pay for) a dark fiber inquiry. *Id.* The Maine PUC, however, required Verizon to provide information about alternative routes if — and *only* if — a dark fiber inquiry revealed that no dark fiber was available between the two points requested by the CLEC.

Moreover, those conditions were imposed *before* Verizon had implemented its new dark fiber processes and procedures for intermediate office routing. As described above, Verizon and Covad have reached agreement on language providing for intermediate office routing that provides Covad with information about alternative routes.

H. Pricing

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)?

Because Covad has not objected to any rates in Appendix A, those rates are binding on the parties — except that, to ensure nondiscriminatory treatment of CLECs, tariff amendments should supersede both the rates in Appendix A — and Covad is not entitled to retroactive application of different rates.

As with other issues in this arbitration, the title Covad has selected for the issue gives little indication of the actual dispute between the parties. This issue addresses the source of the rates for the unbundled network elements that Covad obtains from Verizon and the methods for modifying those rates. Verizon's proposed language establishes a hierarchy of sources for rates. First, rates shall be those stated in Verizon's tariffs. *See* Verizon Response Attach. E at 80 (Pricing Attach. § 1.3). Second, in the event that there is no tariffed rate, the rate shall be as stated in Appendix A. *See id.* (Pricing Attach. § 1.4). Third, in the event that a rate stated in Appendix A were to apply, that rate would be superseded by a rate in a later-filed tariff or in an order of this Commission or the FCC. *See id.* (Pricing Attach. § 1.5). Finally, additional provisions provide that, if a rate for a service is found in neither Verizon's tariff nor Appendix A, the rate shall be (in descending order of preference) the one expressly provided for elsewhere in the agreement, the FCC- or Commission-approved charge, or a charge mutually agreed to by the parties in writing. *See id.* (Pricing Attach. §§ 1.6-1.8).

In contrast, even though Covad has not objected to any of the specific rates in Appendix A to the Pricing Attachment (including rates that are set by reference to Verizon's tariffs), Covad seeks numerous revisions to Verizon's proposed language. For example, Covad has proposed to add language requiring Verizon to "warrant[] that the charges set forth in Appendix A . . . are . . . Commission or FCC approved charges." Revised Proposed Language Matrix – Verizon PA at

21 (Pricing Attach. § 1.3). Covad further proposes language that would require Verizon, if the rates in Appendix A are not “Commission or FCC approved,” to charge such rates on a retroactive basis (*i.e.*, “true up”) from the effective date of the agreement. Covad’s proposed language should be rejected.

As noted above, Covad has not raised a dispute with respect to *any* of the rates contained in Appendix A. Although Verizon has attempted to conform the rates in Appendix A to the requirements of applicable law, including this Commission’s UNE rate orders, Covad’s failure to object to any of those rates means that they are binding upon the parties, even if they are not Commission- or FCC-approved rates. *See* 47 U.S.C. § 252(a)(1) (“carrier[s] may negotiate and enter into a binding agreement . . . without regard to the standards set forth in [47 U.S.C. §§ 251(b)-(c)]”). Because the rates are “binding,” Covad is not entitled to retroactive application of different rates, and Verizon has no obligation to issue any warranties with respect to those rates. Indeed, the 1996 Act makes it incumbent upon the CLEC to identify the specific issues for which it seeks arbitration. *See id.* § 252(b)(2)(A)(i) (CLEC petitioning for arbitration must “provide the State commission all relevant documentation concerning . . . the unresolved issues”). Covad cannot short-circuit the 1996 Act process by placing on Verizon the burden of warranting that provisions to which Covad raises no objections comply with the requirements of the Act.

This is particularly true with respect to those portions of Appendix A that cross-reference Verizon’s tariffs. Verizon is legally obligated, under the filed rate doctrine, to charge the rates in its effective tariffs, regardless of whether the Commission or the FCC issued an order approving the rates or simply allowed the tariff to take effect. *See, e.g., Security Servs., Inc. v. K Mart Corp.*, 996 F.2d 1516, 1519 n.3 (3d Cir. 1993) (tariffed “rates [must] be charged by the carrier

and paid by the [purchaser] without exception”), *aff’d*, 511 U.S. 431 (1994); *Philadelphia Suburban Water Co. v. Pennsylvania Public Util. Comm’n*, 808 A.2d 1044, 1054 (Pa. Commw. Ct. 2002) (“rate of the carrier duly filed is the only lawful charge”). Verizon therefore has no obligation to warrant that the rates in its effective tariffs were also approved by the Commission or the FCC; nor can it retroactively bill different rates in the absence of a Commission or FCC order issued under appropriate statutory authority.

Another change Covad has proposed is the deletion of the provision stating that subsequent tariff filings will supersede rates listed in Appendix A. *See* Revised Proposed Language Matrix – Verizon PA at 22 (Pricing Attach. § 1.5). Verizon recognizes that, after the technical conference in this proceeding, this Commission issued an order in the Verizon PA-US LEC arbitration, in which it held that “the non-tariffed rates negotiated in [that] Agreement must remain in effect throughout the term of the Agreement and thus cannot be unilaterally changed through the filing of tariff revisions by Verizon.”⁷⁶ This Commission reasoned, in part, that Verizon’s proposed language “limit[ed] US LEC’s right to negotiate a fixed rate and also [limited] US LEC’s bargaining power in negotiating subsequent changes to the Agreement.” *US LEC Arbitration Order* at 75. Covad, however, has not sought to negotiate rates unique to either of the agreements at issue here; instead, the rates contained in Appendix A to each agreement are the standard rates that Verizon PA and Verizon North offer to all CLECs in Pennsylvania, which reflect Verizon’s attempt to conform the rates to the requirements of applicable law. If either Verizon PA or Verizon North later files a tariff with respect to one of these non-tariffed rates, it will update Appendix A accordingly — for example, so that it cross-references the tariff.

⁷⁶ Opinion and Order, *Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. A-310814F7000, at 74 (Pa. PUC entered Apr. 18, 2003) (“*US LEC Arbitration Order*”).

Therefore, unless those tariffed rates also apply to Covad's agreement, Covad could game the system by maintaining the rates in its older interconnection agreement, if they are more favorable than those available to all other CLECs in Pennsylvania under the current tariff. This is contrary to the express nondiscrimination principle in the 1996 Act.

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

Covad's proposal to require Verizon to provide individualized notice of non-tariffed rate changes after they take effect should be rejected because Covad has submitted no evidence demonstrating a need for such notice, which would be superfluous and unduly burdensome for Verizon to provide.

As the title of this issue suggests, Covad initially proposed language requiring Verizon to provide Covad with notice of tariff filings that change or establish new rates. In its briefs and at the technical conference, Verizon demonstrated (and Covad agreed) that it receives notice of such tariff filings. *See* Verizon Opening Br. at 52; Pennsylvania Transcript at 250:2-251-2; *see also* New York Transcript at 253:4-6, 255:4-7.

Covad has since revised its proposal and now seeks language that would require Verizon to provide Covad with "advance actual written notice . . . of any *non-tariffed* revisions that: (1) establish new Charges; or (2) seek to change the Charges provided in Appendix A." Revised Proposed Language Matrix – Verizon PA at 22 (Pricing Attach. § 1.9) (emphasis added). This revised language, however, is superfluous — the other provisions of the agreement already obligate Verizon to provide such notice.

First, Appendix A, which both expressly sets forth prices and also cross-references Verizon's tariffs, could be changed by amending Appendix A. Covad would be a party to any such amendment; thus, there is no need for a provision requiring "advance actual written notice" of such a change. Indeed, to the extent that Appendix A cross-references Verizon's tariffs —

which Verizon cannot change except through the filing of a tariff amendment — the only “non-tariffed revision[.]” that Verizon could make would be to amend Appendix A itself.

Second, to the extent the agreement contains provisions that permit Verizon to establish new charges without filing a tariff, those provisions already independently offer Covad advance notification of such charges. For example, the agreement provides for the establishment of new charges if “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.” Verizon Response Attach. E at 80 (Pricing Attach. § 1.5). Covad would clearly have independent notice of the Commission or FCC action approving such charges. The same is true of the provision that provides for rates to be established through “mutual[.] agree[ment of] the Parties in writing.” *Id.* (Pricing Attach. § 1.8).⁷⁷

Third, Covad continues to propose language that would obligate Verizon to provide it with an updated Appendix A, for informational purposes only, within 30 days after a “non-tariffed revision[.]” to the rates in the agreement becomes effective. Revised Proposed Language Matrix – Verizon PA at 22 (Pricing Attach. § 1.9). Covad’s proposed language should be rejected. Covad is as able as Verizon to make *informational* updates to Appendix A, and Verizon should not be required to perform such administrative tasks on Covad’s behalf.⁷⁸

⁷⁷ This section was inadvertently mislabeled as § 2.1.

⁷⁸ Although Verizon does revise its Appendix A from time to time for interconnection agreement negotiation purposes, it does not do so “within 30 days” of a rate change becoming effective, which is the time frame Covad’s proposed language specifies for the provision of an updated Appendix A. Revised Proposed Language Matrix – Verizon PA at 22 (Pricing Attach. § 1.9). Sending out revised versions of Appendix A, even if only for informational purposes, imposes substantial administrative burdens and costs on Verizon, which must provide such documents not only to Covad, but also to every other CLEC in Pennsylvania that requests them. Because Covad has not provided any evidence suggesting — let alone proving — that updated versions of Appendix A are necessary to ensure that Covad has a meaningful opportunity to compete, its proposed language should be rejected.

Indeed, because Covad will receive notice of such rate changes *before* they take effect, there is no reason to require Verizon to notify Covad *after* they take effect as well.

Finally, as Verizon explained at the technical conference, Covad has only ever identified to Verizon two instances where Verizon supposedly did not provide advance notice of a non-tariffed rate change. *See* Pennsylvania Transcript at 251:7-252:7. The two instances that Covad identifies — neither of which occurred recently — are not evidence of any kind of systematic problem that would justify the adoption of Covad’s language. Indeed, the FCC has repeatedly rejected CLECs’ claims that such “isolated problems are sufficient to demonstrate that [an ILEC] fails to meet the statutory requirements.” *Second Louisiana 271 Order*⁷⁹ ¶ 78; *see also, e.g., Maryland/DC/West Virginia 271 Order* ¶ 30 (“we find that such isolated incidents are not reflective of a systemic problem that would warrant a finding of checklist noncompliance”); *Virginia 271 Order* ¶ 57 (“we do not find that this isolated incident . . . rebuts Verizon’s demonstration of checklist compliance”). Instead, the FCC “look[s] for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete.” *New Jersey 271 Order*⁸⁰ ¶ 137. This Commission should do the same.

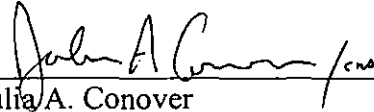
⁷⁹ Memorandum Opinion and Order, *Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599 (1998) (“*Second Louisiana 271 Order*”).

⁸⁰ Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, 17 FCC Rcd 12275 (2002) (“*New Jersey 271 Order*”).

III. CONCLUSION

For the foregoing reasons, Verizon's proposed language on the disputed issues in this arbitration should be adopted and Covad's proposed language should be rejected.

Respectfully submitted,



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PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.

2. The Commission is required to resolve open issues in an interconnection agreement arbitration in accordance with federal law, including the Federal Communications Commission's regulations, as it currently exists. *See* 47 U.S.C. § 252(c).

3. Issues not raised in the petitions for arbitration or in the responses thereto are not properly part of this arbitration and the Commission has no authority to adjudicate such issues. *See* 47 U.S.C. § 252(b)(4)(A).

4. The resolution of the parties' Unresolved Issues, as set forth in the Proposed Ordering Paragraphs, meets the requirements of sections 251 and 252(d) of the Telecommunications Act of 1996, 47 U.S.C. §§ 251, 252(d), including the regulations prescribed by the Federal Communications Commission pursuant thereto.

PROPOSED ORDERING PARAGRAPHS

1. That with regard to Issue No. 1, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in:

- a. Section 4.7 of the Agreements and
- b. Section 1.5 of the UNE Attachments

be incorporated into the Agreements.

2. That with regard to Issues No. 2 and 9, the originally proposed language of Verizon Pennsylvania and Verizon North Inc. in:

- a. Section 9.5 of the Agreements and
- b. The first sentence of Section 48 of the Agreements

be incorporated into the Agreements and that Section 9.1.1 of the Agreements (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company) be rejected.

3. That with regard to Issue No. 4, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices to replace Section 9.3 of the Agreements be incorporated into the Agreements.

4. That with regard to Issue No. 5, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Section 9.4 of the Agreements be incorporated into the Agreements.

5. That with regard to Issue No. 7, Section 14.3 of the Agreements (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company) be rejected.

6. That with regard to Issue No. 8, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Section 43.2 of the Agreements be incorporated into the Agreements.

7. That with regard to Issue No. 10, the language offered by DIECA Communications, Inc. d/b/a Covad Communications Company to add a paragraph at the end of Section 48 of the Agreements and to modify Section 2.11 of the Glossary be rejected.

8. That with regard to Issue No. 12:

- a. the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Section 8.1.4 of the Additional Services Attachments, and
- b. the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Section 8.2.3 of the Additional Services Attachments

be incorporated into the Agreements.

9. That with regard to Issue No. 13 in both arbitrations and Issue No. 38 in the Verizon North arbitration:

- a. Section 8.2.4 of the Agreements (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company) and
- b. the language offered by DIECA Communications, Inc. d/b/a Covad Communications Company to modify Section 4.4.3 of the UNE Attachment to the Verizon North Agreement

be rejected.

10. That with regard to Issue No. 32, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices to replace Section 3.13.5 of the Agreements be incorporated into the Agreements.

11. That with regard to Issue Nos. 19, 24, and 25, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Sections 1.2, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6

of the UNE Attachments be incorporated into the Agreements, and that the originally proposed language of Verizon Pennsylvania in Section 16 of the UNE Attachment be incorporated into the Agreement.

12. That with regard to Issue No. 22, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Section 1.9 of the UNE Attachment be incorporated into the Agreements.

13. That with regard to Issue No. 23, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Sections 3.1, 3.2, 3.3, and 3.4 of the UNE Attachments be incorporated into the Agreements.

14. That with regard to Issue No. 27, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Section 3.11 of the UNE Attachments be incorporated into the Agreements.

15. That with regard to Issue No. 30, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Section 3.13.13 of the UNE Attachments be incorporated into the Agreements.

16. That with regard to Issue No. 33, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Section 3.13.7 of the UNE Attachments be incorporated into the Agreements.

17. That with regard to Issue No. 34,

a. the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Sections 3.13.10 and 3.14 of the UNE Attachments and

b. the originally proposed language of Verizon North Inc. in Section 4.4.6 of the UNE Attachment to the Verizon North Agreement

be incorporated into the Agreements and that Section 4.2 of the UNE Attachment to the Verizon Pennsylvania Agreement (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company) be rejected.

18. That with regard to Issue No. 35, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Sections 3.13.4 and 3.13.12 of the UNE Attachments be incorporated into the Agreements.

19. That with regard to Issue No. 36, this proceeding be stayed pending completion of the New York Public Service Commission's proceedings in Case 00-C-0127.

20. That with regard to Issue No. 37:

a. Section 4.1 of the UNE Attachment to the Verizon Pennsylvania Agreement (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company) and

b. Section 4.2.1 of the UNE Attachment to the Verizon North Agreement (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company)

be rejected.

21. That with regard to Issue No. 38/39:

a. the language offered by Verizon Pennsylvania Inc. in its Revised Proposed Language Matrix for Section 4.3 of the UNE Attachment to the Verizon Pennsylvania Agreement and

b. the originally proposed language of Verizon North Inc. in Section 4.7.2 of the UNE Attachment to the Verizon North Agreement

be incorporated into the Agreements.

22. That with regard to Issue No. 42, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Sections 8.2.1 and 8.2.2 of the UNE Attachments be incorporated into the Agreements.

23. That with regard to Issue No. 43, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Section 8.1.5 of the UNE Attachments be incorporated into the Agreements.

24. That with regard to Issue No. 44, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Sections 8.1.4, 8.2.1, 8.2.2, 8.2.3, and 8.2.9 of the UNE Attachments be incorporated into the Agreements.

25. That with regard to the language offered by DIECA Communications, Inc. d/b/a Covad Communications Company to modify Section 8.2.19 of the UNE Attachments, which has no associated issue, be rejected.

26. That with regard to Issue No. 47, the language offered by Verizon Pennsylvania Inc. and Verizon North Inc. in their Revised Proposed Language Matrices for Section 8.2.20.1 of the UNE Attachments be incorporated into the Agreements.

27. That with regard to Issue No. 52, the originally proposed language of Verizon Pennsylvania Inc. and Verizon North Inc. in Sections 1.3, 1.4, and 1.5 of the Pricing Attachments be incorporated into the Agreements.

28. That with regard to Issue No. 53, Section 1.9 of the Pricing Attachments (as proposed by DIECA Communications, Inc. d/b/a Covad Communications Company) be rejected.

Revised Proposed Language Matrix – Pennsylvania – Verizon PA

Section	Covad Position	Verizon Position	Associated Issue(s)
Agrmt			
4. App. Law			
4.7	<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> <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. 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
9.4	If the billing Party fails to receive payment for outstanding	If the billing Party fails to receive payment for outstanding	Issue 5

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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 (including any unpaid previously billed late payment charges) per month. <u>Late payment charges shall be tolled during any period in which Verizon is analyzing the validity of a bill disputed by Covad and Verizon takes longer than 30 days to provide a substantive response to Covad.</u></p>	<p>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

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Section	Covad Position	Verizon Position	Associated Issue(s)
<p>43.2 Termination/ Assignment Upon Sale</p>	<p>Notwithstanding any other provision of this Agreement, Verizon may <u>assign</u> terminate this Agreement to the purchaser of as to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such <u>assignment</u> termination, 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>	<p>Issue 8</p>
<p>48. Waiver</p>	<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) & (c), and therefore nothing in this Principal Document or the Parties' Agreement waives either Party's rights or remedies available under Applicable Law, including 47 U.S.C. §§ 206 & 207.</u></p>	<p>A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.</p> <p>The Parties agree that Covad may seek in the future to negotiate and potentially arbitrate (pursuant to 47 U.S.C. §§ 251 and 252) rates, terms, and conditions regarding unbundled switching and interconnection of their networks for the purpose of exchanging voice traffic. Such negotiated and/or arbitrated interconnection and switching provisions would be added to this Principal Document as an amendment.</p>	<p>Issue 9 Issue 10</p>

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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, must will provide Covad with nondiscriminatory access to the same detailed information about the loop at within the same time <u>and manner that as</u> 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>UNE ATTACH.</p>			
<p>1.2 Combinations 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 such UNE or Combination, and the equipment and <u>that the</u> facilities necessary to provide such UNE or Combination, are available in Verizon's network (even if they do not have telecommunications services currently transmitted over them or are not currently being utilized by Verizon, except to the extent that Verizon is permitted under Applicable Law to reserve unused UNEs 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 except to the extent that such UNE or Combination would be constructed or deployed, upon request of a Verizon end user.</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>Issue 19</p>
<p>1.5</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 subject to Sections 4.6 and 4.7 of the General Terms and Conditions of this Agreement. If Verizon terminates its provision of a UNE or a Combination to Covad pursuant to this Section 1.5 and Covad elects to purchase other Services offered by Verizon in place of such UNE or Combination, then: (a) Verizon</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>Issue 1</p>

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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/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. <u>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.</u> 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>
<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> <u>The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, Issue 2, as revised from time to time, must be met, or alternatively,</u> eConnecting 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>

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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. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time to time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001, as revised from time to time. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u> The 2-wire HDSL-compatible loop is only available in Bell Atlantic service areas. Covad may order a GTE Designed Digital Loop to provide similar capability in the GTE service area.</p>	<p>"2-Wire HDSL-Compatible Loop" or "HDSL 2W" consists of a single 2-wire interfaces at each end that is generally suitable for the transport of digital signals simultaneously in both directions. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001, as revised from time to time. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities. The 2-wire HDSL-compatible loop is only available in Bell Atlantic service areas. Covad may order a GTE Designed Digital Loop to provide similar capability in the GTE service area.</p>	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. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, as revised from time to time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001. 4-Wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u> The 4-Wire HDSL compatible loop is available in former Bell Atlantic service areas. Covad may order a GTE 4-Wire Designed Digital Loop to provide similar capability in the former GTE service area.</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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	<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. <u>A separate charge will apply for such equipment.</u></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.. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u> <u>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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Section	Covad Position	Verizon Position	Associated Issue(s)
	<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 notwithstanding 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, <u>and after obtaining Covad's approval</u>. Verizon will perform a line & station transfer (LST) (as described below) <u>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</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 notwithstanding having received notice from Verizon during the pre-qualification process that the loop is "loop not qualified – T1 in the binder group" or in the same binder group as a "known disturber" as defined under FCC rules. Upon receipt of a valid LSR for such loop, Verizon will process the order in accordance with standard procedures. If Verizon needs to use manual procedures to process this LSR, it will do so at no charge to Covad. If necessary and as available, Verizon will perform a line & station transfer (LST) (as described below) subject to applicable charges. Upon the request of Covad, Verizon will provide Digital Designed Loop products for the loop in accordance with the Pricing Attachment or other forms of loop conditioning to be agreed upon by the Parties, subject to applicable charges.</p>	<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>, (i.e., in those cases where Verizon does not have the ability to provide electronic prequalification to itself or to a Verizon</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 <u>may also</u> must request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. The rates for manual loop qualification are set forth in the Pricing Attachment. Verizon will complete a manual loop qualification request <u>within the same intervals that Verizon completes manual loop qualifications for itself or a Verizon affiliate</u>. In general, <u>Verizon will complete the manual loop qualification within three one business days although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events</u>.</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 extending loops provisioning</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>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>After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.</p>	<p>Verizon provides to itself, or third parties or (2) the Commission-adopted interval.</p> <p>After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.</p>	
3.13.12	<p>If Covad orders a loop that is determined to be xDSL Compatible, but the Loop serving the service address is unusable or unavailable to be assigned as an xDSL Compatible Loop, Verizon will search the Customer's serving terminal for a suitable spare facility. If an xDSL Compatible Loop is found within the serving terminal, Verizon will perform, <u>upon request of Covad,</u> a Line and Station Transfer (or "pair swap") whereby the Verizon technician will transfer the Customer's existing service from one existing Loop facility onto an alternate existing xDSL Compatible Loop facility serving the same location. Verizon performs Line and Station Transfers in accordance with the procedures developed in the DSL Collaborative in the State of New York, NY PSC Case 00-C-0127. Standard intervals do not apply when Verizon performs a Line and Station Transfer <u>for line sharing loops,</u> and additional charges shall apply as set forth in the Pricing Attachment.</p>	<p>If Covad orders a loop that is determined to be xDSL Compatible, but the Loop serving the service address is unusable or unavailable to be assigned as an xDSL Compatible Loop, Verizon will search the Customer's serving terminal for a suitable spare facility. If an xDSL Compatible Loop is found within the serving terminal, Verizon will perform a Line and Station Transfer (or "pair swap") whereby the Verizon technician will transfer the Customer's existing service from one existing Loop facility onto an alternate existing xDSL Compatible Loop facility serving the same location. Verizon performs Line and Station Transfers in accordance with the procedures developed in the DSL Collaborative in the State of New York, NY PSC Case 00-C-0127. Standard intervals do not apply when Verizon performs a Line and Station Transfer, and additional charges shall apply as set forth in the Pricing Attachment.</p>	Issue 35
3.13.13	<p>In the former Bell Atlantic Service Areas only, Covad may request Cooperative Testing in conjunction with its request for an xDSL Compatible Loop or Digital Designed Loop. "Cooperative Testing" is a procedure whereby a Verizon technician, 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>	<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.</u> 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).</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 & 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 3rd party carrier reselling Verizon's voice services. In order for a Loop to be eligible for Line Partitioning, the following conditions must be satisfied for the duration of the Line Partitioning arrangement: (i) the Loop must consist of a copper loop compatible with an xDSL service that is presumed to be acceptable for shared-line deployment in accordance with FCC rules; (ii) a reseller must be using Verizon's services to provide simultaneous circuit-switched analog voice grade service to the Customer served by the Loop in question; (iii) the reseller's Customer's dial tone must originate from a Verizon End Office Switch in the Wire Center where the Line Partitioning arrangement is being requested; and (iv) the xDSL technology to be deployed by Covad on that Loop must not significantly degrade the performance of other services provided on that Loop. Line Partitioning is otherwise subject to all terms and conditions applicable to Line Sharing.</u></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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	or, (c) the standard provisioning interval for the Line Sharing arrangement that is required by Applicable Law.		
Proposed 4.3	Verizon will provision Line Sharing collocation augments in an interval of no greater than thirty (30) calendar days accordance with the terms of Verizon's PUC PA No. 218 Tariff, as amended from time to time.	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	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	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>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.</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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	in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length (unless the Parties agree otherwise in writing or as required by Applicable Law).		
8.2.2	Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF. 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	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	Issue 42 Issue 44
8.2.3	Except if and, to the extent required by, Applicable Law, Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request or permit Covad to contract a Verizon approved vendor to perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.	Except if and, to the extent required by, Applicable Law, Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request	Issue 44
8.2.9	Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be	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	Issue 44

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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, <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 cancel disconnect the dark fiber circuit.</u>	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>Verizon: None</p> <p>Covad: Issue 44</p>
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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	<p>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>		
<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)
	pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	
1.5	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.	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

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Section	Covad Position	Verizon Position	Associated Issue(s)
AGREEMENT			
4. Applicable Law			
4.7	<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> <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

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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 (including any unpaid previously billed late payment charges) per month. <u>Late payment charges shall be tolled during any period in which Verizon is analyzing the validity of a bill disputed by Covad and Verizon takes longer than 30 days to provide a substantive response to Covad.</u>	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
14. Dispute Resolution			
Proposed 14.3	If the issue to be resolved through the negotiations referenced in Section 14 directly and materially affects service to either Party's end user customers, then the <u>period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days</u> . Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures		Issue 7

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Section	Covad Position	Verizon Position	Associated Issue(s)
	<p><u>rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).</u></p>		
<p>43.2 Termination/ Assignment Upon Sale</p>	<p>Notwithstanding any other provision of this Agreement, Verizon may assign terminate this Agreement to the purchaser of as to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such assignment termination, which shall be effective upon the date specified in the notice.</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>	<p>Issue 8</p>
<p>48. Waiver</p>	<p><u>Except as provided in Section 9.1.1, a</u> failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.</p> <p>The Parties agree that Covad may seek in the future to negotiate and potentially arbitrate (pursuant to 47 U.S.C. §§ 251 and 252) rates, terms, and conditions regarding unbundled switching and interconnection of their networks for the purpose of exchanging voice traffic. Such negotiated and/or arbitrated interconnection and switching provisions would be added to this Principal Document as an amendment.</p> <p><u>No portion of this Principle Document or the parties' Agreement was entered into "without regard to the standards set forth in the subsections (b) and (c) of section 251," 47 U.S.C §§ 251 (b) & (c), and therefore nothing in this Principal Document or the Parties' Agreement waives either Party's rights or remedies available under Applicable Law, including 47 U.S.C. §§ 206 & 207.</u></p>	<p>A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.</p> <p>The Parties agree that Covad may seek in the future to negotiate and potentially arbitrate (pursuant to 47 U.S.C. §§ 251 and 252) rates, terms, and conditions regarding unbundled switching and interconnection of their networks for the purpose of exchanging voice traffic. Such negotiated and/or arbitrated interconnection and switching provisions would be added to this Principal Document as an amendment.</p>	<p>Issue 9 Issue 10</p>

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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 <i>under</i> this agreement.	Issue 10
ADDITIONAL SERVICES ATTACHMENT			
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, must will provide Covad with nondiscriminatory access to the same detailed information about the loop <u>at within</u> the same time <u>and manner that as</u> 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>		
UNE ATTACHMENT			
<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 such UNE or Combination, and the equipment and <u>that the facilities necessary to provide such UNE or Combination, are available in Verizon's network (even if they do not have telecommunications services currently transmitted over them or are not currently being utilized by Verizon, except to the extent that Verizon is permitted under Applicable Law to reserve unused UNEs or Combinations for its own use); and (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination <u>except to the extent that such UNE or Combination would be constructed or deployed, upon request of a Verizon end user.</u></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>Issue 19</p>
<p>1.5</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 <u>subject to Sections 4.6 and 4.7 of the General Terms and Conditions of this Agreement.</u> 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>		
3. Loop Transmission Types			
3.1	<p>"2-Wire ISDN Digital Grade Loop" or "BRI ISDN" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 kbps digital services using the ISDN/IDSL 2B1Q line code, as described in ANSI T1.601.1998 and Verizon TR 72575 (as TR 72575 is revised from time to time). In some cases loop extension equipment may be necessary to bring the line loss within acceptable levels. Verizon will provide loop extension equipment only upon request. A separate charge will apply for loop extension equipment. Verizon will relieve capacity constraints in the loop network to provide ISDN loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers. Covad connecting equipment should conform to the limits for 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>	Issue 23 Issue 24
3.2 ADSL	<p>"2-Wire ADSL-Compatible Loop" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer. ADSL-Compatible Loops will be available only where existing copper facilities are available and meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u> The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, Issue 2, as revised from time to time, must be met, or alternatively, connecting equipment should conform to the limits for SMC5 or SMC9 in T1-417-2001, as revised from time to time.</p>	<p>"2-Wire ADSL-Compatible Loop" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer. ADSL-Compatible Loops will be available only where existing copper facilities are available and meet applicable specifications. Verizon will not build new copper facilities. The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met, or alternatively, connecting equipment should conform to the limits for SMC5 or SMC9 in T1-417-2001, as revised from time to time.</p>	Issue 23 Issue 24

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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. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001, as revised from time to time. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u> The 2-wire HDSL-compatible loop is only available in Bell Atlantic service areas. Covad may order a GTE Designed Digital Loop to provide similar capability in the GTE service area.</p>	<p>"2-Wire HDSL-Compatible Loop" or "HDSL 2W" consists of a single 2-wire interfaces at each end that is generally suitable for the transport of digital signals simultaneously in both directions. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, Issue 2, as revised from time-to-time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001, as revised from time to time. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities. The 2-wire HDSL-compatible loop is only available in Bell Atlantic service areas. Covad may order a GTE Designed Digital Loop to provide similar capability in the GTE service area.</p>	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. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, as revised from time-to-time, must be met or alternatively, connecting equipment should conform to the limits for SMC2, SMC3 and SMC4 in T1-417-2001. 4-Wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities <u>except to the extent that it does so for its own customers.</u> The 4-Wire HDSL compatible loop is available in former Bell Atlantic service areas. Covad may order a GTE 4-Wire Designed Digital Loop to provide similar capability in the former GTE service area.</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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Section	Covad Position	Verizon Position	Associated Issue(s)
	<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. A separate charge will apply for such equipment.</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>	
<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, and <u>and after obtaining Covad's approval</u>, Verizon will perform a line & station transfer (LST) (as described below) subject to applicable charges <u>at no additional charge if Verizon does not charge its own customers for performing LSTs during the process of provisioning service</u>. Upon the request of Covad, Verizon will provide Digital Designed Loop products for the loop in accordance with the Pricing Attachment or other forms of loop conditioning to be agreed upon by the Parties, subject to applicable charges.</p>	<p>Covad may submit an order for a loop not withstanding having received notice from Verizon during the pre-qualification process that the loop is "loop not qualified – T1 in the binder group" or in the same binder group as a "known disturber" as defined under FCC rules. Upon receipt of a valid LSR for such loop, Verizon will process the order in accordance with standard procedures. If Verizon needs to use manual procedures to process this LSR, it will do so at no charge to Covad. If necessary and as available, Verizon will perform a line & station transfer (LST) (as described below) subject to applicable charges. Upon the request of Covad, Verizon will provide Digital Designed Loop products for the loop in accordance with the Pricing Attachment or other forms of loop conditioning to be agreed upon by the Parties, subject to applicable charges.</p>	<p>Issue 35</p>

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3.13.5	<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> <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 finding requirement for an order or set of orders. At Covad's option, and where available facilities exist, Verizon will provision any such contested order or set of orders as Digital Designed Loops, pending negotiations between the Parties and ultimately Covad's decision to seek resolution of the dispute from either the</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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	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 <u>provisioning of loops</u>: (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>After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.</p>	<p>The Parties will make reasonable efforts to coordinate their respective roles in order to minimize provisioning problems. Where conditioning or loop extensions are requested by Covad, the shortest of the following intervals applies for conditioning and/or extending loops: (1) the interval that Verizon provides to itself, or third parties or (2) the Commission-adopted interval.</p> <p>After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, <u>subject to Verizon's standard provisioning intervals.</u></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</u>, and additional charges shall apply as set forth in the Pricing Attachment.</p>	<p>If Covad orders a loop that is determined to be xDSL Compatible, but the Loop serving the service address is unusable or unavailable to be assigned as an xDSL Compatible Loop, Verizon will search the Customer's serving terminal for a suitable spare facility. If an xDSL Compatible Loop is found within the serving terminal, Verizon will perform a Line and Station Transfer (or "pair swap") whereby the Verizon technician will transfer the Customer's existing service from one existing Loop facility onto an alternate existing xDSL Compatible Loop facility serving the same location. Verizon performs Line and Station Transfers in accordance with the procedures developed in the DSL Collaborative in the State of New York, NY PSC Case 00-C-0127. Standard intervals do not apply when Verizon performs a Line and Station Transfer, and additional charges shall apply as set forth in the Pricing Attachment.</p>	Issue 35
3.13.13	<p>In the former Bell Atlantic Service Areas only, Covad may request Cooperative Testing in conjunction with its request for an xDSL Compatible Loop or Digital Designed Loop. "Cooperative Testing" is a procedure whereby a Verizon</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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	<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>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).</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; <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 & 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>		
4. Line Sharing			
<p>Proposed 4.2.1 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 3rd party carrier reselling Verizon's voice services. In order for a Loop to be eligible for Line Partitioning, the following conditions must be satisfied for the duration of the Line Partitioning arrangement: (i) the Loop must consist of a copper loop compatible with an xDSL service that is presumed to be acceptable for shared-line deployment in accordance with FCC rules; (ii) a reseller must be using Verizon's services to provide simultaneous circuit-switched analog voice grade service to the Customer served by the Loop in question; (iii) the reseller's Customer's dial tone must originate from a Verizon End Office Switch in the Wire Center where the Line Partitioning arrangement is being requested; and (iv)</u></p>		<p>Issue 37</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>		
<p>4.4.3</p>	<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 in accordance with applicable industry-wide performance standards <u>within two (2) business hours (weekends and holidays excluded).</u></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>	<p>Issue 38</p>
<p>4.4.6</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) <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> 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</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>	<p>Issue 34</p>

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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. Unless a different interval is stated in Verizon's applicable Tariff, a An interval of seventy-six (76) no greater than thirty (30) calendar business days shall apply.	Where a new splitter is to be installed as part of an existing Collocation arrangement, or where the existing Collocation arrangement is to be augmented (e.g., with additional terminations at the POT Bay or Covad's collocation arrangement to support Line Sharing), the splitter installation or augment may be ordered via an application for Collocation augment. Associated Collocation charges (application and engineering fees) apply. Covad must submit the application for Collocation augment, with the application fee, to Verizon. Unless a different interval is stated in Verizon's applicable Tariff, an interval of seventy-six (76) business days shall apply.	Issue 39
8. Dark Fiber			
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	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	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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	<p>terminates at a Verizon Accessible Terminal in Verizon's Wire Center of Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Except as provided in §§ 8.1.5, 13, and 16 of the UNE Attachment, Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Wire Center or Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure.</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>	

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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>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>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>Except if and, to the extent required by, Applicable Law,</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>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 <u>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.</u></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>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>	<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, 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.</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</p> <p>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><u>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.</u></p>		
PRICING ATTACHMENT			
1.3	<p><u>1.3 The Charges for a Service shall be the Commission or FCC approved Charges for the Service. Verizon represents and warrants that the charges set forth in Appendix A (attached to this Principal Document) are the Commission or FCC approved charges for Services, to the extent that such rates are available. To the extent that the Commission or the FCC has not approved certain charges in Appendix A, Verizon agrees to charge Covad such approved rates when they become available and on a retroactive basis starting with the effective date of the Agreement stated in the Providing Party's applicable Tariff.</u></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	In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.	Issue 52
1.5	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.	The Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The Charges stated in Appendix A of this Pricing Attachment also shall be automatically superseded by any new Charge(s) when such new Charge(s) are required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC (including, but not limited to, in a Tariff that has been filed with the Commission or the FCC), provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.	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

JOB TITLES OF VERIZON'S WITNESSES


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Alice B. Shocket	Senior Product Manager – Interconnection Services
John White	Executive Director, FTTP – Technology

CERTIFICATE OF SERVICE

I, Scott Angstreich, hereby certify that I have this day served a true copy of the Brief on the Merits of Verizon Pennsylvania Inc. and Verizon North Inc., upon the participants listed on the attached Service List, as indicated, in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Washington, D.C., this 24th day of June, 2003.

VIA EMAIL AND UPS OVERNIGHT DELIVERY



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