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March 10, 2003

WRITER'S DIRECT DIAL:

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VIA OVERNIGHT MAIL

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

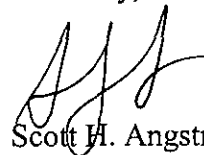
**Re: Docket Nos. A-310696F7000 and A-310696F7001
Petition for Arbitration of DIECA Communications, Inc. d/b/a Covad
Communications Company with Verizon Pennsylvania Inc. and
Verizon North Inc. Pursuant to Section 252(b) of the Communications
Act of 1934**

Dear Mr. McNulty:

Please find enclosed two copies of the transcript of the Technical Conference in Case 02-C-1175, Arbitration regarding the Interconnection Agreement between Verizon and Covad, held at the Offices of the Public Service Commission, One Penn Plaza, New York, New York, on February 4, 2003, for filing in the above matter as a late-filed exhibit, pursuant to a joint stipulation by the parties to this proceeding. A copy of the transcript is also being provided to Administrative Law Judge Chestnut, under separate cover. Please date stamp and return the extra copy of the transcript in the enclosed, self-addressed stamped envelope.

If there are any questions regarding this matter, please contact me at (202) 326-7959.

Sincerely,



Scott H. Angstreich

Enclosures

121

1 NEW YORK STATE PUBLIC SERVICE COMMISSION

2 -----x

3 Technical Conference in Case 20-C-1175,
4 Arbitration regarding the Interconnect
5 between Verizon and Covad

5 -----x

6

7 MINUTES OF the above-mentioned arbitration,
8 held at the Offices of the Public Service Commission,
9 One Penn Plaza, New York, New York, on February 4,
10 2003, commencing at 9:00 o'clock a.m.

11

12

13 BEFORE: JOEL LINSIDER,
14 Administrative Law Judge
15 Public Service Commission

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A-310696F7000

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1 JUDGE LINSIDER: On the record.

2 Good morning.

3 This is a technical conference in Case
4 O2-C-1175, the arbitration regarding the
5 interconnection agreement between Verizon and Covad.

6 Because it's an on-the-record technical
7 conference, which makes it a sort of hybrid
8 procedure, we will talk a little bit more about that,
9 how we're going to proceed, and I'll look to you for
10 advice and agreement on that.

11 But it certainly is formal enough that
12 we should begin with appearances of counsel.

13 The witnesses will be introduced later.

14 But let's just have appearances of
15 counsel first.

16 MR. HANSEL: Tony Hansel, of Covad
17 Communications.

18 MR. ANGSTREICH: Scott Angstreich,
19 Kellogg, Huber, for Verizon.

20 MR. PANNER: Aaron Panner, for Verizon.

21 MR. HARTMANN: Steve Hartmann, for
22 Verizon.

23 MS. GOMEZ: Gayton Gomez, for Verizon.

24 JUDGE LINSIDER: Okay.

1 Let me first ask -- actually, as part of
2 the procedure, I told the Reporters to feel free to
3 raise concerns that they may have in order to make
4 sure that they are able to take everything down,
5 because it's a little more confusing for them than it
6 is at a formal hearing.

7 So please keep that in mind.

8 Let's start.

9 Before we talk about how to proceed on
10 the issues that we have to deal with today, let me
11 first ask if any of the issues have been resolved and
12 taken off the table.

13 I had been hoping that the parties have
14 been talking all along, and that those discussions
15 might have been productive to the point of resolving
16 a few issues.

17 Has any of that happened?

18 MR. HANSEL: Yes, your Honor.

19 Just off the top of my head, I can think
20 of 24A has been taken off the table.

21 I'm trying to remember exactly what was
22 in this particular part of the pleading process. Was
23 it issue six, as well?

24 MR. PANNER: I think Tony is correct,

1 that 24A was resolved, and of the issues that were
2 briefed in this phase, I believe that's the only one.

3 JUDGE LINSIDER: Okay. But some of the
4 ones then that were reserved for legal briefs have
5 been resolved.

6 I'm inferring that from the fact --

7 MR. PANNER: Oh, yes, from when the
8 petition was originally filed, yes.

9 JUDGE LINSIDER: The only one of the
10 issues that's before us now, that's off, is 24A.

11 Okay. The way I envision what we're
12 going to do today, and in some sense, I'm thinking
13 aloud, so I'm going to ask your comments afterwards,
14 is that we will take the issues one by one.

15 With one exception, I found the grouping
16 of the issues in Verizon's reply brief to be a
17 reasonable one for procedural purposes, and we will
18 take them in the order in which they appear in
19 Verizon's reply brief, except that I thought Covad
20 soundly grouped number 32 with number 13, and we will
21 take those two together.

22 And going issue by issue, I guess we can
23 start each issue by asking each party whether there
24 is anything in general that they want to say about it

1 that doesn't appear in the written pleading, and then
2 open it up to questioning by one party of the other,
3 and have an exchange between the witnesses.

4 Before that process starts, since it is
5 on the record, I think the witnesses need to be sworn
6 as to what they are going to be saying today.

7 And for at least the beginning, as you
8 speak, mention your name until the Reporters get some
9 familiarity with who you are.

10 That's the outline of the process.

11 I know it's fairly vague. Let me open
12 that up for discussion.

13 MR. PANNER: Your Honor, that sounds
14 sensible enough. We had anticipated talking between
15 ourselves something along that line.

16 One thing that we had talked about, in
17 part, because of a schedule of one of our witnesses,
18 is we had talked about an ordering that would
19 actually begin, rather than beginning with issue two,
20 would begin by talking about issue 24, and issue 26,
21 which are two issues that deal with the advanced
22 services, and then some of the issues related to
23 unbundled network elements, and then go back to the
24 issues dealing with billing and OSS.

1 JUDGE LINSIDER: That's fine, if the
2 parties are in agreement on that, sure.

3 I take it that's because those witnesses
4 may need to leave early.

5 MR. PANNER: Yes.

6 JUDGE LINSIDER: Okay. That actually
7 opens up one other procedural point, which is
8 schedule.

9 We've got the two days reserved. Do you
10 have any sense yet whether it's likely to go the two
11 days, or do you think we will be able to finish it up
12 today?

13 MR. HANSEL: At this point, I think it's
14 reasonable to believe that we can finish today, but
15 certainly I can't predict how things are going to go.

16 With respect to the procedures that you
17 described, I would also suggest that perhaps a
18 twenty-second introduction of the issue, perhaps
19 before we go into questions, would kind of frame the
20 issue for everybody so that everybody is basically
21 talking on the same page.

22 JUDGE LINSIDER: Yes. That's what I
23 actually contemplated, and I'm glad you said twenty
24 seconds, because, with lawyers involved, twenty

1 seconds can have a different meaning than it might
2 otherwise.

3 All right. Then as far as finishing
4 today or not, we should do a fairly rigorous status
5 check about that sometime early afternoon, so that
6 the people who need to cancel hotel reservations, if
7 we do finish today, will be able to do that.

8 Okay. Any other preliminaries that need
9 to be discussed?

10 All right, let's swear the witnesses,
11 and as part of that, I will ask you to identify
12 yourselves.

13 Verizon first.

14 MR. HANSEN: My name is Ron Hansen,
15 Senior Manager, Wholesale Billing Insurance, with
16 Verizon.

17 MS. ABESAMIS: I'm Beth Abesamis, also
18 with Verizon.

19 MS. CLAYTON: Rose Clayton, Senior
20 Product Manager for Advanced Services.

21 MR. KELLY: Dave Kelly, from Verizon.

22 MR. BRAGG: Bill Bragg, from Verizon.

23 MR. WHITE: John White.

24 JUDGE LINSIDER: I will ask the Verizon

1 witnesses to stand.

2 (Witnesses sworn by Judge Linsider.)

3 JUDGE LINSIDER: Thank you.

4 For Covad.

5 MR. CLANCY: Michael Clancy.

6 MS. EVANS: Valerie Evans.

7 JUDGE LINSIDER: I will ask you to stand
8 to be sworn.

9 (Witnesses sworn by Judge Linsider.)

10 WITNESSES: I do.

11 JUDGE LINSIDER: Okay. You said we
12 would start with issue 24.

13 And I guess we should alternate as to
14 who makes the first opening statement on each issue.

15 Do you want to toss a coin for the
16 first?

17 MR. PANNER: I yield to my adversary.

18 MR. CLANCY: Covad requests that the
19 agreement make clear that Covad has the right, under
20 applicable law, to deploy services that either, one,
21 fall under any of the loop type categories enumerated
22 under this agreement, or two, do not fall under any
23 of the loop type categories.

24 Covad is lawfully entitled to deploy

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1 over union loops any advanced service that complies
2 with industry standards, or have been approved by
3 relevant authorities.

4 Verizon desires to impose limitations,
5 or otherwise Covad's employment of advanced service
6 technologies over union loops, through Verizon's
7 prefabricated selection of loops.

8 Verizon's proposal that Covad submit a
9 bona fide request in order to provide a service that
10 complies with industry standards, because the service
11 does not fall under one of Verizon's predefined loop
12 type categories, serves to restrict the services that
13 Covad may put over that.

14 Verizon's explanation that Covad would
15 have to wait approximately ninety days before Verizon
16 completes this process demonstrates this, and is
17 unacceptable.

18 JUDGE LINSIDER: Thank you.

19 Verizon.

20 MR. WHITE: There is two issues before
21 us here.

22 One is a technical issue which is
23 related to some legal requirements, and the other is
24 a product issue.

1 So I'll let Rose do a piece of it.

2 But from a technical standpoint, when we
3 have XDSL, we do have to worry about, and we are
4 required to do spectra management.

5 And we are required to also provide the
6 technology types, so that people can manage and know
7 whether to anticipate whether there will be a
8 spectrum problem or not.

9 So, because we have that requirement to
10 manage and we need to know what kind of technology is
11 being put on the loops, and the product categories we
12 use, we attempted to do that and put them in major
13 buckets.

14 We aren't saying no to deploying any
15 technology that Covad wants to deploy. We are saying
16 we need to keep track off it.

17 MS. CLAYTON: Just to add onto it, in
18 addition to what Mr. White said, there is a claim
19 that Verizon is attempting to dictate what
20 technologies may be deployed over the union loops.

21 We are compliant with the Telcom Act of
22 '96.

23 The New York Commission, as well as
24 others, has looked at our 271 applications, has

1 approved our 271 applications, and we are compliant
2 as far as our making available both analogue and
3 digital loops.

4 We're also complaint with the line
5 sharing Order.

6 The line sharing Order presents us with
7 an obligation to obtain from CLEC's the type of
8 technology that CLEC's are deploying over the
9 advanced service loops, and that's why, as Mr. White,
10 said we need the corresponding identifiers on the
11 loops, so we are able to identify those technologies.

12 We have an obligation, in return, if we
13 were asked by a CLEC, if they ask what a winder group
14 contains, we have an obligation to present that
15 material back.

16 The only way we are able to do that is
17 if we know what technologies are actually within the
18 binder group itself.

19 In the FCC arbitration in Virginia, the
20 FCC ordered Verizon and CLEC's to submit service
21 orders and receive service orders by what we call
22 NC/NCI code, for network channel, network channel
23 interface communication.

24 And again, that's a way of maintaining

1 the technologies that are within the binder groups.

2 I believe we are responsive to CLEC's or
3 competitors' requests for various loop types from a
4 product perspective. We have made analogue loops
5 available, we have made various types of digital
6 loops available.

7 If the competitors feel there is not a
8 digital loop that's available that they want to offer
9 to their end users, they can come to us in several
10 manners.

11 They can come to us with a bona fide
12 request, and submit the request, we will analyze it,
13 and we will present the information or our analysis
14 back.

15 They can also come in through the change
16 control process, which is a formal process. All of
17 the CLEC's participate in the change control process,
18 and we do offer various enhancements to existing
19 product lines, when the need comes up.

20 There is also discussion about what is
21 called an NRIC proposal in the testimony.

22 It's true, we have supported the NRIC
23 proposal that's on the table today. Actually, that
24 NRIC proposal has been out there since November,

1 2001, and a decision has not been made yet.

2 When a decision is made, we will be
3 compliant with the NRIC proposal, if a decision is
4 made to move forward with it.

5 And basically, what the NRIC proposal
6 states is that in exchange for Verizon no longer
7 having the obligation to say what is contained in a
8 binder group, then we would no longer require CLEC's
9 unless interference was an issue, to tell us what was
10 actually contained, or what they were ordering as far
11 as loop designations.

12 JUDGE LINSIDER: Before we begin the
13 exchange, as part of the procedure, John, Mike and I
14 may jump in at any point with questions, and let me
15 do that now on this issue, to focus some of the
16 discussion.

17 I'm hearing a little bit of disconnect.

18 Covad has really framed the issue as one
19 of Verizon restricting what is available to Covad.

20 Verizon, at least initially, framed the
21 issue as one of making everything available that
22 Covad wants, but simply needing to keep track of what
23 is out there, and that all Covad needs to do is
24 provide Verizon the information.

1 That may be very optimistic about
2 finding an easy way out of this.

3 And I see Mr. White shaking his head as
4 to my characterization of Verizon's characterization.

5 But then, what I heard from Ms. Clayton,
6 suggested that maybe there was something more going
7 on, and that there were potential restrictions on
8 what and how Covad would get particular services.

9 Now, which are we talking about?

10 Are we talking about restrictions on
11 what Covad can get, and how it gets it; or are we
12 simply talking about requiring Covad to keep Verizon
13 apprised of everything that's going on, so that
14 Verizon can discharge its responsibilities to manage
15 the network, and perform other activities that it
16 needs to perform?

17 MR. WHITE: At the present time, we
18 address everything that Covad wants to do, but the
19 way the words are, it's very open-ended.

20 If they wanted to do another technology,
21 and they wanted to just reuse one of our product
22 loads, their wording would not allow us to
23 differentiate that.

24 JUDGE LINSIDER: What about wording that

1 would allow them to do it, but provide you the
2 information that you need to do what you need to do?

3 MR. WHITE: And that is in order to do
4 that we have to have a separate identifier, so that
5 is why there is a process to say we're going to use a
6 new product, with a new interference characteristic,
7 and we would have to create a new identifier.

8 That's the work effort.

9 JUDGE LINSIDER: It's simply creating
10 the identifier, it's not restricting Covad's use.

11 Does that take care of Covad's concern?

12 MR. CLANCY: No, it does not.

13 Because the way that the bureaucracy is
14 associated with doing this identification, for
15 example, going through change management, Verizon's
16 change management, it's really industry change
17 management for Verizon East, or industry change
18 management for Verizon West, two separate channels,
19 on average a type five change request, which is a
20 CLEC initiated, on average has taken eighteen months
21 to resolve.

22 Verizon participates in industry
23 standard setting bodies that set the standards for
24 spectrum, and we only want to use the loops within

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1 those standards, within those parameters.

2 That's what was recommended in the
3 language at issue here, is that we wanted to use
4 classes that are identified, and not be restricted
5 into the products that Verizon decided to develop for
6 its own retail channel.

7 JUDGE LINSIDER: So the issue is not
8 that Verizon is restricting what Covad can use, de
9 jure, but rather that, by taking so long to process
10 the information that it says it needs to get from
11 Covad, the duration of that process restricts Covad's
12 use de facto.

13 MR. CLANCY: Let me use an example.

14 During the line sharing collaborative,
15 Verizon felt, and it is in part for this obligation
16 that they felt they had based on the on line sharing
17 Order, that they needed to test the interference, the
18 near end cross talk interference, that might be
19 created between a higher speed DSL service, which was
20 on the stand alone DSL, versus the line sharing DSL,
21 and they felt that there was a requirement to put
22 coaxial cables, instead of switchboard cabling between
23 the collocation arrangement and the main distributing
24 frame in Verizon's central offices.

1 Testing concluded that that was an
2 unfounded fear.

3 In addition, we had issues with Verizon
4 that have been resolved over the way they managed
5 spectrum on older technologies.

6 So, the spectrum management of the
7 network is kind of a thorny issue. It is discussed
8 in detail in these industry standard setting bodies.

9 The testing is performed by independent
10 laboratories, and the participant in the standard
11 setting bodies get to participate in those tests, and
12 bet those tests.

13 So Verizon has significant resources
14 dedicated to that, far more significant than Covad
15 does.

16 And when those industry standard setting
17 bodies, like IEEE or DSL forum issue standards, the
18 assumption is that the industry already verified the
19 spectrum compatibility issues, and all those other
20 issues, and any kind of warning flag about a
21 particular service would be identified during those
22 tests.

23 So there is no need to do a DFR, do
24 these other things to use a facility that's already

1 been tested.

2 MS. CLAYTON: In response to that, I'd
3 like to say that when the line sharing Order first
4 came out, it did identify certain technologies that
5 were compatible to a line-sharing type arrangement.

6 We were also given a date when to be
7 compliant by. And this very Commission, oversaw the
8 process as far as the trial that took place, the
9 status reports, the implementation date.

10 The technologies that were identified in
11 the line sharing Order had been made available to the
12 CLEC's, and were in place by the time the limitation
13 date happened.

14 So, the ADSL's, the technologies that
15 are compatible with line sharing, are available to
16 CLEC's today, and they have been.

17 MR. WHITE: Can I just go back, though?

18 MR. CLANCY: You go first.

19 MR. WHITE: Okay. We've worked through,
20 from line sharing, many, many products, and we also
21 have standards bodies.

22 And technologies can meet the
23 requirements set out by the standards bodies, and the
24 newer technology generally fit a known frequency

1 power, they are called power spectrum density.

2 So that there is a minimum amount of
3 interference.

4 There is always some interference, it's
5 just a matter of degree, and some of the older
6 technologies, one circuit, one T1 circuit, will
7 disrupt all other services.

8 As the services got better, the HDSL
9 might take five or six of those same kind of circuits
10 to cause a disruption.

11 So that's why we need to keep these in
12 separate identifications.

13 We supported an industry change that
14 hasn't happened yet.

15 If the technology, the next technology
16 that comes out, meets what we consider safe power
17 spectrum densities, we don't need to separately
18 identify it, we can keep them all together, and we
19 think it's over managing.

20 At the present time, there are separate
21 categories, and we're required to keep those separate
22 categories.

23 We have worked, and going way back,
24 where we didn't have a product in the beginning, we

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1 used ISDN as a surrogate, so that the selects could
2 order before we had a product available.

3 And that seemed to work for a while, and
4 then we found out that there were problems, because
5 the way we handle ISDN is not the same as you handle
6 DSL.

7 And Covad, and at that time, I think it
8 was NYNEX, worked together to convert those circuits
9 to ADSL, so that we would manage them correctly, so
10 we wouldn't put them out of service.

11 So there is important reasons to do
12 this.

13 And my concern is that there are a lot
14 of products out there that don't meet industry
15 standards, people can deploy them, and they can cause
16 problems. But by themselves, they may be okay.

17 And if we know that they are in there,
18 we can manage.

19 So if there is a trouble that comes in,
20 we can look at all the pairs and finder groups and
21 say, is there something here that might be causing an
22 interference problem, and look at that, and manage
23 it, and we can rearrange things, so things don't
24 happen.

1 It's a very complex world. We're trying
2 to keep it as simple, we want to keep it as simple as
3 Covad does, but at the same time we've got to manage
4 it, and that is why we like to work through the
5 industry bodies.

6 And when the industry bodies say that
7 these can be all categorized in the same bucket, we
8 would be happy to do that, it would save us time and
9 save them time.

10 MR. CLANCY: Anybody have a screwdriver?

11 JUDGE LINSIDER: Sure.

12 MR. CLANCY: Let me first respond to
13 Rose's comments, Ms. Clayton's comments.

14 Yes, Verizon did work as part of a
15 collaborative to develop a line sharing. And it was
16 only three years after Covad first requested line
17 sharing from Covad.

18 In terms of Mr. White's comments about
19 the ISDN, the product that Verizon offered when Covad
20 went into business, selling digital services,
21 advanced services, in the State of New York, the only
22 product that we could use to put our service into the
23 network was an ISDN UNE.

24 And when Verizon retail was ready to

1 sell its line shared product, which was ADSL, Verizon
2 developed an ADSL product.

3 At that point in time, the technical
4 difference was in the spectrum issue.

5 The technical difference was ISDN can be
6 distributed into the network over a Pairgain device,
7 like a DCL, not the new DCL's, but the older imbedded
8 DLC's, using a particular channel authorized for IDN.

9 And as Verizon upgraded its network and
10 moved those DLC's to either newer DLC's, or they were
11 looking at a loop plant, which was currently copper
12 to convert it to DLC, those ISDN loops looked on
13 their inventory records like ISDN, because it was
14 that product.

15 So we had to go in and do a wholesale
16 conversion on a project managed basis with Verizon,
17 to basically move all of those services to the ADSL
18 category.

19 So their inventory management system
20 would reflect that that was an ADSL product.

21 The reason for that was the product
22 wasn't available, and the product wasn't available,
23 because it takes a long time for Verizon to develop
24 products.

1 So the standards were there, the network
2 capacity was there, the network capability was there,
3 but Verizon's ability to identify it in its inventory
4 management system was the only missing piece.

5 Now we have an ADSL product which
6 Verizon understands the parameters of ADSL require
7 that it had to be on copper, or on next generation
8 loop carrier. So they understand that now.

9 So if I were to put a product into the
10 network today, with whatever spectrum capability, as
11 John pointed out was power density, and put it into
12 the network, and identify it, for example, as ISDN,
13 well, that would be my problem.

14 That would be a service problem that I'm
15 waiting to occur, and I'm going to foist that onto my
16 customers.

17 I can assert right now Covad won't do
18 that.

19 And if there is a requirement for
20 Verizon to develop a different kind of product, so
21 that their inventory management system can handle it,
22 clearly, Covad would work through the process to make
23 that happen.

24 MS. EVANS: Your Honor, if I may just

1 add, one thing just to note, I don't think this
2 proceeding is about New York specifically, I think
3 you understand the implications, not only the Verizon
4 footprint, but Covad is a nationwide provider f DSL
5 services, of broadband services, I should say.

6 So the decisions that we make, and the
7 network that we deploy, has to conform to all the
8 ILEC different standards.

9 Therefore, Covad only puts industry
10 standard stuff out there. We cannot make a business,
11 obviously, work in one state, I do it one way, or in
12 one company, I do it another way.

13 So I just want to make sure it's clear
14 that Covad only deploys industry standard products
15 and services that will not harm anyone's network,
16 because it wouldn't make any sense to do this
17 nationwide.

18 And the second thing I'd just like to
19 add is the sense of urgency.

20 As a competitor, our biggest challenge,
21 our biggest threat to being successful is time,
22 because when we go out to launch a product or a
23 service, it's speed to market that we bring to the
24 table.

1 Any delay in our ability to offer those
2 services to our customers, obviously, is what puts us
3 out of business. It's not the technical issues, they
4 all work.

5 It's not our customer is going to buy
6 it. They are dying for it.

7 It's the delay factor, which is why when
8 you hear Verizon talk about a BFR process, which does
9 not have a requirement that it get delivered in
10 ninety days, it's up to their discretion when they
11 will get back to you on that process.

12 And as they talk about the changed
13 management process, it is tremendously lengthy and
14 burdensome, and it puts a number of competitors on a
15 pecking order for you to get your issues addressed.

16 So it works very favorably for a company
17 like Verizon, who is trying to put the same product
18 out there that I, as a competitor, are, to hold me
19 back from being able to offer the services.

20 And as Mike illustrated with line
21 sharing, for example, as long as Verizon was ready to
22 put it out there for itself, then all of a sudden
23 things worked for us.

24 But this language that Verizon is

1 proposing would hold us back until Verizon is ready
2 to do something for us, and then the green light goes
3 off.

4 And that's not the industry that we need
5 to be in in order to deploy services in a competitive
6 environment.

7 MR. PANNER: Is there any product that
8 you are seeking to offer today for which there is not
9 a loop type available?

10 MR. CLANCY: Well, let's see. That's
11 kind of a funny question, because I believe there
12 isn't, and you believe there is.

13 I believe that I could put what I want,
14 the SMC classes that were identified in the contract
15 language, on the existing ADSL product.

16 Verizon's contention is no, no, no, I
17 have to spectrum manage, I have to do this, I have to
18 do that.

19 And as John pointed out, Verizon would
20 rather be out of the policing business, they would
21 support the NRIC proposal.

22 My suggestion is that we let this
23 Commission order that in this state. Maybe that
24 kicks the NRIC proposal onto a different time line.

1 MS. EVANS: And if I could just add to
2 that, Aaron, it's hard to answer that question,
3 because you are looking at a point in time,
4 recognizing that, you know, we're all working on the
5 parts case here in New York, and there are lots of
6 other things in the throes of things, as you can say.

7 It is hard to say is there anything out
8 there right now that Verizon is prohibiting Covad
9 from getting.

10 It's not the stuff now, we've gone
11 through the year and lengthy delay to get the stuff
12 out there. It's what about the next thing that this
13 contract will cover for the next three years, who
14 knows what's going to be out there.

15 MR. PANNER: Okay. I guess because
16 there is two issues here, just to clarify, there is a
17 product out there that you order for the services
18 that you are seeking to provide now.

19 MR. CLANCY: Yes. Your ADSL products I
20 could use for a variety of services.

21 The issue is, you don't want me to do
22 that.

23 MS. CLAYTON: I think, again, we're tied
24 to what some of the Orders currently say.

1 Remember that the line sharing Order
2 obligates us at this time to request the type of
3 technology that a CLEC --

4 At the current, present time, we need to
5 know what is in the binder groups. We also need to
6 manage spectrum.

7 I'm not sure if every product that Mr.
8 Clancy and Ms. Evans are talking about, if they put
9 it on a DSL loop, would actually be qualified,
10 because we do qualify loops between ADSL and putting
11 them in the same binder group as interferers that we
12 are aware of today.

13 So, it's true, that is in place.

14 May I go back to some things that I said
15 earlier, just to clarify a couple of earlier points?

16 JUDGE LINSIDER: Just bear with me for a
17 second.

18 This is another procedural anomaly
19 related to the hybrid type of nature of the
20 proceeding, and let me ask you how you would like to
21 proceed.

22 If we were doing it purely as a hearing,
23 with my sitting here, and listening, and asking
24 clarifying questions, and then making recommendations

1 to the Commission, I would sit back at this point.

2 I'm hoping that we are going to do it a
3 little bit as a collaboration, as well.

4 And I can help you come to an agreement,
5 by throwing out some ideas, that you're open to that.

6 Do you want to proceed on that basis?

7 MR. PANNER: Yes, your Honor, Verizon
8 does.

9 MR. HANSEL: Yes.

10 JUDGE LINSIDER: Okay. In that case,
11 let me jump in and ask whether -- and I think this
12 makes sense on the basis of what I've heard -- would
13 it make sense for there to be some process by which
14 Covad simply tells Verizon what it's doing, and
15 Verizon has a certain number of days to get back to
16 Covad and say, this looks like a problem?

17 Now, I don't have the in-depth
18 familiarity with the technical aspects to know if
19 that necessarily makes sense, but it strikes me,
20 taking a broad look at what you are talking about,
21 and I come back to the way I tried to set up the
22 issue at the beginning, Verizon keeps on coming back
23 and saying it needs the information from Covad in
24 order to discharge its responsibilities to the

1 network.

2 Covad says, all well and good, but it
3 takes Verizon too long to process the information, so
4 long that it prevents us from using the technology.

5 If that's an accurate statement of the
6 issue, then it seems to me it is fair to say that
7 Covad simply provides Verizon the information, and
8 Verizon has some set amount of time to come back to
9 Covad and say this information raises a red flag, we
10 need to look at it further, and then put in place a
11 process for that further look.

12 Does that move the ball a little bit?

13 MS. CLAYTON: But then I have to go back
14 to the question that was asked earlier, we are
15 providing a product set today. You are ordering your
16 digital loops today.

17 Is there something that we are not
18 providing that you need?

19 JUDGE LINSIDER: My understanding is
20 that they are saying, even if they were to say there
21 is not something that they need, that you are not
22 providing, I think I understood them to be saying you
23 are not letting them use something that you're
24 providing in the way they want to, which really comes

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1 down to the same sort of burden for them.

2 Is that right?

3 MR. PANNER: I don't mean to jump in,
4 but I heard the statement that they can do what they
5 want over ADSL, but that somehow we won't let them do
6 that.

7 What I don't understand, and I'm not
8 asking as a debater, I don't understand whether there
9 is not a product available to them for the service
10 they wanted to provide.

11 MR. WHITE: Can I try an example of some
12 things that we've looked at recently?

13 JUDGE LINSIDER: Well, let's first try
14 to get Covad's answer to that question.

15 MS. EVANS: I need to just ask a
16 clarifying question. I probably should consult my
17 counsel.

18 One of the things that becomes a point
19 of issue here is, for example, there is DSL services,
20 and there is a broad category of DSL services, and
21 then there are different types of DSL. There's ADSL,
22 there's DSL, there's HDSL.

23 And I think that's part of the concern
24 or the question, is that is the expectation of the

1 question is Covad willing to say to Verizon, I'm
2 going to put DSL services on there, and that's okay?

3 I think the additional expectation that
4 you are going to say I'm going to put SDSL, I'm going
5 to put HDSL, I'm going to put SDSL, so to what level
6 of definition do you need to get to?

7 Because, technically, the standard for
8 DSL is the broad standard.

9 So I like the proposal where you are
10 going, it's just that I think when it comes to the
11 actual application, and it gets down to the fine
12 detail, I'm just not clear as to what level of
13 specificity the issue would get into.

14 Let's say tomorrow there is a TDSL,
15 would we have to go through this process all over
16 again?

17 MS. CLAYTON: I think that's clear in
18 the line share Order, because the line share Order
19 tells us to manage our network by spectrum management
20 class.

21 MS. EVANS: Well, let's not talk about
22 line sharing.

23 MR. CLANCY: Well, since Rose brought up
24 the point, the point of contention in the contract

1 language was specific to spectrum management classes
2 that would work over Verizon's current complement of
3 products.

4 So, if Verizon is willing to say that
5 Covad can deploy all of those spectrum management
6 classes, because the products are available, the
7 issue is done.

8 MR. WHITE: I wish it was that simple.

9 Can I give one example?

10 JUDGE LINSIDER: Please.

11 MR. WHITE: One of the things that
12 happens is there are new technologies that are
13 developed, new flavors of DSL, and some of them work,
14 and the manufacturers try very hard to make them
15 noninterfering and friendly products.

16 And, at the same time, there is other
17 people out there that will have unique, one of a
18 kind, they talk to each other, and they don't even
19 want to come to the standards bodies.

20 And they are very difficult to work with
21 these manufacturers.

22 But they sell their products, and they
23 do interfere, and they cause problems, with not only
24 other DSL, but sometimes with voice.

1 Don't assume that everything that you
2 buy out there is good.

3 When a new standard comes down, there is
4 major standards that come down, we throw around ADSL,
5 HDSL, very different technologies, HDSL and ADSL.

6 And HDSL has a specific line code, it's
7 not as bad as T1, but it's pretty powerful.

8 We had a new product come out, it's HDSL
9 2. And it's called 2, not because it's second
10 generation, but because it only uses one pair of
11 wires, two wires, one pair, as opposed to four wires,
12 which the old HDSL did.

13 This is significantly a better product
14 than the HDSL.

15 So to throw it in the same category and
16 have to manage it like we do HDSL would be doing it a
17 disservice. It is a good, nice, clean product.

18 And so we went to change management, we
19 really need a separate identification for this new
20 product that's coming out.

21 It's an industry standard, no one is
22 buying it yet, but they will be, and we are preparing
23 for it.

24 We looked through, and we said we have

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1 this other product that is a two-wire HDSL.

2 Remember I mentioned HDSL used to be
3 four-wire. Well, you technically could make it work
4 with two, but no one ever used it.

5 So we went through all our databases and
6 said, you know, it looks like very few two-wire HDSL
7 out there, why don't we just try to reuse this code
8 and speed up the whole process. And that's what we
9 were doing.

10 But we have a big concern, you can't
11 just say DSL is all the same, it's very, very
12 different the way it talks to one another, the
13 frequencies of users, and whether -- when two
14 frequencies collide, whether or not they help each
15 other or hurt each other.

16 I mean, you can see it in some of the
17 TV, if you have a local antenna here, your worst
18 channels, why is Channel 2, or something, the worst,
19 if you have an antenna down there.

20 It's not because it's a weak signal,
21 it's because there are two conflicting signals. You
22 get it from Philadelphia and you get it from New
23 York.

24 So you get a signal, but it isn't as

1 good.

2 And that's the same kind of thing that
3 happens with DSL. It's not that it doesn't work at
4 all, it's just that the cumulative impact causes it
5 to degrade.

6 So, we want to have quality service. We
7 can't have people just saying, well, yeah, okay, we
8 ordered DSL product. You can't assume a manufacturer
9 meets the standards.

10 And if there is a product that's unique,
11 and they want to buy it, we will develop a full,
12 different product. But we do develop and anticipate
13 some of the industry new things that come up that
14 will be standards.

15 We're also, at the same time, supported
16 as did Covad the NRIC discussion, where we can lump
17 some of these together and say these are safe
18 products, we shouldn't have to -- they meet the power
19 spectrum density, and they are designed that if they
20 see another frequency, they will adjust themselves
21 and not conflict.

22 They actually look out and see if there
23 is another frequency, and they adapt themselves.

24 This is the new stuff that came on, it's

1 very good.

2 There is also some new stuff coming
3 along that's very bad. And we need to be able to
4 still manage that.

5 So we have to be careful with what words
6 we use.

7 MS. EVANS: Judge, if I could just share
8 with you, I was looking at the information from the
9 NRIC recommendation, and in there, it clearly states
10 tat we believe it is in the best interest of the
11 industry to require each service provider to take
12 responsibility for ensuring that its equipment is
13 deployed according to the aforementioned spectrum
14 management guideline, which is clearly saying that
15 providers, that includes such as Covad, would have to
16 manage and ensure that it's meeting these guidelines,
17 which we're signing up to do.

18 So for Verizon to then have to add
19 additional restrictions or criteria on top of that is
20 unnecessary.

21 MR. WHITE: You've got to be careful
22 when you read that. The starting assumption is that
23 given this technology meets the industry standard.

24 MS. EVANS: Which we do.

1 MR. WHITE: But that's the concern, we
2 have to have products for those that don't, and we
3 have to, you know --

4 MR. CLANCY: Judge, just to add to what
5 John is saying, I'm agreeing with most of what he's
6 saying.

7 In fact, the most likely place that the
8 interference would occur is a little bit past my
9 d.slam, probably between my d.slam and their main
10 distributing frame, because that is where these
11 technologies come together. They are concentrated in
12 a digital service line, digital service line access
13 multiplexor.

14 So I am going to, if I am an
15 irresponsible provider, and I irresponsibly go out
16 and buy, you know, company X's non industry standard
17 product, because I like putting interference into my
18 other products, and I deploy that into my
19 multiplexor, well, the one who's going to feel the
20 pain probably are my customers before anybody else.

21 So it would likely be very irresponsible
22 of any carrier to do that.

23 And I'm willing to agree that we won't
24 be irresponsible.

1 MS. EVANS: And Judge, we would like to
2 pick up on your proposal where you are suggesting,
3 like if Covad, if in this case, would tell Verizon
4 what the time frame would be to get back, obviously,
5 the time frame is crucial, but also, I guess what
6 happens if Verizon in this instance says no, Covad,
7 you can't do that? What then is the time frame
8 associated with resolving that?

9 Because, quite honestly, that's what
10 Covad went through when it tried to deploy SDSL, the
11 technology that worked fine, and had been proven, and
12 the ILEC did not want us to do it.

13 We fought for like years in litigation
14 and everything else, just trying to be able to put
15 that stuff out there.

16 So, that's where this has gone, that's
17 where we're at at this point.

18 JUDGE LINSIDER: Presumably, the
19 agreement will have a dispute resolution procedure,
20 and we can follow that.

21 Let's go off the record for a second.

22 (Recess had.)

23 JUDGE LINSIDER: It seems to me that
24 most of what I've heard since making my suggestion a

1 little while ago makes me a little more confident of
2 the suggestion.

3 Verizon has legitimate interest in
4 making sure that there is no interference in
5 maintaining its ability to manage network.

6 Covad has a legitimate interest in being
7 able to deploy the technologies it wants to deploy in
8 a timely fashion.

9 And the issue is how to resolve those
10 conflicting interests.

11 And it strikes me that, given that most
12 of the technologies are within the industry
13 standards, and known to be okay, and that the problem
14 arises with new technologies, that there, Covad has a
15 clear responsibility to let Verizon know what it's
16 doing, and Verizon has a responsibility to react
17 promptly.

18 And so, I think a fair starting point,
19 either for discussion or for resolution, is something
20 like a contractual requirement that Covad keep
21 Verizon apprised, and that Verizon raise red flags if
22 it feels a need to raise it within a specified amount
23 of time, and that there then be some procedure for
24 resolving the issues raised by that red flag.

1 MS. CLAYTON: Well, I think that the way
2 that our systems are set up today is along the same
3 lines that you are suggesting.

4 In other words, when Covad submits an
5 Order to us, they're ordering an SDSL or an ADSL loop
6 time, when they submit that LSR that is their vehicle
7 for telling us.

8 There are costs associated with it,
9 there are descriptions associated with it, there are
10 testing procedures associated with the type of loop
11 they are ordering.

12 If they tell us they are ordering a DSL
13 loop, there are some obligations on our part to
14 maintain that loop on a technology.

15 So that is the vehicle that's in place
16 today.

17 MR. WHITE: I think you weren't further
18 in asking about a new product, you are addressing if
19 there is something new. We have everything addressed
20 today.

21 JUDGE LINSIDER: I take it the issue is
22 new product?

23 MR. CLANCY: The issue is that if I have
24 a product, and it doesn't specifically conform to

1 what Verizon has in their technical references for
2 ADSL, or HDSL, or SDSL, then what I understand your
3 recommendation to be is that I then apprise Verizon
4 that look, I'm putting something in it, it looks a
5 little like this, and a little like that, it's not
6 exactly either one, and here is the power density
7 spectrum, here is the industry standard that I'm
8 referencing, or the SMC class that I'm referencing.
9 Do you have a problem with me deploying this.

10 So far, it sounds great.

11 It's when you get to the red flag, and
12 how long does Verizon have to clear up the red flag
13 part, that I get concerned.

14 Because that kind of trips us back into
15 what Rose said is the stuff that we have in place,
16 which clearly is not working for Covad.

17 MR. PANNER: You said clearly not
18 working, and you referred to line sharing, which when
19 the Order went in place, was available, as I
20 understand it.

21 So you said clearly not working, and
22 what I think would be helpful for the witnesses to be
23 able to respond to is to say today what's the
24 problem.

1 MR. CLANCY: Today the problem is if I
2 put in a five five change request, you take on
3 average eighteen months to resolve it.

4 If I put in a bona fide request, you
5 take, on average, six months to get to it.

6 So if I'm going to work in a competitive
7 environment, with automatic delay built in, for
8 something that's already available as an industry
9 standard, would meet this NRIC recommendation, I
10 don't get what issue is.

11 So, I want to be able to, you know, to
12 meet Judge Linsider's compromise, I want to be able
13 to give you something, get a response very quickly,
14 because it's in a certain spectrum class, and I'm
15 identifying it to you, and you are going to respond
16 to me, yeah, you're right, it's an industry standard,
17 go ahead and deploy it, use this product until we
18 develop one.

19 And if it's a real red flag, like John
20 said, I'm using Ace's Hardware for my DSL products,
21 to put into my d.slam, because I'm a little bit
22 brighter than a moron, then that would be something
23 you want to red flag, and say don't use that, you are
24 going to burn down my CO with that.

1 MR. WHITE: The intervals sound like a
2 long time, but if you look at new products, there are
3 chip sets being developed and modems being tested.

4 It takes a couple of years before they
5 actually deploy in the field.

6 You have a window ahead of you, what you
7 think you are going to use, what you are going to
8 start testing in your own labs, what you are going to
9 do, and then they have to purchase and deploy.

10 If we got that notice in time, that
11 interval is going to be very similar to the interval
12 it takes us, and we have to go to the industry
13 standards bodies to get an NC/NCI code, and
14 Delcordia, to do software changes.

15 It may sound like a long time to do
16 that, but there is a similar parallel going on with
17 the new technologies.

18 So if we get the early warning
19 indicator, and we worked on some of these things long
20 before anybody, so trying to get prepopulated, we see
21 something coming, why don't we order one of these
22 things, but OPF, the standards body, only meets like
23 twice a year.

24 Because it is so significant, because

1 you are changing everybody's OSS to add another
2 identifier, or another definition, another dimension
3 that everybody has to agree upon.

4 MR. CLANCY: With all due respect, we're
5 shifting the argument from spectrum management
6 classes and industry standards into the whole product
7 development discussion.

8 So, you know, it's about the chips sets
9 are developed, I have a card, I want to plug it into
10 my d.slam, it conforms with a broad range of products
11 that Verizon has out there, and they can't do it.

12 So what you are suggesting, what your
13 Honor is suggesting, is some streamline methodology
14 to get to that end.

15 And I, for one, I think that would be
16 good for competition, and good for business.

17 MS. CLAYTON: We have already been asked
18 to look at ways to develop and implement new products
19 as quickly as we can.

20 The process in the interconnection is a
21 documented process. Change control is a documented
22 process. There are time lines associated with that.

23 One of the reasons is we're not simply
24 just addressing Covad's needs, we're addressing all

1 the needs of all the competitors.

2 They are coming to us with multiple
3 requests in through change control, they're
4 prioritizing the requests based on what their needs
5 are, and how quickly we can make the system
6 adjustments to accommodate their needs.

7 So we're making system adjustments not
8 only in response to CLEC requests, we're also
9 responding to Commission Orders.

10 It's a formalized process. We have to
11 do things in steps as we develop the process for the
12 products that are being looked for.

13 MR. HARTMANN: Steve Hartmann.

14 What I hear Mr. Clancy saying is that
15 Covad is anxious for this NRIC proposal to get
16 implemented, and if Mr. Clancy gets that, then Covad,
17 you know, will have its needs met.

18 What I heard the Court propose, and what
19 I thought Verizon was trying to respond to, is a
20 bigger proposal than that.

21 And the bigger proposal relates to new
22 product development.

23 So, when Mr. Clancy said the argument is
24 shifting to new product development, I think that's

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1 because when we hear the Court's proposal about Covad
2 saying I want to put X on the system, Verizon, you
3 got, you know, Y time to respond, that really goes
4 much further than the NRIC proposal, which I think is
5 really at the heart of what Mike wants to get.

6 " And from being involved in the Covad
7 negotiations, I think what Verizon says is, "Mike, we
8 understand that you want the NRIC proposal, we're
9 sympathetic to that, but the FCC just isn't there
10 yet. When the FCC is there, we will be there with
11 you."

12 And this notion of product development
13 and product response time is the thing that concerns
14 us, because we're not willing to go beyond the NRIC
15 proposal to say that we can somehow compress the
16 product development time pursuant to an agreement we
17 strike here.

18 JUDGE LINSIDER: Well, I certainly
19 wasn't intending to expand the issue beyond the
20 parties definition of it.

21 Is it confined to the NRIC proposal?

22 MR. WHITE: Your Honor, I think that's a
23 simplification, but you still have the problem, you
24 are still going to have new products that need to be

1 looked at and addressed.

2 Even with the NRIC proposal, it was a
3 simplification, but it wasn't an elimination of the
4 issues that are debated here.

5 MR. HANSEL: Your Honor, I agree that
6 it's not directly related to the NRIC proposal.

7 What Covad is proposing is to take an
8 industry standard technology that works over one of
9 Verizon's current products, and deploy it over that
10 product.

11 And Verizon is trying to turn that
12 around, and trying to tell Covad that they need to
13 develop a new product in order to accommodate the new
14 technology.

15 It's our view that that's not the case.
16 The technology works over a current product.

17 If Verizon wants to create a new
18 product, that's fine. But why wait for that new
19 product to be created when it's not necessary to
20 actually deploy the technology.

21 Whatever reason Verizon has internally
22 to create a "new product" is their internal reasons,
23 but it's the industry standard technology, and our
24 position, works over a current product.

1 MR. WHITE: That's just not factually
2 correct.

3 The issue is, there isn't one industry
4 standard, there are many different products. There
5 are many different power spectrum density masks with
6 different modulation schemes, that have different
7 interference.

8 There are ones that are managed
9 together. HDSL is an industry standard. HDSL 2 will
10 become shortly an industry standard. They need still
11 to be managed, they can't just be because they are
12 industry standards, can they be thrown together.

13 But the issue is, is there a product
14 that you can't map today into one of our variety of
15 categorizations.

16 And I don't see that you are trying to
17 deploy that we don't think is fine in one of the
18 buckets that we already have available.

19 But we can't certainly have HDSL with
20 HDSL 2 and ADSL 2 thrown into one bucket, and say
21 it's DSL, that's not what was proposed by NRIC,
22 that's not what was proposed here.

23 I think, very specifically, if there is
24 a new product that Covad is looking at, you know,

1 that is very different, then Judge Linsider is
2 absolutely correct, let us know as early as we can,
3 we will say yes, that will fit in there fine, or, no,
4 we're going to have to go to OBF, because it's so
5 different.

6 And what we're hoping with NRIC is some
7 of the newer ones that come along can easily slip in
8 within one of the major categories.

9 And that's what we're trying to do.

10 MS. EVANS: Can we just clarify? I'm
11 getting confused.

12 I keep hearing "technology," and I keep
13 hearing "product." And I want to make sure that
14 we're all on the same page.

15 My understanding is that NRIC talks to
16 technology.

17 MR. WHITE: Right.

18 MS. EVANS: Product is something that
19 you call it this, and then we want to call it this.
20 That's a classification that, you know, a company
21 uses what it calls something.

22 The issue at hand is technology.

23 If the technology that Covad wants to
24 deploy has been blessed by an industry standard, and

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1 supported by the IEEE and all the bodies that we
2 agree to, because that's part of this contract also,
3 Covad says we want to be able to deploy it. What I
4 keep hearing Verizon say is, but, there is a product
5 issue, and that's not what this issue is about, it's
6 about technology.

7 MR. WHITE: I kind of feel the same way,
8 as far as you say the label is product.

9 But we have identifiers that we put on
10 the loop, and we give it a name.

11 It can be a silly code name, or a label
12 that we give it that we use, but behind that is all
13 the technical inspection that we say this loop being
14 an ADSL loop is cross-referenced to the technical
15 specs.

16 And what we want to do is take as many
17 of those variety of technical specs and map it. We
18 don't want to have fifty-seven varieties, we want to
19 keep it to a dozen varieties, and keep mapping the
20 new products into the ones we have.

21 And there are right now, that's kind of
22 the generations we have.

23 Yes, there is a technical reference and
24 a spec on T1, but, by God, we've got to manage that

1 separately.

2 We have a technical reference and a spec.
3 on HDSL, and we have to manage that separately.

4 And the same comes through with HDSL and
5 ADSL.

6 And then there's more flavors of SDSL.

7 We are trying to make sure that we
8 encapsulate in our labels SDSL and the NC/NCI code,
9 we are remapping these things, as many as we can, to
10 keep it as simple as we can.

11 MR. CLANCY: So it sounds like we're in
12 violent agreement that if we use your current
13 products, and deploy a spectrum management class that
14 fits into that class, or that definition in that
15 product, you don't have a problem.

16 MR. WHITE: That's correct.

17 MS. EVANS: But I need to understand
18 something, because I think Rose --

19 JUDGE LINSIDER: Before you do, does
20 that -- I don't want to let that go.

21 You agreed on that.

22 How much more is needed to take care of
23 the issue?

24 MR. CLANCY: I don't know. Steve and

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1 Tony, wasn't that the argument?

2 Wasn't that the whole argument?

3 MR. WHITE: Let's be very specific.

4 You had referenced the T1E1, and if
5 memory serves me right, I can't remember --

6 MR. CLANCY: IEEE -- you had numerous
7 engineers working on.

8 MR. WHITE: SMC2 was what we had
9 identified in our product codes, and you had added
10 SMC7 and 8.

11 MR. CLANCY: 7 and 8.

12 MR. WHITE: Okay. Those weren't linked
13 and included in our product code, and we're in the
14 process of trying to figure out can they be linked in
15 that one SDSL, or do we need a separate product code.

16 MR. CLANCY: So we've been at this for
17 two years, and is there a new product that supports
18 it?

19 MR. WHITE: Do you have a product that
20 you are using that's SMC 7 and 8?

21 MR. CLANCY: Do I have one yet? I can't
22 deploy it.

23 MR. WHITE: Have you plans to deploy it?

24 MR. CLANCY: Well, I think our engineers

1 were the ones that were involved in the conservation,
2 and clearly, SMC 7 and 8 are important to them for a
3 reason.

4 So I guess there are plans to deploy a
5 product.

6 MR. WHITE: Do you have plans to make
7 sure that that's addressed when it's ready?

8 I think that's issue. But you can't
9 just lump them together and say they will be in this
10 product.

11 We may have to have a separate NC/NCI
12 code for those two new categories. I'm not sure.

13 MR. CLANCY: So given Judge Linsider's
14 proposal, if I came to you tomorrow with an SMC 7 and
15 said, here is an SMC 7, here is the plug I am going
16 to use, this is the product, having a problem,
17 interference problems, let me know in fifteen days.

18 MS. CLAYTON: Actually, I think that's
19 issue 24A, which we have already agreed that we had
20 settled on.

21 I think we allowed you a way to order
22 that today. That's my understanding.

23 MR. CLANCY: Is that 24A?

24 MR. PANNER: Yes.

1 MR. CLANCY: I'm sorry.

2 MS. EVANS: Well, wait. Let me just
3 make one observation.

4 We seem to be getting back from the
5 technology versus the product.

6 And I heard Verizon, either Ms. Clayton
7 or John White said that Verizon gets itself ready,
8 they work on things well in advance, and so, you
9 know, yes, there may be some delay.

10 But let's go back to the example that
11 you used, John.

12 You mentioned ISDN.

13 ISDN came back out in the eighties, and
14 then DSL was deployed, or came out in the eighties or
15 something.

16 Then why did, when Covad came to put DSL
17 out there, was there not a product to be able to do
18 it, and we had to use the ISDN codes for a couple of
19 years, and then had to go through this conversion
20 nightmare?

21 MR. WHITE: I think I'm talking about
22 the Roman empire.

23 JUDGE LINSIDER: One at a time.

24 Wait. Just one second.

1 Let Valerie finish, and then, rather
2 than John answering directly, since his counsel wants
3 to say something, he is free to interrupt his
4 witness.

5 First let's let Valerie finish.

6 MS. EVANS: Okay. Thank you.

7 So I just want to understand, the
8 technical issues, everything we knew was blessed, the
9 standards, everything was there, but the roadblock
10 and the hurdle that Covad had to overcome was
11 Verizon's ability to deploy the product.

12 So, when Mike was making his, throughout
13 his offer to say okay, Verizon, we want to offer --
14 in this case, it would have been DSL, can we do that,
15 yes or no, in fifteen days, technically, you would
16 have said sure, but the technical issue wasn't the
17 hurdle, it was the product part of it, where you had
18 to develop all your NC/NCI codes, all that other kind
19 of stuff.

20 So now I'm almost back to where I'm
21 confused. If I asked would it technically work, the
22 answer was yes.

23 But can I do it, the answer is no.

24 MR. PANNER: I won't stop my witness

1 from responding, but if I could, you are making
2 certain statements about what happened when the
3 companies first tried to go into business together,
4 or started doing business together.

5 And I'm sure that if I let Mr. White
6 talk about it, he would explain our point of view on
7 that, and so forth, what happened in 1998.

8 I'm not sure that really advances the
9 ball a lot. Obvious, Judge Linsider will make the
10 judgment about that.

11 But I think there has been -- thinking
12 about witnesses, and time and so forth, if I could,
13 we've had a discussion about the issues.

14 At the end of the day, these issues come
15 back to concrete language in the agreement that has
16 been proposed.

17 And that will obviously have to be
18 addressed by the parties in briefing, to explain why
19 it does or does not reflect some of the things said
20 this morning.

21 I think Mr. White made the point about
22 the basic connection between the technology issue and
23 the product issue.

24 Verizon has products available, it can

1 be ordered that have certain technical specs behind
2 them.

3 If the technology that's being deployed
4 meets the specs underlying the product, the parties
5 don't have a problem, as I understand it.

6 We also asked a question about whether
7 there is a product that Covad is seeking to deploy,
8 or anticipates deploying, for which there is not a
9 product available, and you know I don't want to put
10 words in Covad's mouth, but I haven't heard a "yes"
11 answer to that question.

12 So, what we are saying, the language
13 that's in here says essentially there is products out
14 there, order the product for which the technical
15 specs meet.

16 Now, the products may become broader if
17 the NRIC proposal goes through. The product
18 categories may become broader, and that's simpler for
19 everybody, both sides.

20 Then there is an issue, there is a
21 technology that does not meet, for which there is no
22 product available, and what has to happen?

23 Verizon's point is there is a BFR
24 process. Given product development timelines, the

1 BFR process is a reasonable one.

2 And that's the language in there. The
3 language says -- or I should say that's Verizon's
4 language is applicable law for spectrum management,
5 and BFR process, if there is a new technology that is
6 going to be deployed within the network.

7 And that's kind of where we are.

8 And I guess the question is, is there
9 more that you want -- more technical facts that need
10 to go into the record to go beyond that point.

11 In other words, we could be here for a
12 long time, talking about past issues.

13 But is there a problem with that state
14 of affairs?

15 MR. HANSEL: It's going to be twenty
16 seconds or less.

17 JUDGE LINSIDER: I'm going to ask for
18 summation by counsel on the issue.

19 MR. HANSEL: I think the last point that
20 Mr. Panner said is where we have some disagreement,
21 and that is, if there is a new industry standard
22 technology, we're going to have to go through the BFR
23 process.

24 And if that's the case, if there is a

1 new technology that works over a current UNE, we
2 shouldn't have to go through the BFR process. If it
3 works over a UNE that's existing, then we should be
4 able to provision an industry standard technology
5 that works over that UNE.

6 And the BFR process is not applicable in
7 that situation.

8 MS. CLAYTON: I think Mr. White said
9 earlier, if that was the case, we would see if it
10 would fit in our existing product line.

11 If it cannot, simply because of the
12 technical characteristics of the new technology, then
13 we most likely will have systems work to do and
14 product development work to do.

15 JUDGE LINSIDER: Well, first I think,
16 unless either of my colleagues wants to raise
17 anything else, I think we have on the record what is
18 needed to decide the issue if the parties don't reach
19 agreement.

20 It seems to me that the clarification
21 that has gone on today ought to help you reach
22 agreement.

23 And jumping ahead a little bit, the way
24 I envision the briefing process is to allow time, not

1 only for briefing, but for further negotiations, and
2 for the briefs to be the mechanism for informing me
3 of the issues that have been resolved through those
4 further negotiations.

5 And it seems to me on this issue, the
6 further negotiations ought to consider some way in
7 coming to terms on, number one, incorporating the
8 final agreement that was reached earlier, and dealing
9 with what I think is the main issue of whether a new
10 technology that Covad wants to deploy is consistent
11 with Verizon's products.

12 And for dealing with that, it seems to
13 me that whether or not the technology is consistent
14 with industry standards ought to matter.

15 And if it's consistent with industry
16 standards, then it might well make sense to put a
17 more rigorous deadline on Verizon for ascertaining
18 that an available product will work, or figuring out
19 a way for that product to work.

20 If it is a completely new technology
21 that's not dealt with by existing standards, then it
22 seems to me Covad bears a heavier burden of showing
23 that the technology ought to be deployed.

24 That's a fairly general statement of

1 what I know is a complex technical issue, but I think
2 it's something that the parties can talk about.

3 Now, again, for purposes of process, I
4 think the way we've set it up, we ought to end this
5 issue here, and those further negotiations be
6 conducted elsewhere.

7 There is the option, which I'm offering,
8 but not necessarily suggesting, that we go off the
9 record, and conduct those negotiations now, with me,
10 and John and Mike to mediate it.

11 Conceivably, that's more efficient in
12 the long run. It might mean we will be here four
13 days, rather than two.

14 If we do all the issues that way, but
15 that's really the parties pleasure, given that this
16 is sort of a hybrid proceeding between mediation and
17 arbitration, you do have that option.

18 MR. PANNER: Can we go off the record
19 for a second?

20 JUDGE LINSIDER: Yes.

21 And once we deal with that, I want to
22 discuss a few minor issues, and then we will take a
23 break.

24 (Recess had.)

1 JUDGE LINSIDER: Back on the record, or
2 should we stay off?

3 We will go back on the record.

4 MR. PANNER: Judge, I think that we're
5 going to have a lot to talk about, and probably it
6 makes more sense to do it after, through the issues,
7 not do a mediated negotiation.

8 That's what is Verizon's preference, and
9 Covad agreed to that.

10 MR. HANSEL: We are willing to do it,
11 but we understand that certainly this is not
12 something that we were going to try to force through
13 through discussion.

14 So we're certainly amenable to what
15 Verizon decides to do at this point. But we're free
16 to do whatever they want.

17 We're comfortable not mediating it in
18 front of you.

19 JUDGE LINSIDER: As I said, I think the
20 briefs should report on the negotiations.

21 On the basis of what I've heard, I can
22 tell you at this point, I don't have a basis for
23 comparison, this is the first issue. But it seems to
24 me that you ought to be able to reach agreement on

1 this.

2 Each side has a legitimate interest, but
3 I don't think those interests, as they have been
4 identified here, clash to the point of precluding
5 agreement.

6 Well, enough said on that.

7 Okay. I'm assuming that the amount of
8 time we've taken on this issue is a little bit of
9 surprise to anyone who thought we were going to
10 finish today.

11 MR. PANNER: Well, I do think that this
12 was, in terms of technical issues to get out, that is
13 probably the most technically heavy issue.

14 JUDGE LINSIDER: Okay.

15 MR. PANNER: In my own estimation.

16 JUDGE LINSIDER: Again, we don't need to
17 form any hard and fast decisions on that now.

18 But I do want to keep track of the
19 timing.

20 The other point is that apparently
21 Verizon has prepared an issues list, and a sequence
22 of issues.

23 I'm going to ask that it be shared with
24 Covad, as well.

1 MR. HANSEL: We have it.

2 MS. EVANS: We have that, yes.

3 JUDGE LINSIDER: Okay, fine.

4 And is this the sequence that we will be
5 following, by agreement, again, recognizing that it's
6 simply a sequence.

7 If we finish everything in day one, day
8 two becomes moot.

9 MR. HANSEL: One clarification, your
10 Honor.

11 There are two issues on the back that
12 Verizon has proposed that we not discuss today.
13 Covad has not agreed to that. To the extent there is
14 little discussion, that may be the case.

15 But we intend to at least leave it on
16 the table for discussion, depending on how the day
17 goes.

18 MR. PANNER: To the extent that the list
19 suggested something different, that was certainly
20 what we agreed to.

21 JUDGE LINSIDER: Okay. Do we need more
22 copies of the list?

23 I guess we're okay.

24 We can make them, if we need them.

1 Let's break until five of eleven.

2 MS. EVANS: Great.

3 (Recess had.)

4 JUDGE LINSIDER: Are we all set?

5 MR. PANNER: Yes.

6 JUDGE LINSIDER: Okay, let's go back on
7 the record.

8 I guess the next issue is 26; is that
9 correct?

10 MR. PANNER: Yes.

11 JUDGE LINSIDER: Loop maintenance.
12 I've forgotten who went first.

13 MS. EVANS: We went first.

14 JUDGE LINSIDER: Aaron.

15 MR. PANNER: Thank you.

16 Verizon isn't sure if we have any
17 disagreement about this anymore.

18 We have problems with Covad's proposed
19 language, but Verizon's position is that, again, this
20 issue has to do with Verizon's obligations to
21 maintain or repair unbundled network element loops
22 that are provided to Covad.

23 Verizon's position is that our
24 obligation is to maintain and repair such loops in

1 parity with what we do for our retail operation, and
2 that we have an obligation, in terms of the standard
3 to which they need to be maintained and prepared, to
4 maintain or repair the loops in keeping with the
5 technical specifications of the product ordered.

6 So, each of the loops that is ordered
7 has technical specifications associated with it, and
8 maintenance and repair has to meet, after a loop is
9 maintained or repaired, it has to continue to meet
10 those standards.

11 That is our position on what our
12 obligation is.

13 The bone of contention with respect to
14 the language that Covad has proposed is the reference
15 to industry standards, which are not defined.

16 "Industry standards" can mean all sorts
17 of things.

18 We maintain a product in keeping with
19 the product specifications, and that is something
20 that we are willing to agree to do.

21 MS. EVANS: One second.

22 JUDGE LINSIDER: Sure.

23 (Pause.)

24 MR. CLANCY: Verizon's recommended

1 resolution is a little bit broad for Covad, and the
2 issue comes down to this.

3 The standard for the product covers a
4 wide range of data speeds, for example.

5 So, we could turn up a loop that we
6 purchased from Verizon that's a short distance from
7 the central office, and it runs at, let's say, 768
8 kilobits per second in both directions.

9 Subsequent to provisioning that loop and
10 turning it up for service, and the customer enjoying
11 that service, Verizon, either in repairing another
12 loop, or doing a network reconfiguration, might add a
13 bridge tap to that complement.

14 And the end result could be it now runs
15 at 384, or 128 kilobits per second, a noticeable
16 difference in speed to the user.

17 But Verizon would come back and say,
18 that's within the product definition, so what is your
19 problem?

20 So we have an end user that has an
21 experience of a particular service, and that service
22 then gets degraded, but as long as the loop has
23 continuity, and can pass data to Verizon, that's
24 sufficient.

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1 Now, one of the things in the proposal
2 was that Verizon would maintain it to the same
3 standards they maintain their own customers.

4 I guess what they are saying is, what
5 Verizon is saying is, that if the same situation
6 happened with their own customer, their own DSL
7 customer, they would do the same thing.

8 So, if their customer had a 768 or a 1.5
9 service, or whatever, and it got degraded to 384,
10 they would kind of tell the customer, that's the way
11 it is, and life goes on.

12 JUDGE LINSIDER: Would the industry
13 standards language that Covad wants to include
14 preclude that result?

15 MR. CLANCY: If you used a broad
16 definition of "industry standards," it wouldn't
17 preclude that result.

18 So, the industry standard that's being
19 referenced here is I turn up a service, the standards
20 could be any one of the speeds that ADSL could
21 provide.

22 But the benchmark that the customer
23 understands to be the standard is the one they
24 receive when they get the service.

1 And a lot of the customers are pretty
2 sophisticated, they know how to ping out to the
3 network, and get a report back that says, this is how
4 fast your data service is running.

5 And when they have a degradation, they
6 call us up with a trouble ticket.

7 MR. HANSEL: Your Honor, Verizon, just a
8 few minutes before this particular issue came to the
9 table, came to us with a proposal.

10 We would like to propose tabling this
11 particular issue to perhaps after lunch, or a little
12 bit later, so that we can have enough time to talk
13 amongst ourselves, to see if we can come up with a
14 counter proposal, or to iron out some of our concerns
15 with their proposed language.

16 At this point, the issue is different
17 than, based on Verizon's proposal as put forward,
18 it's a little bit different than it was coming in,
19 and so, we would like to have a little time to
20 analyze that, if we could.

21 MR. WHITE: I would just like to comment
22 on what Mike said technically. I think it would be
23 helpful.

24 What we are doing with the DSL is using

1 a copper loop. We have technical standards that
2 we've built a telephone network to. It's a 1,300-ohm
3 design.

4 And when DSL was deployed, and there are
5 many flavors, as we know, it uses high frequency, it
6 uses pieces of the spectrum that were never designed
7 for telepathy.

8 And they're unique in that the high
9 frequency is going to vary by distance. So you are
10 going to get, as the signal attenuates, or gets
11 weaker, it happens in the high frequency, so distance
12 is an important factor.

13 And when we provide a loop makeup, we
14 provide the distance, and we give that so that the
15 see CLEC can have an approximation of what the
16 distance is, and what to expect as far as the high
17 frequency distance.

18 However, these technologies, you can
19 have two different modems, from two different
20 companies that will react differently. Some will
21 have a better performance than the others.

22 Every day they try to tweak these, get
23 more speed out of them.

24 At the same time, there are other

1 factors.

2 Temperature, you could have a huge
3 difference in the characteristics in the high
4 frequency based on temperature.

5 And I'm not talking about many degrees,
6 I'm talking about if you go from a sixty-degree day
7 to a ninety-degree day, you may see your speed drop
8 dramatically if you are out at that margin.

9 So there are many factors that impact
10 it.

11 When we provide the loop to the CLEC, we
12 provide them a copper loop, but there may be
13 situations where it has been on a heavy gauge, or
14 there was a repair done, and we have some cable out
15 there, and we replace it. And we build it to the
16 specification for 1,300 ohms.

17 So we may change again, something like
18 that. It should work, but it may not be identical to
19 what was there in the initial stage.

20 We do not guarantee any speeds, we can't
21 guarantee any speeds, because the modems, the
22 temperatures, all make differences, as well as other
23 services.

24 You can have, as I mentioned before, a

1 lot of services in there that could impact five or
2 ten percent in the speed as everybody tries to use
3 their modem at the same time.

4 The customer may turn up their service
5 during the week, and nobody is home, and everybody
6 turns on their service, the kids at 3:00 in the
7 afternoon, there is a whole lot of noise, and it's a
8 high frequency noise that I can't hear it, my
9 daughter says she can hear it. But it's there, and
10 it can cause each modems to slow down slightly.

11 So, these are the factors that we can't
12 guarantee for them.

13 We guarantee we have a copper loop, we
14 guarantee about what the resistance on that -- as far
15 as leaks to ground, crosses, all the metallic
16 facilities.

17 But what Mr. Clancy is looking for is
18 some relationship to speed.

19 And there is just no way, how fast can a
20 car go down the street. Well, some of it's
21 relationship to what type of car you have, the other
22 is the traffic, the weather, the same is true with
23 DSL.

24 JUDGE LINSIDER: Okay. We will set this

1 issue aside for this afternoon, after Covad has had a
2 chance to think about Verizon's proposal.

3 Okay. 19 and 23.

4 MR. CLANCY: Covad asks that Verizon
5 provide UNE's in UNE combinations, in instances in
6 which Verizon would provide such UNE or UNE
7 combinations to its cell.

8 Covad's request for this contract
9 language is based on the fact that Verizon has
10 rejected a number of Covad orders for high capacity
11 UNE's, claiming that no facilities are available on
12 the basis that the capacity of those facilities are
13 exhausted.

14 Covad notes that it is not the capacity
15 of the transmission facility that is exhausted, but
16 rather, that the electronics are not configured to
17 the particular level of capacity required to serve
18 Covad alongside Verizon's existing customers.

19 Covad believes that there is a clear
20 distinction between constructing a new facility and
21 modifying an existing one to improve its capacity.

22 Based on the facts, Verizon regularly
23 reconfigures or substitutes electronics on its
24 private facilities in order to accommodate its own

1 needs for its customers.

2 Covad's request is supported by Federal
3 and New York law, and requires Verizon to provide
4 UNE's, UNE combinations, in a nondiscriminatory
5 manner.

6 MR. PANNER: Here is whether Verizon has
7 an obligation to engage in construction activities to
8 build a new network for purposes of unbundling that
9 network.

10 MR. HANSEL: If I can make one comment.
11 I don't mean to interrupt.

12 If he wants to summarize some of the
13 issues at the end, that's fine, but I didn't know
14 that attorneys were going to give opening statements
15 in this particular proceeding, and I thought it was
16 the experts that would be doing this.

17 JUDGE LINSIDER: Well, I think the
18 opening statement could be made either by counsel or
19 by subject matter expert.

20 I think Aaron can continue for a bit.
21 Let's see where it goes.

22 I recognize that perhaps sometimes the
23 first step in resolving an issue is making sure that
24 the parties define the issue in the same way.

1 And I think we may not have reached that
2 first step here.

3 But having heard Covad's definition,
4 let's hear Verizon's.

5 MR. PANNER: Thank you.

6 The issue here is the extent to which
7 Verizon can be required to construct, engage in,
8 construction activities to create a new network for
9 purposes of unbundling for a requesting carrier.

10 That is an issue that is before this
11 Commission in Case No. 1233. It is before the SEC in
12 the triennial review process.

13 Mr. Clancy made reference to obligations
14 under the law.

15 I don't understand that to be the
16 purpose of the proceeding today.

17 Issues of law and policy, obviously,
18 will be addressed in the briefs, if necessary.

19 But Verizon's position, which Mr. Bragg
20 can describe in detail, is that we will engage in
21 provisioning, but we will not engage in construction
22 activity to make facilities available for unbundling.

23 Do you want to elaborate on that.

24 MR. BRAGG: That essentially states our

1 position.

2 We will provision or connect any
3 existing inventory parts of a loop to provide a UNE
4 to a location, and that would include cross connects,
5 line cards, any existing inventory piece.

6 What we will not do is construct,
7 undertake construction activity, to create elements
8 that are not existing at a location.

9 And we believe our policy is compliant
10 with the current rules, in fact, exceeds the current
11 rules.

12 JUDGE LINSIDER: Okay. Let's try this
13 way.

14 Verizon's view of the issue is that it
15 involves new construction.

16 Covad's view of the issue is that it
17 involves primarily parity.

18 And here I'm generally asking a question
19 because I really don't know, is part of the dispute
20 over whether parity necessarily means new
21 construction because Verizon would undertake new
22 construction for itself, then parity would require it
23 to undertake the new construction on Covad's behalf,
24 as well.

1 And Verizon is saying, parity stops when
2 new construction would be needed, and Covad is
3 saying, no, it doesn't.

4 MR. PANNER: Your Honor, if I could
5 address that in two ways.

6 First of all, let me say that this
7 issue, I think the way you proposed that question
8 emphasizes that this is really, as we have
9 maintained, a legal and policy issue.

10 And we are addressing those issues and
11 those questions in detail in other proceedings. We
12 can address them here in the briefs.

13 I guess the question is whether there is
14 a technical question about which the parties -- where
15 there is some question.

16 In other words, there might conceivably
17 be a technical question about what is contained in
18 the provisioning issue, and what construction that
19 could be addressed.

20 It is certainly Verizon's position, as a
21 preliminary position, it is our position that we do
22 not have an obligation to treat retail customers and
23 requesting wholesale carriers in the same way.

24 If Covad is free to order special

1 access, and then they will be treated as a customer
2 -- this seems to be a legal point, which is why I'm
3 addressing it as a lawyer.

4 So, the question is, if we have an
5 obligation to treat Covad in the same manner as a
6 retail customer.

7 The answer is that we don't.

8 And that our obligation in terms of
9 making the network available is to make the existing
10 network available in accordance with the requirements
11 of Federal law under 251 C3 and the FTC's
12 regulations, not to construct a new network.

13 It seems to me that's the legal policy
14 issue that's teed up in a number of -- but I don't
15 see the technical question that needs to be -- I
16 don't say there isn't one, but that doesn't seem to
17 me to implicate a technical question.

18 MR. BRAGG: I don't see any technical
19 issues.

20 MR. CLANCY: Well, I have a technical
21 question based on Mr. Bragg's comment about existing
22 inventory parts of a network are the elements that
23 get provisioned as UNE's.

24 MR. HANSEL: If I can make two comments,

1 before Mike asks his questions.

2 Mr. Panner mentioned two points.

3 The first is that wholesale customers
4 are not to be treated the same as retail customers;
5 and I disagree with that point.

6 I think that's what the
7 nondiscriminatory provisions provide for, is that
8 wholesale customers are to be treated in parity with
9 retail customers.

10 And the fact that Verizon is requiring
11 us to become a retail customer, and then convert into
12 a wholesale customer, completely goes around that
13 particular nondiscriminatory provision.

14 The second is we are not asking Verizon
15 to build a superior network.

16 Basically, the issue of fact is whether
17 a superior network is being asked to be built, or
18 whether these are routine modifications to the
19 network that Verizon routinely performs for its own
20 customers.

21 And that, in my view, is not a legal
22 question, and so I'll let Clancy ask his question as
23 he proposed.

24 MR. CLANCY: Thank you.

1 So, Bill, what are existing inventory
2 parts of a network?

3 MR. BRAGG: What are they?

4 They could be a pair that's inventoried
5 in LFACS.

6 It's anything that we have built that's
7 inventoried in our OSS systems that we can connect.

8 MR. CLANCY: Which OSS systems?

9 MR. BRAGG: Well, LFACS would be the
10 primary for what you are ordering.

11 MR. CLANCY: For UNE loops, LFACS.

12 MR. BRAGG: Yes.

13 MR. CLANCY: For DS0 or DS1.

14 MR. BRAGG: DS0. TERC's would be for
15 DS1 and above.

16 MR. CLANCY: And when an element is
17 available for use in LFACS, how is it designated as
18 available?

19 MR. BRAGG: Spare.

20 JUDGE LINSIDER: I'm sorry?

21 MR. BRAGG: Spare.

22 MR. CLANCY: And in TERC's, how is an
23 element that's available for assignment signified
24 that it's available for assignment?

1 MR. BRAGG: I believe it's just a spare.

2 MR. CLANCY: So, if I order a DS1, as a
3 UNE, and the order flows into whatever -- an ASR.

4 ASR's are, when we order a DS or lower,
5 we use an ASR loop service request.

6 When we order a UNE or a special access
7 service, that is DS1 or higher, we use an access
8 service request to send it to Verizon.

9 It essentially goes to two different
10 shops in Verizon.

11 MR. BRAGG: Local.

12 MR. CLANCY: Local, I'm sorry.

13 JUDGE LINSIDER: That's what I thought
14 it was.

15 MR. CLANCY: I call my customers
16 customers.

17 So anyway, the TERC's DS1 and above,
18 when I place an access serve request, and it's going
19 in to get provisioned, how does an agent determine
20 that there are spares available or not?

21 MR. BRAGG: Well, he will look into
22 TERC's, to see if the equipment is inventoried in
23 there, and able to be connected together through
24 TERC's, he will be able to see that.

1 It actually has to be engineered.

2 MR. CLANCY: So that's all equipment
3 that would be required from my collocation
4 arrangement to the end user's products?

5 MR. BRAGG: I'm actually not sure if all
6 of that is inventoried in TERC's, because some of
7 that, some of the cross-connects, if they are
8 electronically cross-connected, may be assigned
9 automatically.

10 The issue with these is that they have
11 to be physically designed, they go to an engineer,
12 and he designs the circuit.

13 So anything that's not inventoried at
14 TERC's, the engineer would find if it's existing in
15 inventory, and do the design to connect those parts
16 together.

17 MR. CLANCY: And equipment that is on an
18 engineering job, that's going to be implemented
19 sometime in the future, how is that designated in
20 TERC's?

21 MR. BRAGG: You mean in the event that
22 we're saying that there is a pending job there?

23 MR. CLANCY: Right.

24 MR. BRAGG: It might not be. It's

1 inventoried in TERC's, it's built in when the job is
2 complete.

3 And we will not assign to it until it's
4 built in.

5 When the job is complete, those elements
6 get built into the assignment systems and
7 provisioning systems, and then we will provision
8 them.

9 MR. CLANCY: So the design engineer may
10 or may not know, based on what is in TERC's, that
11 there is a job pending?

12 MR. BRAGG: No, possibly not.

13 But when we do an engineering check, we
14 see if there is any engineering work orders pending.
15 It might not be in TERC's that that is shown, but
16 they will do an investigation, to see if we have any
17 jobs.

18 And, in fact, even though we're not
19 required to, if we have an engineering work order
20 pending now, we will let you know, we will let you
21 know when the estimated completion date is.

22 Rather than reject that order, we will
23 tell you in thirty days this job looks like it's
24 going o e completed, and we will now offer you this.

1 MR. CLANCY: That's my understanding.

2 That's why I was asking how they know.

3 MR. PANNER: What is this --

4 MR. CLANCY: He made a statement about
5 inventory. I'm trying to discern how that works.

6 So how does my order flow-through --
7 well, maybe -- do you have a legal issue, that's a
8 legal issue, I have a factual issue.

9 JUDGE LINSIDER: My understanding of
10 what the factual issue is -- correct me if I'm
11 wrong -- is that Covad is concerned about a
12 possibility of Verizon asserting a need for new
13 construction to deny a request in a situation in
14 which new construction isn't really needed.

15 MR. PANNER: I don't think so.

16 JUDGE LINSIDER: Is that the issue?

17 MR. PANNER: That's what they are
18 suggesting, that's not what this issue is about.

19 MR. CLANCY: That was my question.

20 Based on what responses Mr. Bragg was
21 providing, I'm trying to find out how does that work.

22 What system is that in?

23 MR. PANNER: That's not legally relevant
24 here.

1 The relevant factual issue is -- in
2 other words, what do we do, what don't we do, if
3 there is some question of that.

4 I don't think that there is a factual
5 issue about that, and it's being briefed in other
6 proceedings.

7 And what Mr. Clancy is saying is, oh,
8 you really have the stuff, you really have it there,
9 but you are not unbundling, is that is a completely
10 different issue, that has nothing to do with what we
11 are dealing with in this interconnection agreement
12 context at all.

13 It just has nothing to do with it.

14 JUDGE LINSIDER: Well, I don't take
15 Covad to be suggesting that Verizon is doing anything
16 improper, or is in any way being deceitful.

17 Rather, my understanding of what Covad
18 is getting at is that the process, as it exists, can
19 produce ambiguous results as to whether something is
20 available or not.

21 And Verizon, as part of simply going
22 through that process, can use that ambiguity to deny
23 a request in a situation in which it doesn't have to.

24 And if that's the case, Covad is looking

1 for contractual agreements that would somehow provide
2 a mechanism to avoid an ambiguity.

3 Now if that's not the issue, then there
4 seems to me there may not be an issue of fact here.

5 But that's the only issue of fact that I
6 can see at this point.

7 MR. BRAGG: There is no ambiguity about
8 whether something exists. The very definition of
9 "inventory" is if it exists in our system.

10 So if Mike was to take a new job and say
11 that didn't exist, that's a special case, there is no
12 ambiguity there, it's a new job that has just been
13 built, you need time to build it into your inventory.

14 We said that we will offer that to you,
15 and you avail yourselves to those facilities, we will
16 give you those facilities when they are built,
17 inventory.

18 So when they are not inventory, they are
19 not available to anybody, they are as good as not
20 there. They are not built yet.

21 As soon as they are built, they are
22 inventory, and then they are available for all.

23 JUDGE LINSIDER: Let me put the question
24 to Covad.

1 Other than the issue of whether Verizon
2 always needs to build for you, in a situation in
3 which it would build for its retail customer, what is
4 at issue here?

5 MR. CLANCY: Bill just answered it very
6 clearly.

7 What is not inventoried is not available
8 for anyone.

9 So, that brings us back to the legal
10 issue.

11 Because that's parity, right?

12 MR. BRAGG: Yes.

13 MR. WHITE: Bill also said that we go
14 the extra step and we look for those jobs. And there
15 is no example that has ever been presented that we
16 missed a job type of thing.

17 We make a very good faith effort to look
18 for anything that is pending.

19 MR. CLANCY: My only question was are
20 pending jobs inventoried in TERC's. The answer was
21 no.

22 That's the answer.

23 JUDGE LINSIDER: Aaron is right, and the
24 only issue here is the legal one of whether parity

1 stops at new construction.

2 MR. CLANCY: Yes.

3 JUDGE LINSIDER: All right.

4 Can we go to the next issue.

5 MR. CLANCY: I just wanted to get clear
6 on my next issue.

7 JUDGE LINSIDER: Among my jobs here is
8 to make sure that we finish by tomorrow.

9 There is no factual issue here.

10 This, as on all issues, you will
11 continue to talk, and if we can't resolve it, the
12 briefs will deal with the legal issue, narrowly
13 focused, because I want the briefs to be shorter than
14 the first round, the narrowly focused legal issue of
15 whether parity stops at new construction.

16 All right.

17 MR. HANSEL: Your Honor, just one
18 clarifying point about the process.

19 It appears to me that Mr. Clancy was
20 asking questions and wanted to obtain a factual
21 response from Verizon, which he did.

22 And again, it appears as though once Mr.
23 Clancy received that response, he agreed that his
24 questions were finished.

1 But I just want to make sure that that
2 process is allowed to start and finish.

3 And while we are now at a point where,
4 okay, Mr. Clancy's questions are finished, and he's
5 got his factual response, it appears as though, prior
6 to him doing that, there was an attempt to kind of
7 stop the process midway.

8 Meaning, I think they came to an
9 agreement on a factual issue, but Mr. Clancy
10 certainly should have the option of providing his
11 question in order to get to that point.

12 JUDGE LINSIDER: Well, I thought it was
13 his questions that actually brought about that
14 agreement.

15 But what I was trying to do early in the
16 process is focusing. I didn't mean to cut anybody
17 off.

18 MR. HANSEL: I think --

19 MR. PANNER: Mr. Hansel is saying that
20 I'm trying to cut somebody off.

21 (Laughter.)

22 MR. HANSEL: Yes.

23 JUDGE LINSIDER: In either case it's on
24 my head.

1 MR. PANNER: Judge, I just wanted to
2 clarify.

3 I think you made a statement about what
4 the legal issue is here.

5 The legal issue here is what our
6 obligations are.

7 Again, it's a legal issue that we think
8 will be resolved in another forum.

9 What our obligations are to engage in
10 new construction, to make facilities available for
11 unbundling. That's what we understand the issue to
12 be.

13 I realize that it may be framed in
14 different ways. But I want to get on the record that
15 our understanding of the issue doesn't necessarily --
16 and that's something that we can certainly thoroughly
17 address in the briefing, what we understand to be the
18 issue.

19 MR. CLANCY: And what drove my questions
20 is the way Mr. Bragg responded originally was the
21 first time I heard Verizon use the word
22 "inventoried," so I wanted to inquire what that
23 meant.

24 JUDGE LINSIDER: Okay. Well, that's a

1 nice example of the purpose of this entire exercise,
2 and that's why we are here today, to get that kind of
3 information out, and see whether by doing it, we can
4 at least reach agreement on what the issues are, if
5 not resolving them.

6 Okay. Number 22, the appointment
7 window -- I'm sorry, that's my sequence.

8 Is that yours, too?

9 Yes, number 22, appointment window.

10 Whose turn is it?

11 MR. PANNER: We are on 22?

12 JUDGE LINSIDER: Yes.

13 MR. PANNER: Okay. Actually, do you
14 want to go ahead.

15 MR. KELLY: Verizon's position on issue
16 22 is that we provide all-day appointments for
17 provisioning of services, particularly when we have
18 to have an outside plant dispatch.

19 We do a customer, whether that be a CLEC
20 or retail customer, can request a.m. or p.m., which
21 is eight to twelve or one to five.

22 We don't guarantee them. There is no
23 obligation on our part to meet that, we do try to
24 meet that.

1 The original issue, as I believe has
2 been changed originally, they were looking for a
3 three-hour appointment, is now they are looking for a
4 four-hour appointment.

5 Our position is that we don't do that,
6 we can't do that really with a guarantee of any sort.

7 MR. PANNER: There is one other piece of
8 that also in this issue.

9 Mr. Kelly addressed part one, which is
10 should we have an obligation to do for Covad -- let
11 me try not to be -- do we have an obligation to
12 provide an a.m. or p.m. appointment window, I think
13 is now the issue, a guaranteed one.

14 The other issue is whether there should
15 be a separate penalty provision in this agreement
16 when we miss an appointment.

17 We have a performance assurance plan
18 that thoroughly addresses the appointment issue, and
19 we can address that today.

20 So that's already dealt with in the
21 metrics, in the performance assurance program
22 associated with, and Verizon's position should not be
23 a separate penalty provision in the agreement to deal
24 with a problem that has already been addressed by the

1 Commission through that mechanism.

2 MR. CLANCY: Your Honor, I think,
3 specifically, Covad's request would be that on
4 dispatched orders, Verizon give us the ability to
5 select a.m. or p.m., and still maintain the six-day
6 commitment.

7 So that's full request.

8 And guarantee the appointment.

9 So that's the complete request. Okay.

10 MR. KELLY: And the first part of that,
11 you can request a.m., p.m., first in the morning or
12 last job of the day.

13 You can request those four.

14 MR. CLANCY: And still have a six-day
15 window?

16 MR. KELLY: Yes.

17 MR. PANNER: Mr. Kelly, can you explain
18 a little bit -- first of all, do we do anything
19 different for our retail customers?

20 MR. KELLY: No, it's the same process,
21 same request. There is no guarantee.

22 The local dispatch, DSC dispatch center,
23 tries to get as many as they can to meet any customer
24 request.

1 They can't tell how long each job is
2 going to take for each technician.

3 As Mr. Clancy talked about, he wants to
4 maintain the six-day interval. In any given area,
5 Mr. Clancy may have two jobs on a given day, and the
6 next day he could have twenty.

7 So, there is no way to look at what they
8 can do.

9 And, as I said, basically we can't tell
10 with their technicians. We may send a technician out
11 that we think will take forty-five minutes to an hour
12 to do a particular job.

13 And they go out there, and they can't
14 get access, or the plant isn't in the condition they
15 thought it was going to be in, and it can take them
16 three-and-a-half, three hours.

17 There is no way to predetermine what
18 that work is going to be.

19 MR. CLANCY: So, Mr. Kelly, just for the
20 purpose of being clear, I can request, Covad can
21 request, an a.m. or p.m. appointment, and a six-day
22 interval.

23 Can we do that flowing orders through
24 EDI?

1 MR. KELLY: It's on the LSI, there is a
2 field on the LSI that you can request a.m., p.m.,
3 first job of the day or last job of the day.

4 MR. CLANCY: And if Verizon can't
5 meet that commitment when the order flows --

6 MR. KELLY: That's not a commitment,
7 that is a request.

8 MR. CLANCY: Okay.

9 MR. KELLY: So you can request a.m.,
10 p.m., first or last job of the day.

11 MR. CLANCY: But I shouldn't tell my
12 customer that's what is going to happen?

13 MR. KELLY: You can tell your customer
14 what we tell our retail customers, it is a request
15 that we will try to meet, which is what we do.

16 And the local dispatch center works on
17 that premise.

18 That doesn't mean that they can meet
19 that.

20 MS. EVANS: And this is new information
21 for Covad. And I guess the question may be that --

22 MR. KELLY: It's in the business rules.

23 MS. EVANS: Well, when I say new
24 information, as you can see, I think even in

1 Verizon's brief, it did not clearly state that, you
2 know, Verizon was willing to take orders with the
3 a.m., p.m., request in the six-day interval.

4 So my question is that there may be an
5 opportunity for the parties to discuss off line, but
6 it sounds like Verizon is willing to put some
7 language around that doesn't necessarily commit them
8 a hundred percent, but is willing to say this is the
9 way we do business.

10 And the reason I ask that, for your
11 Honor's sake, as you can hear, these are business
12 rules that Verizon establishes and changes at will.

13 And there is no control or expectation
14 in some cases that the CLEC can say you can't do
15 that, or I don't want you to do that.

16 They can put them in their business
17 rules, and put them on their form, and we may not
18 have input into it.

19 The reason that this is such a big
20 issue, and it's part of the arbitration, is because
21 Covad needs certainty in what Verizon is going to
22 offer through the length of this contract.

23 So this may be something, again, that we
24 may be able to take off line, but this is not

1 something that Verizon has ever said to us in the
2 past.

3 MR. KELLY: I completely disagree with
4 that. There is a change control process for any
5 changes that are made, it's sent out to the industry.

6 I was part of the group that put that
7 together.

8 No, all the changes -- these are
9 interface rules and valid values that you put in
10 there when I talk about the business rules. They are
11 published, they are out on the web, they are sent out
12 to the industry.

13 And for you to say that you haven't seen
14 them is not factual.

15 MR. PANNER: Your Honor, I do want to
16 make a point --

17 MR. CLANCY: So if there is any change
18 in the business rules, how does that get
19 communicated?

20 MS. CLAYTON: Before we go there --

21 JUDGE LINSIDER: Wait.

22 I'm going to let Aaron go first.

23 MR. PANNER: I think it's important to
24 put into the record Ms. Evans has complaints about

1 things that happened in 1998. Covad filed an
2 antitrust case, they have a lot of complaints about
3 things that happened.

4 This is about an interconnection
5 negotiation. There are particular issues that are
6 being presented.

7 And I think it's very important -- I
8 don't want to spend a lot of time --

9 JUDGE LINSIDER: Because I'm going to
10 grant your request, I'm going to take liberty of
11 cutting you off.

12 I don't want to spend any time in
13 talking about past practice.

14 Past practice is pertinent in one way
15 only, and I think it's something that can be dealt
16 with in the brief, namely, if Verizon's current
17 business practices are consistent with what Covad
18 says it needs, but Covad is concerned that Verizon is
19 able to change those practices unilaterally, then it
20 may well be that that is something that needs to be
21 in the contract, rather than relegated to the
22 business practices.

23 And I really don't think we need to --
24 we don't need to deal with past history in order to

1 prove Covad's concern that it needs to be concerned
2 about potential unilateral changes on Verizon's part,
3 which in no way suggests that Verizon can make those
4 unilateral changes, or would make those unilateral
5 changes.

6 But a theoretical concern about
7 unilateral changes is certainly a legitimate concern
8 for Covad, and from its point of view, may warrant
9 putting something into the contract.

10 We don't need to talk about history to
11 do that.

12 MS. CLAYTON: I would like to say that
13 in Mr. Kelly's testimony, on page 3, it says that
14 CLEC's may provide installation of these fixed
15 interval products on a four-hour window basis, either
16 a.m., eight to twelve, or p.m., one to five.

17 MS. ABESAMIS: I'd like to clarify.

18 On the local service request that you
19 asked about, Mike, on EDI, as Dave said, you can
20 check a box, and the local service request is an
21 industry form, and we do generate notification of
22 changes, and there are optional fields on there that
23 Verizon, if they want to use them, have to notify the
24 CLEC and there is a documented process.

1 However, if you check off a time frame
2 on your standard interval order, when we confirm
3 it -- I just want to be clear here -- when we confirm
4 the order, we don't confirm back with that time
5 agreed to or not.

6 I think that was the point you were
7 getting at, we will confirm back the six-day interval
8 but we wouldn't be able to confirm yes, we will
9 definitely be able to provide that on the A p.m..

10 MR. CLANCY: So the a.m. or p.m., even
11 though it's not coming back to the CLEC on the
12 confirmation, is coming back confirming what would
13 be, I guess, the firm order commitment date,
14 confirmation date.

15 The FOC comes back with the confirmation
16 on the LSR, saying we got your order, we are posting
17 this with a six-day interval, but the time of day
18 doesn't come back, but somehow that's getting
19 recorded in Verizon's force management system.

20 MS. ABESAMIS: Usually what happens is
21 when your LSR comes in, in order for us to confirm
22 that we create an internal service order.

23 When we create that order, that's a
24 field, that's an optional field, and if you have a

1 request, we would put that on the service order
2 itself, and that's the document that would flow into
3 the centers, as Mr. Kelly mentioned, that would say
4 customer request, a.m.

5 Similar, when you put information on
6 your order that says, call Joe at 422, that
7 information transfers over.

8 I just want it to be clear that if you
9 get your confirmation back, and you have requested
10 dealing with your end user, you just need to be
11 cautious, since it's not going to show up on the
12 confirmation.

13 MR. CLANCY: So there are other products
14 that Verizon offers, like SMARTS Clock, where CLEC
15 goes in and goes in and asks for a time. I don't
16 know if that works on EDI or not. We don't use that.

17 So somehow is there a link between this
18 internal service order and some slot in the SMARTS
19 Clock that tries to populate that at the requested
20 time?

21 MS. ABESAMIS: Yes.

22 MR. KELLY: It's basically the same
23 process in the respect that there is no designation,
24 there is no guarantee. It's a request, again.

1 You can go out to the SMARTS Clock.
2 What you can do is look and see that, okay, today is
3 the 4th, the 11th is busy, and you can see that maybe
4 the 12th or 13th is less busy, and you can kind of
5 get your request in first.

6 That's all it does.

7 It doesn't build, per se, take 9:00 to
8 10:30 and say that's only for that person, it doesn't
9 work that way.

10 MR. CLANCY: So would it be appropriate
11 to say that the way SMARTS Clock works, in terms of
12 force management, is that Verizon has an expected
13 number of people going to show up for work on a
14 particular day, with vacations, and sick, and all
15 that being understood, and there is a number of
16 available slots for the whole day, and that's what
17 SMARTS Clock kind of manages; like all the slots, but
18 not necessarily the time?

19 MR. KELLY: Well, the smart clocks kind
20 of says, depending upon the job, there are some times
21 that have been estimated how long, given the
22 parameters which you think you are going to do in a
23 job. I'm not going to use the term "average," but it
24 was probably done on an average.

1 So this type of work we expect will take
2 X amount of time, et cetera.

3 And smarts looks with WFA, it's really
4 when it goes through the process, because going into
5 smarts, per se, doesn't reserve populate that time.

6 It really has to go through the process
7 of going through WFA, and then, at that point in
8 time, you don't reserve, so there is no reservations,
9 there is no free service order utilization, it's just
10 a function of building up to the expected workforce,
11 and then trips over to the red day to say, from green
12 to red, to say we expect it at that point in time.

13 Prior to that day -- understand smarts
14 is the, I will use the term the "forecast system," in
15 that it can trip from green to red. Your six-day
16 interval can't.

17 So technically, I could have a SMARTS
18 Clock that's out eight, ten days, but yet you've got
19 orders that are going to come in on a six-day
20 interval.

21 So it's not easy.

22 And then the DRC goes in prior to the
23 actual dispatch and tries to work geographically,
24 because that's part of it, too.

1 You don't want a tech in lower Manhattan
2 sending him up to 125th Street, and then back down to
3 do the third job of the way.

4 So it's well beyond my ability to do it.

5 So the SMARTS Clock is kind of a rolling
6 one of which says, we think, we filled the day up,
7 trip over to the next.

8 MR. PANNER: Just to clarify, smarts is
9 based on the idea that you can say, well, I don't
10 care if it's done in six days, eight, or ten, or
11 twelve or thirteen, so I'll go further out to have a
12 greater ability to schedule. That won't work.

13 MR. KELLY: That's my next question.

14 Can you maintain the six-day interval,
15 and the answer is the six-day interval is the first
16 step, that's sacrosanct.

17 And in that request, and that's what the
18 DRC will do, try to move those people, try to move
19 and work the job, so that we're sending techs in a
20 same geography, or jobs that are close to each other,
21 so that you are not moving them from place to place.

22 MR. CLANCY: So let me reiterate, to see
23 if I understood pretty much what you said.

24 So, in force management, the six-day

1 interval, based on what's coming in the front door is
2 being managed, but it plugs up spaces that the SMARTS
3 Clock could have used, because they are being used up
4 by six-day interval orders. So you've got to manage
5 that.

6 And then this DRC organization looks at
7 all the jobs on a global basis, geographically, where
8 the force is located geographically, tries to match
9 the people to the geography to the job.

10 MR. KELLY: And to the expected time
11 frame.

12 MR. CLANCY: So in terms of
13 qualification, location, and all that, marry all that
14 together, and if they are able to manipulate the
15 workload for a given day to meet the commitment, or
16 meet the request for an a.m. or p.m., they will do
17 it.

18 MR. WHITE: And that is usually done in
19 the garage.

20 MR. CLANCY: And if everything goes
21 according -- is "Hoyle" a good word? If everything
22 goes according to Hoyle, then it could happen.

23 MR. WHITE: Yes. Out in the garage they
24 will get all the orders for the day. They will say

1 John, here is three, you have one in the afternoon,
2 one in the morning, they try to do that kind of
3 thing.

4 MR. KELLY: You could realistically have
5 a geography that you could handle fifty orders a day,
6 if you have a hundred requests for a.m.

7 So at that point, they try to do it on a
8 first come, first serve basis.

9 MR. CLANCY: I understand that.

10 MR. HANSEL: Two points.

11 One is to respond to Mr. Panter's point
12 on the issue that we're addressing under this item.

13 But my first point is whether Verizon is
14 amenable to somehow memorializing an interconnection
15 agreement, the process that's being described right
16 now.

17 And so to the extent that we're more
18 understanding fully of how the process works, in our
19 view, there shouldn't be a reason why we can't
20 implement that process in the agreement.

21 My second point is with respect to
22 Mr. Panter's comment that penalties with respect to
23 missing appointment windows by Verizon is already
24 addressed in the path.

1 And that comment is that that path is
2 not the end all and be all in Verizon's penalties,
3 and interconnection agreements are another avenue
4 where incentives can be placed on Verizon to perform
5 in a particular manner.

6 Along those lines, in the first
7 instance, we are only asking that should Verizon miss
8 its first appointment, that it waive its charge to
9 Covad.

10 So we're not actually imposing a penalty
11 on Verizon, we're asking them not to charge us in the
12 case they missed the appointment.

13 And it's only in the second or third
14 instance where they missed the same appointment that
15 we propose adding a particular charge that is
16 afforded to Covad.

17 So I want to make that clear, as well.

18 MR. PANNER: There is obviously a legal
19 policy issue about whether -- as we see it, we should
20 go outside of the established process here, whether
21 there is an industry process set up that deals with
22 this precise issue, should we do something different
23 here. That's how we see it.

24 Tony sees it as the industry process is

1 not the be all or end all. I don't see a technical
2 issue there.

3 The other point is that if Verizon
4 misses an appointment, we don't charge for it, if
5 it's our fault.

6 Which I assume is what Covad is saying.

7 If we don't make an appointment because
8 we screwed up, we don't charge for it; that's my
9 understanding.

10 MR. HANSEL: We're trying to add that
11 language to the agreement.

12 MR. PANNER: There is obviously an
13 issue. We have a procedure that we need to deal with
14 the entire industry.

15 Covad is not the only person that can
16 order, not the only person requesting appointments.

17 We have rules on an industry-wide basis,
18 and where Covad says yes, the rules are fine, we need
19 to have those rules be the ones that are binding.

20 And to the extent that those rules are
21 going to be modified, this is a legal policy issue, a
22 very important one.

23 To the extent that those rules are going
24 to be modified, because they reflect an industry-wide

1 and Commission policy decision that there has to be
2 some change, those changes should cut across the
3 industry, and there should not be -- first of all, in
4 many cases, technically infeasible, but as a matter
5 of policy, there should be where there is an industry
6 process in place to deal with these issues, that is
7 what should govern.

8 Again, that strikes me as a legal policy
9 issue, that's an important one in this proceeding,
10 but doesn't seem to me to raise a technical or
11 factual issue that we need to elucidate.

12 MR. HANSEL: If I can clarify.

13 The reason that I mentioned it was in
14 response to Mr. Panter's initiation of that issue in
15 his opening statement.

16 And so for the record, Covad did not
17 start talking about that particular issue today.

18 But to clarify, a more broad issue is
19 that if Verizon agrees to a particular point, then
20 why not put it in the agreement?

21 That's what an interconnection agreement
22 is for.

23 And throughout this proceeding you're
24 going to see Verizon say yes, we will do it, but we

1 are not going to put it in the agreement.

2 And that's not how I believe the process
3 should work.

4 And it leaves open the possibility that
5 Verizon can change its position on its own at any
6 time.

7 JUDGE LINSIDER: I'm sorry, have you
8 finished?

9 Here is how I see the issue as it's
10 developed.

11 With regard to what I think was an issue
12 of fact that needed to be elucidated here, it has
13 been elucidated, and it turns out there is no issue,
14 Verizon's current practice is satisfactory to Covad,
15 and that has come out of this discussion.

16 Then that leaves two other questions.
17 Number one, should that current practice be codified
18 in the contract.

19 And it seems to me that that's a legal
20 issue, and the parties can address it in a brief.

21 Let me ask you to brief it along these
22 lines. Anything else you want to say within a
23 reasonable number of pages is okay, too, but please
24 address at least this.

1 On the one hand, Covad wants to be
2 protected, and deserves to be protected from
3 unilateral changes that Verizon might want to make
4 almost -- and without that protection, could make
5 capriciously.

6 On the other hand, Verizon needs to
7 preserve its right to make justified industry-wide
8 changes that would trump the contract provision, and
9 certainly needs to reserve its right to make those
10 changes, if the Commission should direct it to.

11 And that, it seems to me, is very much
12 not an issue of first impression and contract
13 drafting, because there are hordes of contracts that
14 deal with those kinds of changes. And it seems to me
15 that some kind of language could be worked out.

16 And if it can't be, then the Commission
17 will decide it.

18 But assuming that you can't resolve it
19 yourselves along those lines, by agreement, if it
20 gets to briefing, please address reconciliation of
21 those issues, and in particular, that means that
22 Verizon shouldn't simply assert its interest, it
23 should deal with how it can protect Covad's interest,
24 in light of its own, and Covad shouldn't simply

1 assert its interest, it should explain how it would
2 protect Verizon's interest, in light of its own.

3 So I would like to see the issues joined
4 in that way.

5 Finally, penalties.

6 That, it seems to me, is entirely a
7 legal issue, it's part of the broader issue, as I
8 think both sides recognize, to what extent are the
9 generic provisions exhausted, and to what extent, on
10 the other hand, do individual contracts have
11 provisions that go beyond them.

12 So I think that's where we are on that
13 issue, unless there is anything else that needs to be
14 said.

15 I'm gratified that the factual piece of
16 that issue got resolved as it did, because I think,
17 just from a stepping back and watching the process, I
18 think it's a good example of how this ought to work.

19 Somehow the parties never really quite
20 understood each other as well as they did when they
21 got face-to-face here.

22 Yes.

23 MR. PANNER: Ms. Clayton wants to
24 address one piece of that as a piece of background,

1 we will address it more thoroughly in the briefs, but
2 I think it might be useful to get it out.

3 JUDGE LINSIDER: On which piece?

4 MR. PANNER: The one piece about
5 Verizon's ability to change its business practices.

6 JUDGE LINSIDER: Okay.

7 MS. CLAYTON: This is the idea of
8 unilateral changes.

9 As Mr. Kelly stated earlier, the time
10 frames, meaning the four-hour windows, are described
11 in the business rules.

12 Any time something is documented in the
13 business rules, we have an obligation to go through
14 change control if we have any idea of changing the
15 rules that are contained in that set of documents,
16 approach the CLEC community, tell them what the
17 change is going to be, allow them an opportunity to
18 present us with feedback on the change, before we
19 ever attempt to implement it.

20 And there are time frames associated
21 with any changes to the business rules, as well,
22 especially if they impact anything that the CLEC
23 community has to reprogram for.

24 Intervals would be one of those things.

1 So that whole process would have to be
2 introduced to the CLEC's, before we can change it at
3 will.

4 JUDGE LINSIDER: Okay. That's the sort
5 of thing that can be presented in brief by either
6 side. Verizon can explain that, or Covad could
7 explain why it regarded that as insufficient.

8 All right, that brings us to 27.

9 Assuming all other things are equal, we
10 will break for lunch around 12:30.

11 Cooperative testing, I think it's
12 Covad's turn.

13 MR. CLANCY: Covad seeks language in
14 this agreement that provides specific terms and
15 conditions reflecting how the parties currently
16 conduct cooperative testing, and intend to continue
17 to do so under the agreement.

18 Covad's proposed language tracks the
19 methods and procedures established in the New York's
20 DSL collaborative, and includes sensible refinements
21 that will serve to improve the efficiency and quality
22 of the process, and those refinements have been
23 practiced by Verizon in Massachusetts and New York
24 City.

1 Although the DSL collaborative has
2 agreed to the process itself, Verizon has not
3 revealed specific procedures associated with the
4 cooperative testing process to the industry on paper
5 that individuals outside the collaborative may rely
6 on, for example, on Verizon's website, you can't find
7 the description of cooperative testing.

8 Significantly, Verizon did not discuss
9 in the DSL collaborative the use of the interactive
10 voice response system when performing cooperative
11 testing.

12 However, Verizon does use a similar
13 system when it tests retail services, and it uses
14 Covad's IDR in testing wholesale services prior to
15 calling for the cooperative test.

16 Additionally, as described in Covad's
17 proposed language, when Verizon dispatches, it should
18 be required to label or tag all circuits at the
19 demarcation point.

20 The need for this process is that the
21 Covad technician knows that Verizon has terminated
22 the loop at its customers premise, and knows where
23 the loop is located, taking a loop as a practice that
24 has been followed for several generations in

1 telephone operations.

2 This is a particular concern to us now,
3 as Verizon implements, I think it's merger agreement
4 15, where, in some instances, there is an SPOY, in
5 some instances, there is not.

6 In some instances, Verizon owns and
7 operates the SPOY, in some instances they do not.

8 And Mr. Kelly and I have been on -- and
9 Mr. Bragg, and different people in Covad, have been
10 on telephone calls, trying to divine the mystery of
11 where is the demarcation point.

12 MR. WHITE: Are you finished, Mike?

13 MR. CLANCY: Yes.

14 MS. EVANS: Yes, he is.

15 MR. CLANCY: That's my opening
16 statement.

17 MR. WHITE: What Covad has done is very
18 well-documented a process that was agreed upon in the
19 DSL collaborative back when there were 386 computers,
20 and we didn't have -- they didn't have the tools at
21 hand, we didn't have line sharing.

22 They have done well in documenting what
23 we used to do, and had to do, at that time, in the
24 early stages of deploying DSL.

1 To put it in an interconnection
2 agreement is certainly fixed and rigid, and doesn't
3 reflect what we do today.

4 The process has been substantially
5 improved, and cooperatively, substantially improved.

6 And, in many cases, it isn't documented
7 in our rules, because we have evolved with different
8 CLEC's at different paces.

9 When we first planned for DSL, we were
10 going to use smarts equipment that was Verizon-owned
11 and costly, and Mr. Clancy argued that no, they had
12 their own equipment, Harris equipment, and Turnstone
13 equipment that worked just as well, and we agreed,
14 and that's really what Mr. Clancy has documented
15 here, how we worked together to use their test
16 equipment to turn up the loop.

17 But while it's cooperative, it's
18 manually intensive, and we believe that we need to
19 test, we believe that there are times when you need
20 to meet and do a cooperative test.

21 But it's not needed all the time,
22 because of the new tools that have been provided.

23 When we have a Verizon retail service, a
24 dial tone, we have mechanized loop testing, NLT.

1 And NLT provides us with all the
2 functions when we call to Denver, wherever the
3 technician is that he's accessing, we can do it all
4 remotely, whether or not -- we don't have to worry
5 about if somebody is going to answer the phone, or if
6 they are there on a Sunday, or late or night, or the
7 time zones, or that everybody cues up at the same
8 time. We just dial into computers and do it.

9 And we continue to look at similar type
10 equipment for eliminating the complex manual process,
11 mechanize it.

12 That's what the IVR process is. The IVR
13 is actually a telephone number that we dial into
14 Covad's equipment, and it does the testing without
15 having to have two people talking about how the
16 weather is.

17 It's much more efficient, and enables us
18 to do the same kind of work and functionality.

19 And that was left out of the proposed
20 agreement, and I brought it up. And that was for
21 DSL.

22 Then we got into line sharing.

23 And in line sharing, we had two more
24 things that we added, intelligence in the testing

1 process.

2 One is we have dial tone on there, so we
3 can use our own mechanized loop testing, or NLT. So
4 there is a less of a need.

5 But we were also worried about
6 interference, and some of the spectrum issues that we
7 talked about this morning.

8 So we also invested, Verizon did, in
9 adding additional testing, we call it -- was the
10 vendor, and so we have that additional functionality.

11 So, what I want to say is this is an
12 evolving process. We are measured on the output, we
13 are measured on the repair troubles, how fast we
14 repair those troubles.

15 We are measured on other troubles when
16 we install, do we have trouble within thirty days,
17 and supply installation repair work.

18 So there are measures to know how we are
19 doing. And we are doing very well.

20 And these tools, these grocery list
21 tools, are working very effectively.

22 And there are times that we want to do a
23 cooperative test, there are times that Covad wants us
24 to do a cooperative test. And by that I mean the

1 old-fashioned manual way.

2 There are lots of times that we don't
3 need to, and it's unnecessary. And to do it in a
4 level of detail, if we are out at a customer's
5 premise, and they want us out because it's lunch
6 time, and we can do it electronically, and get in and
7 out in five minutes, it's fine.

8 But if we're in the basement of an
9 apartment, and we're trying to call in, well, you
10 know, can you wait fifteen minutes, the landlord
11 wants to close and lock the door. He can't wait.

12 So that in order to do it from the
13 demarcation, you've got to go back and get access
14 again, which is a very difficult process for this
15 customer that's upstairs in an apartment to call the
16 super, to get us into the basement to do it.

17 So, what I'm saying is, we have the
18 measurements in place that protect Covad with the
19 measurements.

20 We have worked cooperatively to enhance
21 the process, and we shouldn't be required to do it
22 the old-fashioned way, when it's unnecessary.

23 The same is true with the tagging. In
24 some cases -- and it's a geographic issue, more than

1 anything, it depends where you are working, whether
2 you need to leave a label, a tag, on the pair of
3 wires.

4 In some locations, we don't want to
5 leave a label and highlight how many Covad customers,
6 Covad circuit number is coming up here, you don't
7 want other people that are in this equipment room to
8 see the names and labels, or those kinds of things.

9 In some locations, it's very obvious,
10 you're on the side of your garage, a tag, a label, we
11 can put it on there, but it's almost redundant.

12 In other cases, you may be in a huge
13 equipment room, and it's much more useful to talk
14 about the binding post number, and the pair number.

15 We need to give them enough information
16 so they can go out there and find that pair.

17 But it is not always the same, in the
18 same way.

19 When we do line sharing, Covad doesn't
20 have to dispatch at all. Or if they do, there is a
21 telephone number, and they can find it with a
22 telephone number, and we will still give them the
23 information.

24 So we think we have a very clean

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1 process, and to make them do it the old-fashioned way
2 is very inefficient.

3 JUDGE LINSIDER: The other issue is that
4 Covad is, for some reason, seeking to preclude use of
5 newer, better methods, and to codify what's, in
6 effect, an archaic method. I'm sure Covad has a
7 different view of it.

8 What is the interest that Covad feels it
9 needs to protect by including the DSL collaborative
10 results in the contract?

11 MR. CLANCY: As John has gone on in
12 detail about line sharing, which doesn't get
13 cooperatively tested at all, Covad is the company
14 that introduced the IVR into the process.

15 We did it cooperatively with Verizon,
16 first up in the Boston area, and then brought it down
17 into the New York area.

18 And the value added of the IVR is that
19 prior to that -- and I will point out, John, that I
20 really feel that, you know, you're technically
21 deprived if you are using a 386 in 1999.

22 But that's what you said.

23 The issue was that cooperative testing
24 came into being because Verizon's performance on

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1 delivering stand alone UNE, DSL loops, which have no
2 noise on them, no signal, sometimes they have a white
3 noise, depending on the technology, sometimes not,
4 they are basically a pairing cable from the central
5 office to the end user's premise.

6 It was very difficult for Verizon to
7 deliver those effectively without some kind of
8 testing.

9 That's how cooperative testing became
10 defined and developed, and it has worked since 1999
11 to today in improving Verizon's loop delivery
12 performance overall.

13 So, part of Verizon's good numbers are
14 based on the fact that this is a practice that is
15 followed by the industry.

16 The IVR enhances the process, in that
17 it's more efficient for a Verizon tech, when they are
18 sectionalizing a loop, for example, they go out to
19 the end user's premise, and they dial up on the IVR,
20 and they realize when they access our test equipment
21 they are not seeing their own shorts or grounds,
22 trying to confirm that they have DC continuity on
23 that loop.

24 So, they would have to walk that trouble

1 back toward the central office.

2 In the past, in order to do that, they
3 would be constantly calling Covad, getting a Covad
4 agent, asking the Covad agent to test with them.

5 The IVR permits them to more effectively
6 find the trouble, sectionalize the trouble, close the
7 trouble, and then go back to the end user's premise,
8 call Covad, ask Covad to test the loop.

9 Covad actually records the test in its
10 loop test history they are then able to record the
11 test.

12 And we have a benchmark for what that
13 loop looked like when it was delivered to Covad in
14 terms of electrical characteristics.

15 So, we have that definition.

16 And if the technician is actually where
17 they are supposed to be, at the end of the circuit,
18 then all is good, and the customer should come up in
19 service after that test.

20 We also get the dMarc information from
21 the technician who is present at the location, as
22 John said, where binding post information and other
23 information is available.

24 And we ask them to tag the loop.

1 So if it's an environment that's not
2 taggable, they can tell us at that time this
3 environment is not conducive to tagging, here is the
4 information you will need to find the loop, this is
5 where it is.

6 So I'm not on the telephone with Dave,
7 saying where did you put the loop.

8 JUDGE LINSIDER: What does Covad lose by
9 the processes that Verizon says superseded all of
10 these channels?

11 MR. CLANCY: We were not aware of any
12 process that has superseded this process. Verizon
13 still conducts this process with us today.

14 Now, the measurements, originally, the
15 measurements actually had a difference, the carrier
16 working group metrics that were originally devised to
17 measure DSL performance and delivery of DSL loops by
18 Verizon, originally had distinctions for CLEC's that
19 engaged in cooperative testing, and CLEC's that did
20 not.

21 They went away, because some CLEC's were
22 not engaged, most CLEC's were not engaged in
23 cooperative testing loops.

24 MS. EVANS: Your Honor, I think that

1 this issue may be somewhat similar to the previous
2 one, in that what Covad is looking to do is to
3 protect the business, the operation of the way that
4 Verizon is claiming that it's operating today, at a
5 minimum, set a floor.

6 And, I think that, as you suggested
7 earlier, that if Verizon is saying, I don't know why
8 Covad would want this way of testing, certainly there
9 could be language that could incorporate, you know,
10 if Verizon upgrades this testing, or whatever.

11 But it's just interesting, because,
12 first of all, as Mike characterized it, the
13 cooperative testing only came out of the New York 271
14 process, because the ability for Verizon to do loops
15 was a nightmare.

16 This was the only way that we could get
17 them to deliver the loops very well for us.

18 So, yes, we're going back in history,
19 but we have to remember that when there is a
20 disagreement, if we're talking to a new manager of a
21 center, what they pick up is this contract. They
22 don't look at necessarily Verizon's methods or
23 procedures.

24 The first thing they go to is a

1 contract, because that's the only document that binds
2 both parties.

3 And we read the contract, and we see
4 what, at a minimum, they are provided to deliver to
5 us.

6 So perhaps again this is an opportunity
7 for us to work on language that incorporates this and
8 references some document that Verizon is indicating
9 that they have better ways of doing it. They just
10 have not shared that with us.

11 So we're at a loss to be able to say, oh
12 things are better.

13 This is what we know they've done, we
14 worked through this process, and at a minimum, we
15 need to continue this process.

16 MR. CLANCY: If I could just correct my
17 testimony, because I misspoke.

18 The metric was changed because most DSL
19 CLEC's were engaged in cooperatively testing.

20 MR. KELLY: This is the cooperative
21 testing piece of it.

22 My people have worked with Covad, I've
23 got the Boston/New York area on the IVR.

24 My understanding is that the IVR

1 evolution on the Covad side is going to be such that
2 in a relatively short period of time, a year,
3 whatever, I don't have to call a Covad tech.

4 So, in other words, my tech can go into
5 the IVR, my Covad tech would do, being told get a
6 confirmation number, which is what is looked for
7 today.

8 I'll never talk to a Covad tech.
9 Somehow I've got to present the information. This is
10 part of what is being worked on, electronically back
11 to Covad, where the dMarc is.

12 That language says I have to call a
13 Covad tech.

14 My concern is, and one of the reasons I
15 will use the IVR, is I want my technicians to be able
16 to use it today.

17 And what they are doing, effectively, is
18 they are going in, they are sitting there, waiting
19 for the test to be run. It takes a couple of
20 minutes, and then they call the Covad tech, who then
21 performs the same test, and I've got a tech waiting.

22 Mike is right, it helps my tech, because
23 if there is a problem -- there isn't always -- he can
24 use that, rather than calling the company Covad tech,

1 to call them up, to sectionalize and fix the problem,
2 and reinspects.

3 And at that point calling Covad for a
4 confirmation number, to give them the tag, the dMarc
5 information.

6 Why would I continue to call a Covad
7 tech, if I can do on a mechanized basis.

8 And this is cooperative, this is great,
9 I think it's the greatest thing in the world. I'm
10 not sure if everyone does.

11 I thought it was great, and that's why
12 we're willing to do it.

13 Now, for a three-year agreement, I've
14 got to say that I've to call a Covad tech.

15 To me, then the IVR becomes a useless
16 piece of information, because I'm pretesting to
17 prevent my tech calling to Covad tech.

18 MR. WHITE: And your IVR can record the
19 test that our technician does, and you get back upon
20 the completion of the order, the dMarc information.
21 All of that happens all the time.

22 MR. BRAGG: And we also provide that
23 information on a website, too.

24 MR. PANNER: Can I ask a question also

1 about something, just to clarify?

2 Is it right that we would go to an
3 interconnection to find out what to do on cooperative
4 testing?

5 MR. KELLY: No.

6 MR. BRAGG: No.

7 MR. PANNER: Can you elaborate on that ?

8 MR. KELLY: We have methods and
9 procedures.

10 Our technicians never look at it, no.

11 MS. EVANS: The technicians don't, but
12 the managers do.

13 When it comes to a dispute, and
14 certainly, Steve knows, when we get into these issues
15 the first thing we do is call on them and look at the
16 contract language.

17 MR. KELLY: My team leaders and my
18 managers do not have copies of everyone's contracts
19 in their offices.

20 MS. EVANS: Can I just say this?

21 This is one of those where we violently
22 agree. That's why I'm shocked.

23 We violently agree that we want you, you
24 are using the thing, you think it's great.

1 And we're not saying that this -- again
2 I think there is opportunity for us to get language
3 that allows us, to over the life of this contract,
4 the three years, incorporate that.

5 Maybe the parties meet after a year and
6 see if the need for doing the cooperative testing is
7 still there.

8 We can put language to address our
9 concerns and your concerns.

10 But Verizon has not proposed anything
11 other than they won't put anything related to this in
12 there.

13 MR. PANNER: That's not true.

14 MR. WHITE: You didn't put one word of
15 IVR in any of your write-ups. It wasn't there.

16 MS. EVANS: I'm talking about our
17 negotiations, John.

18 MR. HARTMANN: One of the things that we
19 haven't done throughout the course of the day is
20 refer to what I have been referring to myself, this
21 matrix of contract language.

22 We have the Covad language on the
23 proposed, the proposed language on the left, and the
24 Verizon language on the right.

1 It's attached to Verizon's initial
2 brief.

3 MR. PANNER: Response.

4 MR. HARTMANN: Verizon's response to
5 Covad's arbitration petition.

6 We also have actually got other separate
7 copies, if anybody wants one.

8 By looking at that matrix, we can see
9 what Verizon proposed for language, as well as what
10 Covad proposed.

11 And this is actually an issue on which
12 Verizon has proposed language.

13 And I think it's language of the type
14 that I was referring to, that is sufficiently
15 concrete to give Covad some, hopefully, some comfort
16 that Verizon is in cooperative testing for the long
17 haul, but not so detailed that we can't change it
18 over the three years.

19 That's our position.

20 MS. EVANS: Well, let me just say I
21 definitely think that there was a starting point.

22 I think why we are here is that it
23 didn't have enough assurances, because as you folks
24 are indicating, you all work off of method and

1 procedure.

2 We don't get the method and procedure.

3 We don't get the updates to it.

4 I don't know what that method and
5 procedure requires Verizon to do.

6 And so, at a minimum, this would ensure
7 that we get a minimum level of testing and certain
8 things done.

9 So that's why we are here.

10 MR. CLANCY: Also, it's not documented
11 anywhere what the procedure is, other than in a
12 collaborative, which is nondiscoverable information
13 that is protected by a protective Order.

14 So the issue is, how does the industry,
15 for example, should Verizon decide to change this
16 unilaterally, since it's not a business rule, none of
17 those rules that apply to what is defined and
18 documented apply here.

19 So in terms of why do we need it
20 documented, because it defines the business
21 relationship between Covad and Verizon, and how we
22 interact.

23 So what do you want to document?

24 MR. KELLY: At the end of the day, one

1 of the things that is in the Verizon position is that
2 you're going to give us the confirmation number, the
3 serial number.

4 So irrespectively, it's not just Covad,
5 there are -- quite frankly, we have different, based
6 on the levels of sophistication within these centers,
7 I have different processes, testing with them, seeing
8 if they work, moving them to, quite frankly, I won't
9 mention them by name, but we're talking about the
10 IVR, saying isn't this really what you want to do.

11 That point is, you get a confirmation,
12 you're going to give us the confirmation number.

13 If you don't agree it's tested, whatever
14 the agreement is between us, you don't give us the
15 confirmation.

16 MR. BRAGG: What we proposed here
17 sufficiently documents the process to allow for
18 change or improvement going forward, but documented
19 enough that it should be amenable to you.

20 MR. CLANCY: Forgive me --

21 MR. PANNER: If we're talking about
22 documenting, we're really in the realm of -- I think
23 it's very helpful to summarize it --

24 JUDGE LINSIDER: It sounds like we

1 moved -- well, I think as Valerie suggested first, it
2 sounds like Verizon's current procedure is acceptable
3 bill to Covad, and the issue is the extent to which
4 it should be codified, and that gets back to where we
5 left the earlier issue of coming up with some wording
6 that notes the current -- that, in effect, codifies
7 the current procedure, and provides a mechanism for
8 changing it that serves the interests of both parties
9 that I outlined before.

10 If we have agreement that that's the
11 posture, then I think we can treat this issue the
12 same way, negotiate, and if the negotiation doesn't
13 prove successful, agree to the legal issue, with each
14 side explaining how it will deal with legitimate
15 concerns of either side, and the Commission will
16 decide it.

17 MR. HARTMANN: Your Honor, from what I
18 heard from both sides, we have to have agreement as
19 to the testing.

20 I'm not sure that we agreed that we have
21 agreement on the tagging.

22 MS. EVANS: Yes. If I could just
23 comment on that.

24 I guess my response to John White's

1 statement about tagging, and it's all over the place,
2 it's a really simple no brainer.

3 If the tech goes out, tag the loop. If
4 he doesn't, we will find out where the loop is
5 otherwise.

6 But it's not -- monitoring has nothing
7 to do with this issue, it's a standard practice that
8 if Verizon is providing a circuit to its own business
9 customers, that they have vendors that put phone
10 systems in, they go to the location, they drop the
11 circuits, they tag them, and then their vendor comes
12 in and says okay, here is my five circuits, I can put
13 my equipment in.

14 It's a very similar setup to that
15 scenario.

16 We buy a loop and we need it to be
17 terminated to a location, and then our technician
18 goes to pick it up, and take it to our customer. We
19 need to know where it is.

20 So that's what tagging the loop boils
21 down to, in our minds.

22 And I don't hear Verizon willing to say
23 that, given certain scenarios.

24 There are instance in which Verizon may

1 deliver a loop and not have an actual dispatch, and
2 we recognize that.

3 But when they dispatch, all we want is
4 the language to say is that they will tag the loop,
5 so that we can easily find it.

6 Mike, do you have anything to add?

7 MR. CLANCY: No, other than this creates
8 the lack of a tag, or the inability to find a tag,
9 and I'm not asking -- John noted that they would be
10 putting CLEC's names on the tags.

11 Verizon has distinctive circuit ID's for
12 each and every service they deliver. And if those
13 distinctive circuit ID's are on the tag, we should be
14 able to find our circuit.

15 So the issue with tagging is when --
16 this is kind of a bifurcated process, because Verizon
17 delivers their portion of the service, which is the
18 unbundled network element from the central office to
19 the end user's premise, and since merger condition
20 15, and now techs are telling our techs that as of
21 January they got issued new rules, we haven't seen
22 those new rules, but they are saying that.

23 So I'll talk to you later.

24 But the issue is that where the

1 demarcation point is is important, in light of the
2 rules that Verizon engaged in with the FCC in terms
3 of where they are going to leave a service in
4 different types of dwellings, and in different
5 states.

6 It's kind of like a grid.

7 MR. KELLY: It's quite a grid.

8 MR. CLANCY: And it says on the bottom
9 it's not a policy, so I don't believe it, but this is
10 kind of what we do.

11 So it's an iffy area that a tag brings
12 certainty to.

13 So if I go out to an end user's
14 location, and it's multi-unit dwelling, and there's
15 no tag, and they say the dMarc is the terminal on the
16 fifth floor, there could be 150 pairs on the fifth
17 floor that I'm going to look for my circuit on.

18 JUDGE LINSIDER: But you are asking for
19 the tag only where the tech goes out, anyway; is that
20 right?

21 MS. EVANS: Yes.

22 MR. CLANCY: Where we have to pick up
23 the service, we have to dispatch, they have to
24 dispatch.

1 MR. WHITE: This is something that is
2 done a lot, tagging, but it's not always helpful.

3 If you went to -- and some of these
4 terminal rooms are huge, there are thousands of
5 pairs.

6 If every pair was tagged every time, you
7 would go there and you'd say, look at all the tags,
8 you would be reading tags for hours.

9 So in some cases, absolutely I agree,
10 you need a tag.

11 But it's not always. Sometimes it's
12 better to say vertical 62, binding post 12. This is
13 going to give you a better indication than seeing all
14 these pieces of paper that are hanging off of wires,
15 and you are trying to read them, and which one fell
16 off when somebody else worked on it.

17 I've been in places where they end up on
18 the floor, and you say, I wonder if it's one of the
19 ones that fell.

20 I think it's engineering -- it's the
21 technicians judgment, and he knows that somebody else
22 has to follow up, how is he going to pick up and
23 describe it to him.

24 It might be just as important to say

1 there is a door there, go see the super for a key.

2 All these things, we provide. And go to the terminal
3 room.

4 And he will say it is a tag, or it is on
5 binding post so and so.

6 But it's going to vary, it's going to
7 vary by sight.

8 And in some cases the pairs will be
9 reused. We may dispatch, or we may not dispatch.

10 MR. PANNER: Just to clarify.

11 We certainly agree, Mr. White, isn't it
12 right, that, that it's important to provide a
13 description that is usable to Covad of where the loop
14 is.

15 MR. WHITE: Yes.

16 But not always is a linen tag with a
17 string on it.

18 MR. CLANCY: So where a tag is usable is
19 where there is no identifiable characteristics for
20 the termination?

21 Correct, incorrect?

22 MR. WHITE: Yes, that would be a
23 requirement.

24 MR. CLANCY: So in locations where there

1 is no defining characterization for the actual
2 terminal of the service, Verizon would be willing to
3 tag.

4 MR. WHITE: Yes.

5 MR. CLANCY: And in locations where
6 there are defining characteristics that you
7 described, such as a frame, a real frame, that people
8 can go in and find verticals, and rails and blocks.

9 MR. WHITE: Absolutely, yes.

10 MR. CLANCY: You would define that in
11 the information you give to Covad.

12 MR. WHITE: Absolutely.

13 We would give you whatever is necessary
14 for you to find it, whatever is the best means for
15 that location.

16 MR. PANNER: Lately has this been
17 functioning okay?

18 MR. KELLY: The answer is, for the most
19 part.

20 As Mike pointed out, there are some
21 changes coming down, so where is the dMarc rather
22 than the tag.

23 MR. WHITE: Minimum point of entry.

24 MR. KELLY: Yes.

1 MR. CLANCY: You've got a situation
2 where there are technicians on Verizon's side who are
3 used to a particular environment that's changing.

4 MR. KELLY: Yes.

5 MR. CLANCY: And there's Verizon-Covad
6 technicians, some of whom at one time probably worked
7 for the phone company, that are used to certain
8 conditions, and those conditions are changing.

9 Tagging and detailed information, the
10 kind that you described when the facility is such
11 that you can get detailed information is what we
12 need.

13 MR. WHITE: In the beginning, when we
14 were working through the initial installations, I
15 wouldn't certainly characterize it as a nightmare.

16 MS. EVANS: Ask the customers.

17 MR. WHITE: When we were working these
18 through.

19 Probably a bigger issue is not so much
20 tagging, but did we leave it in the basement, or did
21 we leave it on the first floor, because in some
22 buildings, we own the cabling, some we didn't.

23 So where has a lot of dimensions, not
24 the physical where.

1 MR. WHITE: The left or right side of
2 the wire.

3 MS. EVANS: Again, I'm hearing violent
4 agreement.

5 Verizon is saying I understand the need,
6 I understand that there may be circumstances in which
7 tagging is not the best means, and Covad is willing
8 to take those and try to articulate those in some
9 language that we can work with.

10 But the concern, obviously, the first
11 red flag is that I don't know how we can define in
12 this type of location, Verizon will tag, but in this
13 one it won't, because the concern is the
14 subjectivity, and I can't tell by the technicians. I
15 don't to what you are going to get when you go out
16 there day by day.

17 But we can certainly try to make an
18 attempt to codify some language that explains what
19 the process will be between the two parties in terms
20 of identifying where loops have been dropped.

21 MR. WHITE: We share the pain, if it
22 isn't labeled.

23 MS. EVANS: There you go.

24 JUDGE LINSIDER: The contract language

1 is something along the lines of leave identification,
2 or other site appropriate method.

3 MR. WHITE: That sounds good.

4 JUDGE LINSIDER: All right.

5 So I think we're there on this issue, as
6 well. "

7 Okay, that was 27.

8 Let's break for lunch and come back at a
9 quarter of two.

10 Before we do that, let's go off the
11 record for a second.

12 (Recess had.)

13 JUDGE LINSIDER: Back on the record.

14 It looks likes issue 32 is next, and
15 that is the one that Covad grouped with issue 13,
16 Verizon put 13 toward the end of the second part of
17 the agenda.

18 I had suggested doing 13 and 32
19 together.

20 Let's do 32 first, and then see what to
21 do about 13.

22 I think it's Verizon's turn, but don't
23 hold me to it.

24 MS. EVANS: It is.

1 JUDGE LINSIDER: Okay.

2 MR. PANNER: Issue 32 is about the
3 interval that applies to provisioning of line shared
4 loops.

5 That's an issue that has been addressed
6 in industry. The interval right now is three days,
7 with certain business rules associated with it.

8 Under the agreement, we have to provide
9 treatment that is in three days -- under Verizon's
10 proposal we have to do it within three days, or at
11 parity with retail, whichever is faster.

12 And essentially, Covad is saying that we
13 don't want three days, we want two days.

14 And our position is that this is an
15 industry -- this is something that has been resolved
16 and established through industry collaboratives, and
17 it shouldn't be changed for this proceeding.

18 JUDGE LINSIDER: Let me just make sure I
19 understand this.

20 There is a distinction between two types
21 of request.

22 Isn't there one for LSR's and a
23 different proposal for the DS1?

24 Just so we know what we're talking

1 about.

2 MR. PANNER: This is about provisioning
3 of line sharing. This issue 32 is about if they make
4 a request that says we would like to have DSL, offer
5 DSL -- we would like the line sharing element, what
6 is the return date.

7 JUDGE LINSIDER: Okay, so we're talking
8 only about line sharing now?

9 MR. PANNER: Correct.

10 JUDGE LINSIDER: There the issue is two
11 days versus three days?

12 MS. EVANS: Correct.

13 MR. PANNER: Yes.

14 JUDGE LINSIDER: Okay.

15 MR. PANNER: Do you want to elaborate at
16 all on the three days?

17 MS. ABESAMIS: Basically, the three
18 days, from a measurement perspective is what has been
19 ordered, that Verizon needed to provision within
20 three days, it started in four days back in 2001, and
21 it has been reduced to three.

22 And the way that we measure it is we
23 measure parity with VADI, or, in this case, a
24 separate division, Verizon Advanced Data, Inc.

1 And the way the measure works is it's 95
2 percent within three days and/or parity with VADI.

3 So, for example, if we provisioned line
4 shared loops within three days 96 percent of the
5 time, but we've done it for our separate affiliate,
6 or a separate division 98 percent from a performance
7 standpoint, we score that as a miss on Verizon.

8 JUDGE LINSIDER: Covad?

9 MR. CLANCY: This is in industry change
10 management, the change request was submitted by
11 Verizon, and although we haven't gotten official
12 feedback, the informal feedback is it's not going to
13 happen. It was submitted by Covad.

14 MS. ABESAMIS: Yes.

15 MR. CLANCY: I'm confused.

16 So, the informal feedback from Verizon
17 is that it's not going to happen.

18 Basically, it's a change in interval.

19 The reason I submitted the request is I
20 was at a forum ostensibly that was for hot cuts, and
21 Verizon was describing the hot cut process, and they
22 do all cross-connections for the hot cut by day two.

23 So, I found it interesting, because
24 there is a little bit more cross-cut work for a hot

1 cut than there is for a line sharing.

2 So I figure if you could do hot cut
3 wiring in two days, you can do line share wiring in
4 two days.

5 MR. KELLY: Can I elaborate for a
6 moment?

7 MS. EVANS: Let me just finish our
8 opening statement.

9 Let me explain what the difference of a
10 day makes.

11 As competitors try to differentiate
12 themselves, and obviously, when customers want the
13 services, they want them as quickly as possible.

14 Covad takes orders twenty-four hours a
15 day, seven days a week. So the customers'
16 expectation is they want this broad band as quickly
17 as possible, and there are some things that we have
18 to do on our end.

19 Until Verizon commits to delivering the
20 loop and doing the work that they have, we know they
21 go back to the customer and say you can get it until
22 then.

23 And then, as far as actually getting it,
24 like I said, it might sound a little, just a day, but

1 every day makes a difference.

2 BellSouth, who is a company a little bit
3 south of here, does the exact same thing, and they
4 can deliver the loops to Covad in two days.

5 And so we are at a point where we feel
6 that line sharing has been out there since 2000, or
7 actually, a little bit before that, and the three
8 days was kind of a like a negotiated type of thing.

9 CLEC's wanted it to be done on a
10 graduated level, when they were in the collaborative.
11 They wanted, okay, let's start out, it's a new
12 process, we'll start out four days, then we'll do
13 three, and let's go down to two, and maybe a half a
14 day.

15 But the compromise at that time was on
16 like four days, or going to three days.

17 And then, in the Massachusetts 271,
18 through negotiations with Covad, Verizon agreed to
19 make it a three-day interval everywhere in the United
20 States that they offer services, which is great.

21 Now is the time to raise the bar. The
22 work that's involved, the processes that are
23 involved, we can do it, and they can do it in their
24 sleep.

1 And the question becomes when does the
2 bar get raised, so that we can start to offer these
3 services to customers who are aggressively looking
4 for these services in a faster manner.

5 So that's why the need for the one day
6 shortening is what we were requesting.

7 MR. KELLY: First of all, let's fully
8 understand in some ways why there was a three-day --
9 actually, why there was a five-day, I believe was the
10 first interval.

11 As I talked about standard, I talked
12 about the fact that six days, irrespective of the
13 volume, it is our commitment to meet that.

14 In three days, this is not something
15 where Covad is saying to us we will only issue so
16 many orders for central office, we will look for the
17 available workers, which, by the way, we don't have
18 the way we have in the outside plant, the smart type
19 system, et cetera.

20 There what would happen is three days
21 gives our central office people the ability to
22 respond if they have to, whether by moving resources
23 between CO's, if there is work being done in the CO.

24 There is no governor to stop the volume

1 that you go into a particular CO on a three-day
2 interval.

3 So, what we've done is to give our
4 people, because the central office people,
5 effectively, day one is really the data they will get
6 the request for work.

7 As Mr. Clancy just pointed out, in a hot
8 cut, we try to prelay the wiring, and by the way we
9 try to do that to the client, we try to lay it in,
10 it's the firm ready day, the date before the due
11 date, and then there is the actual due date.

12 So the attempt is made to do it on that
13 date, which is the two days out, if you will. There
14 is no guarantee that it can be done. It's a
15 workforce management's issue.

16 We have no ability to react effectively,
17 if it was in two days, central office would get it on
18 day one, have to provision it on day two, and they
19 have no ability to work their workforce around to
20 accommodate it. It just doesn't give them any time
21 to react to it.

22 This is a growing part of the business,
23 and again, our ability to move the workforce to
24 handle the workload, there is no governor on it.

1 JUDGE LINSIDER: What are the features
2 that BellSouth could it in two days?

3 MR. KELLY: There are a ton of features.
4 Some are they are a multi-frame locations.

5 Some of the CO's, if they want a frame
6 called cosmic frame, depending where the appearance
7 is, instead of running a pair of wires, they can run
8 up to six cross connections.

9 You can't compare what would be -- I
10 don't know what Bell South's unmanned CO situation is
11 versus New York's, I don't know what percentage of
12 their frames are unmanned.

13 There are just a ton of differences
14 geographically.

15 I don't know what their volume is. They
16 may have a steady volume coming into any of their
17 central offices.

18 You just don't know. I can't tell you
19 the differences between BellSouth and -- I can tell
20 you Manhattan, as everyone will tell you, it's
21 unique, so are the boroughs, both from the physical
22 structure of the frames, and also from the volumes.

23 The volumes fluctuate significantly.

24 JUDGE LINSIDER: Is volume an important

1 aspect of the difficulty of committing to two days.

2 MR. KELLY: Yes.

3 It's not just the volume in this
4 product, by the way, it's the volume in every
5 product.

6 JUDGE LINSIDER: Is there any potential
7 in talking about volume constraints, somehow the two
8 days would be available in certain circumstances, up
9 to certain volumes, something like that?

10 MR. WHITE: What happened is, as we
11 tried to bring down the number of days, there are
12 certain steps in the process where you do your
13 wiring, where you do your testing, and you do your
14 turnout.

15 And I don't know what -- I've never
16 heard that BellSouth did it in two days, I'd have to
17 see that. I'd also have to see what their
18 performance is.

19 But the issue comes, you know, force to
20 load, if we have to go to a remote location and
21 package something, you could make adjustments in a
22 day, it gives you one day to send people up, or to
23 ship forces from one location to another.

24 If everything came in magically where

1 it's expected, it's possible to do it.

2 But the predictability, and planning of
3 this is important, that everybody can plan for it.

4 If you have this load, and it's now
5 shorter than doing anything else, it's shorter than
6 doing regular telephone service.

7 It's now going to take precedence. No,
8 we can't put new telephones in, no, we can't do any
9 other services, it would be the shortest interval
10 around.

11 And it isn't hot cuts are not longer,
12 and hot cuts are not simpler, as far as the timing
13 goes, but there are more wires run for line sharing
14 than there are for hot cuts.

15 There is one wire, one cross connection
16 for hot cut, and then there is a replacement of it.

17 In line sharing, you've got to run a
18 cross-connector to a splitter, or a block that feeds
19 a splitter, and another one back, a minimum, two
20 cross-connections.

21 It is more complicated. As David
22 mentioned, those could be on multiple floors.

23 So if we were to reduce it, I think the
24 metrics would be greatly impacted, that we would

1 certainly not be able to do the performance that we
2 have here today.

3 And they do see on the website, if we
4 get it done, they will see that the status of the
5 work is complete.

6 We don't hold it, wait for it. If it's
7 wired the second day, and they test it, there is no
8 reason that they can't treat that as a completion.
9 But the predictability is very, very important.

10 MR. PANNER: We haven't received
11 documentation of what BellSouth offers. We haven't
12 seen details of it, anything in writing.

13 MS. EVANS: Would you like it?

14 MR. PANNER: Yes, we do.

15 MS. EVANS: Sure.

16 MR. PANNER: Sometimes when you dig into
17 this, there may be conditions attached, or other
18 things that make that different.

19 I'm not saying that's true here, because
20 we haven't seen it.

21 JUDGE LINSIDER: All right.

22 MR. CLANCY: I just wanted to point out
23 a clarification of Mr. White's testimony.

24 At this point in time, line shared loops

1 can't be looked at on the website. Stand alone loops
2 can, but not line shared loops.

3 MR. KELLY: I think that's right.

4 MR. WHITE: That's true?

5 MR. KELLY: Yes.

6 MR. WHITE: I stand corrected.

7 MR. KELLY: John is right, once it is
8 complete, once it's framed complete, you get the PCN.

9 It's not like we hold it and don't
10 complete it. If it's done, it's wired in, they test
11 it, it works.

12 MR. CLANCY: How would you get that?

13 MS. ABESAMIS: He wouldn't know the work
14 is done, he would get the notice.

15 MR. BRAGG: If you get wired on the
16 frame ready date -- whenever it gets wired, the PCN,
17 provisioning completion notifier, that goes out
18 pretty much immediately after completion of the
19 frame.

20 MS. EVANS: And, just to clarify, and
21 thank you for sharing that, but the thing that the
22 competitor can hang their hat on, and we have to tell
23 our customers what is going on, is based on we
24 initially sent the request in, Verizon comes back and

1 gives us a targeted completion date, if you will.

2 And that's three days.

3 So, what Bill is saying is that, well,
4 it might get done sooner, and then we'll send you a
5 notice and tell you it got done sooner.

6 But again, we're trying to manage
7 customer expectations.

8 So that's what they are committing to
9 doing.

10 JUDGE LINSIDER: Let me ask Covad why,
11 given that it appears to be an issue raised entirely
12 in terms of Verizon's capabilities, rather than in
13 terms of Covad's specific needs, because Covad like
14 all CLEC's, needs to have this done as quickly as
15 possible, but Covad has no unique interest in
16 specifically two days.

17 I know you would like to see it done as
18 quickly as possible.

19 So the issue really is what can Verizon
20 do.

21 And if that's the issue, why shouldn't
22 they be treated generically, given the processes that
23 we have set up?

24 MS. EVANS: Well, the argument that I've

1 heard Verizon raise on this issue is that it's
2 primarily they are concerned with central offices
3 that aren't covered, that they may have a need to get
4 somebody out there.

5 And certainly, Covad would be willing to
6 have a discussion about let's talk about that
7 scenario.

8 So we want to work with them to figure
9 out, but Verizon is unwilling to sit down at the
10 table and say, okay, what can we do as an industry to
11 try to increase the level of services being delivered
12 to our customers faster.

13 It's basically they're saying it's three
14 days, and it will stay at three days.

15 There is no impetus on their part to
16 ever change that.

17 And so, this was our opportunity, if you
18 will, to try to get the issue revisited.

19 We have it in change management, we
20 raise it everywhere we can.

21 The 271 was the way that we got the
22 process fixed the first time, that's gone. And so
23 the question to the industry is how do you get this
24 changed going forward.

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1 MR. WHITE: There is another dimension.
2 When you start to compress intervals --
3 and we had a discussion this morning about
4 appointment times -- customers are very unhappy if
5 you promise and don't deliver, and the shorter the
6 interval, the more precise you give it, the more
7 probability of missing it.

8 We also see, when there is activity in
9 sales, weekend activity, there will be peaks during
10 the week, there will always be an unusual one-day
11 type of event.

12 But when you have a three-day interval,
13 it's possible to ameliorate that somewhat.
14 Otherwise, you're sitting there with -- and we have
15 seen CLEC's, certainly not including Covad in this,
16 that have bolted and sent us a huge volume of orders
17 in one day, hoping that we would fail.

18 MR. KELLY: The issue is not unmanned
19 CO's, the issue is workforce management, period.

20 I mean, it's whether they're manned or
21 unmanned. There is no volume regulator.

22 It is those orders are in with everyone
23 else.

24 It's not just the impact of whether it's

1 line sharing being wired on that particular day, it's
2 the cumulative impact of all the work that is being
3 done in the CO that day.

4 And again, the issue becomes not can we
5 get someone out to a manned CO, it could be as simple
6 as could we get someone from White Plains to Mount
7 Vernon to augment the force there, because -- quite
8 frankly all the CLEC's, not just DSL CLEC's, have
9 marketing campaigns, and some of them target very
10 specific areas.

11 And we have seen spikes that are
12 absolutely phenomenal in a very short period of time.

13 MS. EVANS: Just so we all understand
14 the process, we're required to provide Verizon on a
15 central office by central office basis the expected
16 demand.

17 And I think historically we've gone
18 through these with the spikes, and things like that.

19 Covad has in no way ever exceeded its
20 forecasted demand.

21 If anything, the reason we do that is so
22 Verizon can plan accordingly.

23 They claim that without the forecast,
24 they don't know where the people are going to be

1 needed, and where the facilities are going to be
2 needed.

3 We're required to give them a forecast
4 well in advance, down to the central office level,
5 that tells them what the expected demand is going to
6 be.

7 And again, we have never exceeded that
8 in any way, shape or form.

9 JUDGE LINSIDER: And how frequently is
10 that given? Is it given on a daily basis?

11 MS. EVANS: You're required, I believe
12 it's every six months.

13 MR. KELLY: If you are going to give so
14 many orders --

15 MS. EVANS: It's the system you all
16 established, so if it is not meeting your needs,
17 please let us know. It's a system that you
18 established, and we're just utilizing it.

19 MR. HARTMANN: There is at least one
20 thing that I do want to address.

21 Valerie indicated that there is no
22 impetus on Verizon to shorten the intervals beyond
23 what they are. I think that that's simply not so.

24 One of the guarantees that Covad has

1 here is that we have a parity standard.

2 Verizon is trying to provision these
3 same advanced services to its own retail users, and
4 you can bet that the people that provision those
5 services are banging on the network people's door,
6 the provision people's door, to say we've got to get
7 this stuff as fast as we can.

8 So it's simply not true, I think, that
9 we need to, by regulation, to push Verizon in the
10 direction that the market is already pushing us and
11 pushing Covad.

12 JUDGE LINSIDER: Let me throw out one
13 other idea, and don't be shy if you think it's utter
14 nonsense.

15 That goes to either party.

16 Is it fruitful to discuss a premium
17 service, a higher-priced service, for a two-day
18 guarantee which Verizon would charge Covad, and Covad
19 would be free to pass on to its customer when it
20 guarantees the two days to the customer?

21 Does it make sense?

22 MR. KELLY: I'm not going to answer that
23 one.

24 MR. WHITE: We have developed a few

1 products that people thought they needed, and spent
2 millions developing the OSS to handle them, the
3 process to handle them.

4 And if I took the number of orders and
5 divided it into what we spent in OSS, the premium
6 would have to be a couple of thousand dollars an
7 order.

8 It is that kind of situation.

9 MR. HANSEL: We are working on fixing
10 that one, by the way, get ready.

11 MR. KELLY: Judge Linsider, from my
12 operations people's perspective, and I'm not a
13 product person, so I'm not talking revenue, the rest
14 of it, that's not going to solve their problem.

15 They have a workforce management
16 problem. It puts a premium on it from the working
17 people's perspective, it doesn't answer it.

18 JUDGE LINSIDER: I'm just throwing it
19 out.

20 All right. It looks like on this issue
21 I think we have everything we need.

22 Essentially it comes down to an
23 assessment of what Verizon can do.

24 And unless the briefs report some

1 agreement, however, you may be able to reach it, I
2 think it's going to be decided on the basis of the
3 Commission's expert assessment in consultation with
4 staff of what is reasonable under the circumstances.

5 I think we can regard this issue as
6 taken care of today, unless there is something, other
7 factual material, that either side wants to raise.

8 MR. PANNER: Just to follow up, I think
9 it's encompassed within what you said, but of course,
10 there is the issue that you raised whether this can
11 be dealt with better in the generic.

12 JUDGE LINSIDER: That goes without
13 saying, that's the background. Yes.

14 We can't charge a premium, that's right.

15 What's your pleasure? Shall we go to
16 issue 13, which Covad regrouped with 32, or should we
17 continue with Verizon and go next to numbers 2 and 9?

18 MS. EVANS: 13.

19 MR. PANNER: Fine.

20 JUDGE LINSIDER: Okay, number 13, which
21 is the timing, I guess, for the loops, local service
22 request.

23 Covad.

24 MR. CLANCY: Covad requests that the

1 agreement require Verizon to return firm order
2 commitments electronically within two business hours
3 after receiving a loop service request that has been
4 prequalified mechanically, and within seventy-two
5 hours after receiving a loop service request, local
6 service request.

7 That is subject to manual
8 prequalification, in return, firm order commitments
9 for UNE DS1 loops within forty-eight hours.

10 The intervals proposed by Covad are
11 identical to those set forth in the Commission's
12 current guidelines, and firm order commitments are
13 critical to Covad's ability to provide its customers
14 with reasonable assurances regarding the provisioning
15 of their orders.

16 Covad is not seeking to change the
17 industry-wide performance standards. Covad has
18 clarified this in briefs, and through negotiations.

19 Covad wants certain intervals that are
20 of particular importance to Covad included in the
21 interconnection agreement.

22 MR. PANNER: Your Honor, Verizon's
23 position on this issue is that the carrier to carrier
24 guidelines, which have been established over a

1 multi-year process, in collaboration with Verizon
2 under the auspices of this Commission, set forth a
3 set of standards for the return of these
4 notifications, along with performance standards, 95
5 percent on time, and a series of associated business
6 rules.

7 We take at face value Covad's
8 representation that they are trying to cap the
9 intervals to obtain the guidelines.

10 I know that the language in the matrix
11 doesn't do so, and I'm not sure Mr. Clancy hit them
12 all right, but I think they are in their brief, and
13 we understand them to have changed the position from
14 the language to try and capture the intervals.

15 But even if they also were to try to put
16 in the agreement the business rules, and the
17 performance standards and the exclusions, and
18 everything that has been worked out on a
19 collaborative basis, Verizon's position is that as
20 with other things that are handled in this category,
21 to the extent of these change in the future, they
22 ought to change for everybody.

23 And that we shouldn't have to go and
24 mend agreements every time the metrics change.

1 The metrics changed three times in the
2 last fifteen, sixteen months.

3 So to have to change the metrics every
4 time strikes us as an unwise position.

5 Our way of seeing things is not shown
6 that it stands differently from any other CLEC with
7 respect to the various intervals that they have
8 discussed.

9 JUDGE LINSIDER: Is this another one
10 where the issue is coming up with wording that
11 protects both sides by codifying the existing
12 practices, subject to particular kinds of changes,
13 where generic changes might trump the -- this is the
14 same as issue we had this morning.

15 MR. PANNER: I don't believe so, your
16 Honor.

17 This is nothing Verizon can change
18 remotely unilaterally, until this Commission changes
19 the guidelines.

20 The guidelines are what they are.

21 Even when consensus is reached on
22 metrics, until this Commission is in the process of
23 changing them, even if everybody in the world thinks
24 that a different measurement is the right one,

1 Verizon continues to report under the measurement
2 that this Commission has approved.

3 MS. ABESAMIS: That's correct.

4 MR. KELLY: I think this morning the
5 discussion was there wasn't a cooperative test
6 document that could be referenced. There is a
7 document referenced. It's the map.

8 MS. ABESAMIS: The carrier to carrier
9 guideline.

10 JUDGE LINSIDER: So what you are saying
11 is in this instance Covad's worry about capricious
12 and unilateral action by Verizon isn't applicable?

13 MR. PANNER: Completely so.

14 JUDGE LINSIDER: Covad can speak for
15 itself on that.

16 MR. HANSEL: Covad's position on this
17 particular issue is, to the extent that it's a
18 business practice followed between the companies, it
19 should be memorialized in an agreement.

20 And that is the extent, at this point,
21 of our position for purposes of discussions today.

22 Certainly, other people have other
23 discussion points that they would like to make,
24 that's fine.

1 JUDGE LINSIDER: When you say
2 memorialized in an agreement, do you mean cast in
3 stone in the agreement, regardless of the generic
4 changes that the Commission might otherwise -- would
5 the agreement say this is it, and it's exempt from
6 generic changes the Commission might otherwise make,
7 or would it say this is it, subject to changes that
8 the Commission might make?

9 MR. HANSEL: Subject to the changes.
10 Again, we're trying to take snapshots of
11 the relationship, put it in the interconnection
12 agreement, and as the changes would allow, to the
13 extent the Commission changes those particular
14 intervals, then the new intervals would be
15 incorporated into the agreement.

16 JUDGE LINSIDER: Well then, if that is
17 the case, it strikes me that the only disagreement
18 between the parties is that Covad is seeking a
19 provision that Verizon says Covad doesn't need, but
20 whose presence doesn't harm Verizon.

21 MR. PANNER: If I could just follow up
22 on that?

23 This is not a business practice between
24 the parties so much as it is an industry-wide

1 business practice.

2 And Verizon has an independent legal
3 obligation, pursuant to this Commission's orders in
4 the carrier to carrier, carrier working group docket
5 to report its performance under these measurements,
6 no matter what the interconnect agreements say or do
7 not say.

8 That's point one.

9 Point two is that if you are going to
10 write the guidelines into the interconnection
11 agreement subject to a proviso that they will change
12 whenever the guidelines themselves change, we need
13 the whole guidelines.

14 It looks like the standards Covad has
15 written, and their brief pretty much says this, is
16 they want a hundred percent performance in the time
17 periods that the Commission has set for the return of
18 these notifications.

19 That's just not the standard the
20 Commission has set.

21 There are no exclusions that the
22 Commission has approved.

23 It's just a two-hour number, or
24 seventy-two-hour number.

1 MR. PANNER: To put it more simply, what
2 Mr. Hansel said is not the language that is proposed
3 in Covad's language.

4 MR. HANSEL: To clarify something for
5 the record, to the extent that the numbers and the
6 hours are inconsistent with what is currently in the
7 performance plan, Covad has clarified that we're not
8 trying to change those intervals.

9 But, again, we're not trying to
10 incorporate the entire path into our agreement, but
11 there are selected items in the path that Covad feels
12 are important to Covad, and the company's operations
13 that we would like to incorporate in the
14 interconnection agreement, not all of them, but a
15 few.

16 And that's what we would like to do,
17 subject to change in law.

18 So we're not trying to incorporate the
19 entire performance plan.

20 And it's Verizon's position that if it's
21 identified elsewhere, whether it is an industry
22 standard, or if it's in their business rules, they
23 are not going to put it in the interconnection
24 agreement.

1 And I think that is the underlying
2 dispute at this point.

3 MR. PANNER: With respect to this
4 issue -- and I think it has been said -- there are
5 the carrier to carrier guidelines that address this.

6 It's not a question of business
7 practices. With respect to this issue, that concern
8 does not exist.

9 JUDGE LINSIDER: I think we can deal
10 with this in brief.

11 In the briefs, I would like Covad to
12 explain what it gains by having a provision along the
13 lines that Tony just clarified, and I would like
14 Verizon to explain what it loses by having such a
15 provision.

16 I didn't mean to cut you off, Steve.

17 MR. HARTMANN: Your Honor, I don't
18 understand what the point of such language would be,
19 which is a different way of saying Covad gains
20 nothing from such language.

21 JUDGE LINSIDER: Well, we established in
22 at the beginning of the discussion that is Verizon's
23 view.

24 I'm prepared to hear what Covad gains.

1 MR. HARTMANN: I should have stayed
2 quiet.

3 MR. PANNER: Your Honor, if I can just
4 suggest an order issue?

5 Since we have been dealing with related
6 matters, issue 31 might make sense.

7 MS. EVANS: All right.

8 JUDGE LINSIDER: Mike just reminded me
9 we just have to go back to 26. Let's not forget
10 that.

11 MR. HANSEL: We resolved issue 26, so
12 it's off the table.

13 JUDGE LINSIDER: A productive lunch
14 hour.

15 Okay, 31, Verizon.

16 MR. PANNER: Issue 31 is about whether
17 Verizon has a legal obligation to make available a
18 high frequency portion of a loop where a reseller is
19 providing voice service to the customer.

20 Verizon's position is that's a pure
21 legal issue that has no technical issues associated
22 with it.

23 Verizon's position has been, repeatedly
24 upheld, we have no obligation to do that.

1 And we had actually suggested that this
2 not be discussed today, because we don't see any
3 technical issue associated with it.

4 And we're prepared to brief the legal
5 issue further.

6 MR. CLANCY: Your Honor, could I ask a
7 question?

8 When you say there's no technical issue,
9 there is no OSS development or anything Verizon has
10 to do to make this happen today?

11 MR. PANNER: That's not what we're
12 saying.

13 MR. CLANCY: Okay.

14 MR. PANNER: Our position is that we
15 have no obligation to do that.

16 If we were required to do that, there
17 would be, obviously, lots of things that would have
18 to happen.

19 But that's not an issue that we think is
20 legally -- those aren't factual issues that are
21 legally relevant, because we have no obligation to do
22 it at all.

23 MR. HANSEL: Your Honor, if I could
24 clarify.

1 Mr. Panner's position seems to be that
2 we've won this issue, so no need to look into any of
3 the facts surrounding it.

4 And I think that's a bit premature to
5 come to his own legal conclusion on this particular
6 issue. I think that's something that's in your -- I
7 think that's basically your job.

8 Certainly, Verizon feels that they've
9 won this position.

10 I can state the same. I believe legally
11 Covad has a right to this, to line partitioning.

12 That aside, I believe Mike Clancy has
13 raised a technical question, which is, are the
14 systems in place to handle this.

15 And that, in and of itself, is a factual
16 question, not a legal question.

17 JUDGE LINSIDER: Is it a factual
18 question that should be addressed before the legal
19 question is resolved?

20 MR. WHITE: It's still not a technical
21 question.

22 MR. HANSEL: Basically, if you take an
23 issue off the table, because legally you decided the
24 question --

1 JUDGE LINSIDER: I don't think the
2 suggestion is to take it off the table, the
3 suggestion is to decide it as a legal issue.

4 And you are saying that if you should
5 win the legal issue, it will have been more efficient
6 to have the technical issue on the record already.

7 MR. HANSEL: There certainly are
8 efficiencies, and that's one point.

9 But the question you raised about
10 whether this needs to be, this factual discussion
11 needs to be had before there is a ruling on the
12 issue, is one that, honestly, I had not considered,
13 and was one that since we have these procedures in
14 place where there was going to be this technical
15 conference, where we would have factual discussions,
16 I didn't think it was on the table.

17 If you are saying now that you would
18 like to have this factual discussion at a later date,
19 okay.

20 But it was my understanding that this
21 technical conference was to discuss any factual
22 issues surrounding the issues.

23 MR. CLANCY: Could I ask my question a
24 different way?

1 Exclusive of OSS development, is what
2 Covad is requesting the same as line sharing,
3 technically?

4 It's putting high frequency data over a
5 voice loop.

6 MR. WHITE: Physically it's the same.

7 MR. CLANCY: Physically, it's the same,
8 the OSS issues.

9 MR. KELLY: The issue that it's going to
10 come down to, in my opinion, as we sat through all of
11 these, is like line splitting, it's going to be an
12 issue.

13 Right now, we handle things under line
14 sharing, for lack of a better term, defers to the DSL
15 portion.

16 Verizon owns the retail voice, so we, in
17 maintenance procedures, give preference, if you will,
18 to DSL.

19 There is probably going to be some
20 negotiation with, not just Covad, because there is a
21 reseller on this line providing the service that now
22 has to be brought in from the perspective of do we
23 take the voice down to fix the DSL.

24 We have been able to internally --

1 MS. EVANS: I think he wants you to shut
2 up.

3 Is that what you want?

4 MR. PANNER: I'm sorry?

5 MS. EVANS: Did you want his attention?

6 I'm sorry.

7 MR. KELLY: I don't think there are
8 technical issues, there are issues that have to be
9 resolved.

10 But no, from a technical perspective,
11 how it works, the same as both line shares and line
12 splitting.

13 MR. CLANCY: From a technical
14 perspective, it's like line sharing, from this
15 perspective, it's more like line splitting?

16 MR. KELLY: Right. And it creates the
17 need to do different things in the OSS based on how
18 it looks, if you will, at the end.

19 MR. CLANCY: So to answer Judge
20 Linsider's concern, then, it's a chicken and egg
21 question that the Judge asked, what gets discussed
22 first.

23 If the legal arguments should have the
24 Commission decide that, yes, this is a good idea, it

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1 increases competition, so let's do it, then we would
2 have to get together collaboratively and work out how
3 it's going to bring the resellers in and make sure
4 that everybody understands how it will work, and then
5 we can go chase them and try to get their business.

6 MS. EVANS: I have one other factual
7 question.

8 MR. WHITE: This is a hypothetical,
9 based on if something happened, and if these were the
10 rules, and if we made all these assumptions, there is
11 no question that there would have to be a different
12 product.

13 But it's not a technical question.

14 MS. EVANS: My question is, how does
15 Verizon identify a reseller line versus, I guess,
16 what we would call a traditional third-party line?

17 MR. PANNER: Your Honor, I really don't
18 see how this has anything to do with the issue that
19 needs to be addressed here.

20 The issue here is whether we have a
21 legal obligation to provide line petitioning.

22 If we do, then obviously -- we take the
23 position that we don't. To the extent that we do,
24 we're going to figure out how to do it.

1 The question presented here is do we
2 have to do this.

3 That's the question.

4 None of these technical issues are
5 relevant to the resolution of that question.

6 MR. HANSEL: If I may make one point?

7 JUDGE LINSIDER: I think, as long as
8 we're all here, I think it's probably worthwhile
9 spending at least a few minutes exploring some of
10 these.

11 Clearly, the legal question is the
12 threshold one, and if the legal issue is decided,
13 such that Verizon does have to provide the service,
14 there probably needs to be a lot more examination of
15 how it goes about doing it.

16 But I don't think there is any harm in
17 getting at least a little bit of that down on the
18 record, just so that we can understand the issue a
19 little bit better in terms of clarification.

20 None of that is in any way prejudicial
21 to Verizon's assertion that it's not obligated to
22 provide the service.

23 And clearly, I'm not making even a
24 preliminary judgment on the legal issue at this

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1 point.

2 MR. PANNER: Your Honor has ruled on it.

3 But if I can just speak to that, with
4 your indulgence, one more time?

5 Verizon has not said that it's
6 technically impossible to do line partitioning,
7 that's not Verizon's position.

8 So exploration of the technical
9 feasibility of line partitioning, it seems to me, is
10 irrelevant to resolution of the issue presented,
11 which goes to Verizon's legal obligation, not the
12 technical feasibility of providing service.

13 JUDGE LINSIDER: So far, I'm not sure
14 that Covad has been necessarily probing the
15 feasibility, and I'm certainly willing to recognize,
16 and to urge Covad to recognize, that Verizon would
17 stipulate purely hypothetically, and for purposes of
18 discussion, recognizing that the legal issue is in no
19 way resolved preliminarily to stipulate that this is
20 feasible, subject to whatever qualifications and
21 conditions, and so forth, would have to be imposed.

22 I agree that we don't need to discuss
23 that any further.

24 For example, I think it was useful to

1 clarify that, from a technological point of view,
2 it's the same as line sharing.

3 I think the clarifications that Covad
4 has asked for and received so far are useful and
5 certainly not harmful.

6 So let's spend another couple of minutes
7 on it, but not going into it excessively, and not as
8 to feasibility.

9 MR. WHITE: Let me just explain.

10 I think we're in agreement, I don't like
11 to use the word "violent," but I think we're in
12 agreement that physically if you looked at it, the
13 wiring looks the same.

14 That addresses the technical issues.

15 The rest has to do with, you know,
16 relationships, and agreements and stuff that would
17 need to be developed based on yet-to-be-written law
18 if there was ever law to be written.

19 So it's hypothetical upon hypothetical.

20 So it's really not a technical thing.

21 If the rules are, yes, resellers have to
22 give up their rights, those kind of things, they
23 would have to be spelled out in order for something
24 to be moved forward.

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1 MS. EVANS: My question is still out on
2 the table.

3 MR. PANNER: Repeat it, please.

4 MS. EVANS: My question was, how does
5 Verizon distinguish in its systems the difference
6 between the reseller, which is applicable in this
7 scenario, and a third-party provider?

8 JUDGE LINSIDER: I'm sorry, could you
9 clarify what you mean by a third-party provider, as
10 opposed to a reseller.

11 MR. CLANCY: UNE-P.

12 MR. HARTMANN: The question then is, how
13 does Verizon know that a voice provider on a given
14 line is, on one hand, Verizon, on the other hand, a
15 reseller, on a third hypothetical, a UNE-P?

16 MR. PANNER: I know this isn't
17 cross-examination, but can I ask why that is relevant
18 to the question?

19 MS. EVANS: He is asking me.

20 MR. PANNER: I asked whether I can ask.

21 JUDGE LINSIDER: Go ahead.

22 MS. EVANS: I was going to refer back to
23 your statement earlier.

24 JUDGE LINSIDER: Honestly, it seems to

1 me in light of what I, or we just said, that I think
2 it may well be extremely relevant, but for purposes
3 of today's discussion, immaterial, because, in
4 effect, we have agreed, number one, there is a legal
5 issue.

6 Number two, it's technologically
7 feasible to provide the service.

8 Number three, providing it would involve
9 a fairly large array of issues related to how the
10 reseller fits into the picture.

11 And from a business point of view, it
12 has an additional layer of complexity that line
13 splitting and line sharing don't have.

14 And this question bears on an aspect of
15 that complexity, and how easy or difficult it would
16 be to deal with, I take it.

17 And that, I think, may get to the level
18 of detail that goes beyond what we ought to be doing
19 today.

20 Clearly, if it gets to the point where
21 the service is being offered, and the issue is how it
22 can be offered in a reasonable way, then that's an
23 extremely important question.

24 But for purposes of what we're

1 discussing today, I think it may go a little bit
2 further than that, until we get the underlying issues
3 resolved.

4 MR. HANSEL: I just want to make one
5 point on the underlying issue which you asked me
6 earlier, and whether this factual assessment is
7 necessary to come to a legal conclusion on this
8 issue.

9 And one of the legal questions is
10 whether or not voice resellers are being
11 discriminated against because UNE-P providers can
12 provide voice when there's ADSL provider through line
13 splitting, and Verizon can do it through line
14 sharing.

15 So why can't a voice reseller do it via
16 line partitioning?

17 And you can almost relate this similar
18 to the T-1 discussion, which is, is Verizon treating
19 competitors discriminatorily by provisioning T-1's to
20 itself, but not to Covad.

21 And the underlying question there is,
22 what is constructing a new facility?

23 Is Verizon merely modifying the existing
24 facility, or is it building a new facility?

1 And so, in this particular issue, when
2 we're talking about discrimination to voice
3 resellers, an important factor is whether or not
4 Verizon needs to "build new facilities" in order for
5 voice resellers to have access to line partitioning.

6 And so, I believe this factual
7 development is directly related to any legal
8 conclusions that we may come to.

9 MR. WHITE: I didn't hear a technical
10 question.

11 MR. CLANCY: Can I ask a business
12 question?

13 Can a reseller resell Verizon data when
14 they have a resold voice line from Verizon.

15 MR. ANGSTREICH: I know that the issue
16 of resold data, resold Verizon DSL service over
17 resold voice is an issue that has been discussed in
18 271 proceedings, for example.

19 I'm not sure we necessarily have a
20 person here who is particularly knowledgeable about
21 that product, that service.

22 MR. PANNER: What Verizon does with
23 respect to that is public information that Covad has
24 access to, and again, I don't see a technical dispute

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1 about that.

2 If it's offered as a resold service,
3 presumably it's under tariff.

4 So, again, I would suggest that we don't
5 have anything further to do on this issue at this
6 technical conference, and that we should, you know --
7 in the interest of everybody getting done what we
8 need to get done today, I would propose that we move
9 on.

10 JUDGE LINSIDER: Tony's point about
11 whether you want to call it a technical or factual
12 issue having a potential bearing on how the legal
13 issue is resolved strikes me as having some merit.

14 And one of the supposed advantages of a
15 technical conference, rather than a hearing, is that
16 you don't spend so much time talking about what you
17 should be talking about, you simply go ahead and talk
18 about it.

19 How much more does Covad want to go into
20 this? How many more questions do you have?

21 MR. HANSEL: Covad doesn't have any more
22 questions, but I wanted to address the question that
23 you had posed to me earlier.

24 So we're fine with closing this issue

1 out for the day.

2 JUDGE LINSIDER: Okay. All right.

3 MR. CLANCY: Would it be helpful if,
4 following Verizon's counsel's suggestion that I look
5 for it in public record, should I get it to you in
6 some way?

7 JUDGE LINSIDER: Yes. The reference
8 that you draw from it, with a copy, of course, to
9 Verizon.

10 All right. That was 31, which brings us
11 to 2 and 9.

12 2 and 9 are the first of a series of
13 billing issues.

14 Covad.

15 MS. EVANS: Covad requests that the
16 Commission implement a one-year limitation on
17 backfilling.

18 Such a limitation would provide much
19 needed certainty for Covad and its customers.

20 By had not having a one-year time
21 limitation for backfilling, Covad faces two
22 significant problems with its customers and the SEC.

23 First, Covad is not the ultimate party
24 to be billed.

1 Covad has to absorb backfill charges,
2 because it practically is impossible to recover
3 retroactively such costs from its customers, without
4 losing its competitive foothold.

5 Second, Covad's officers must attest to
6 the accuracy of financial statements filed with the
7 SEC on a yearly basis.

8 In its reply brief, Verizon states that
9 Covad cannot claim that it only bills for services
10 after it has received all bills from its vendors.
11 This is not Covad's position.

12 Covad does, however, set its end user
13 rates based on charges it reasonably expects to incur
14 from Verizon.

15 Verizon also claims that Covad instances
16 of backfilling are irrelevant, because they are for
17 primarily services rendered within the one-year
18 limitation.

19 This is baseless. Covad's examples
20 clearly highlight Verizon's lack of adequate
21 supporting documentation, inaccuracies in Verizon's
22 billing process, and the difficulties that Covad
23 would face when trying to reconcile and compare
24 charges on the bills to the service that it has

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1 ordered.

2 Backfilling beyond a year would prolong
3 an already lengthy and unreasonable claims and
4 dispute process.

5 By Verizon's own admission, older
6 billing charges are more difficult to review and
7 reconcile than new ones.

8 MR. ANGSTREICH: Your Honor, Verizon's
9 legal position as set forth in its briefs is that the
10 Statute of Limitations that apply to contract
11 actions, six-year statutes of limitations in New
12 York, applies in the absence of any concrete
13 agreement by the parties, and it would apply to a
14 carrier's ability to bill for previously rendered
15 services, just as it would apply to a carrier's
16 ability to object to a bill that it's received.

17 Covad has proposed to change the statute
18 of limitations, the limitation period for one of
19 those, while apparently reserving to itself the right
20 to make claims based on six-year-old bills.

21 From a practical factual point of view,
22 Covad has identified two instances of back billing in
23 its briefs, one of which was no more than three
24 months old, one of which the vast majority of

1 charges, according to the bill they produced within
2 their filing was within a year. The oldest was
3 fourteen months old.

4 They showed no indication that there is
5 a massive problem to be solved, nor any reason why
6 this Commission should depart from the statute of
7 limitations as set forth in New York law.

8 That's our legal position.

9 The factual position is that there are
10 no facts relevant to that. They showed no problem
11 requiring a resolution.

12 JUDGE LINSIDER: Let me say, on the one
13 hand, this strikes me as something that ought to be
14 handled generically, though that doesn't necessarily
15 mean six years.

16 Let me just ask you, because I don't
17 know, are any of the generic treatments of Verizon's
18 CLEC arrangements, have any of them dealt with the
19 statute of limitations, and if so, what have they
20 come up with?

21 MR. ANGSTREICH: I don't understand the
22 question.

23 JUDGE LINSIDER: Any generic treatment
24 of the statute of limitations within the carrier

1 working group, or in the carrier account.

2 MR. ANGSTREICH: It was discussed in the
3 billing task force.

4 JUDGE LINSIDER: What was the result?

5 MR. ANGSTREICH: We understand that the
6 staff put forward a recommendation of some kind to
7 the Commission, which was on the January 22nd agenda
8 on the consent agenda.

9 The brief, two-sentence summary, which
10 is all we have seen, suggests that it was for
11 information only. Okay.

12 MR. ANGSTREICH: That's the extent of
13 it, that's the extent of the information that we have
14 on what has been done.

15 But it was discussed thoroughly as part
16 of the billing task force.

17 Ron Hansen can speak more to that.

18 MR. HANSEN: I was part of that, as well
19 as Covad, and we spent several months actually
20 discussing back billing, and the legal ramifications
21 involved with short link, or suggesting to shorten.

22 And ultimately, we came to the
23 conclusion that the New York law, as it's written in
24 the tariff, is evenhanded to both backfilling and

1 claims brought in against Verizon.

2 And even if two parties agree to shorter
3 terms, there is no way of binding them to that
4 agreement, because the law would allow them to go six
5 years.

6 MR. CLANCY: Your Honor, I wasn't part
7 of the billing part of that collaborative, someone
8 else was, and in reading Verizon's reply, I followed
9 up with that individual, to see have we heard
10 anything from staff as far as a report from that
11 proceeding. And she hadn't seen anything.

12 So, I don't know what the outcome of
13 that proceeding was at all.

14 MS. EVANS: And if I can just add,
15 historically, these negotiations started about two,
16 two-and-a-half years ago. This backfilling issue has
17 been brewing for quite some time.

18 Obviously -- I forgot what I was saying.

19 The point is, as the folks have
20 mentioned, the task force has been dealing with the
21 backfilling issue, maybe what the outcome of that, or
22 the suggestion would be that the parties look at
23 having some language that does try to limit the
24 backfilling, but then also refers to if there is a

1 change of -- a decision that is made as a result of
2 that task force.

3 But this has been a highly contested
4 issue since day one.

5 I think Ron's characterization of it
6 being evenhanded would probably be Verizon's
7 assessment. Surely the CLEC's doesn't feel that the
8 six-year statute of limitation is something that we
9 continue to live with.

10 JUDGE LINSIDER: Would Covad be willing
11 to forego its six years, its ability to make claims
12 over Covad's six years against Verizon?

13 MS. EVANS: Yes, it would.

14 MR. ANGSTREICH: So if there was a
15 one-year limit on backfilling, Covad could not --

16 MS. EVANS: If that's what we want to
17 put out there, let's look at it.

18 JUDGE LINSIDER: All right. That might
19 be worth pursuing in further negotiations.

20 If it gets into the brief, take into
21 account anything that might come out from the
22 Commission in the intervals.

23 MR. CLANCY: Just to be clear, if you
24 mean give me a bill today for thirteen months ago.

1 So from the bill date you mean?

2 MR. ANGSTREICH: I was just trying to
3 clarify. I wasn't clear whether Ms. Evans was
4 talking about back billing still.

5 I was unclear as to what Ms. Evans was
6 referring to.

7 MR. CLANCY: Okay.

8 JUDGE LINSIDER: All right, does that
9 take care of 9, as well?

10 MR. ANGSTREICH: Yes, your Honor.

11 MR. HANSEL: Yes.

12 JUDGE LINSIDER: All right, number 3 on
13 claim numbers.

14 Verizon.

15 MR. PANNER: Can we take a five-minute
16 break?

17 I apologize.

18 JUDGE LINSIDER: Sure.

19 Let's make it ten minutes.

20 Well, a status check.

21 Are we going to finish?

22 Should we call our hotels?

23 MR. PANNER: Yes.

24 JUDGE LINSIDER: No hidden issues that

1 are going to emerge and consume an hour before we
2 know it?

3 In that case let's make it a
4 fifteen-minute recess break. We can make whatever
5 phone calls we need.

6 Come back at ten after three.

7 (Recess had.)

8 JUDGE LINSIDER: Back on the record.

9 Issue number three, claim number,
10 Verizon.

11 MR. HARTMANN: My name is Steve
12 Hartmann.

13 Issue number three revolves around the
14 extent to which Verizon will reference Covad's claim
15 number, a claim number assigned by Covad, in dialogue
16 between Covad and Verizon about that claim.

17 And there are two parts to the issue.
18 The first is the extent to which Verizon can, and
19 will, reference Covad's claim number when, in the
20 dialogue that precedes actually issuing a credit
21 bill.

22 And the second part of the issue is
23 actually referencing Covad's claim number on the bill
24 itself, where the credit is issued.

1 And it's only through negotiations
2 between the parties to try and close this issue that
3 we realized that it had two parts.

4 And as to the first part, Verizon is
5 both willing and able to reference Covad's claim
6 number in all the back and forth.

7 We are able to do that on a manual basis
8 currently, and we will be able to do that on a
9 mechanized basis when a new system, which is referred
10 to with the acronym of WCITS, becomes operational in
11 New York.

12 As to the second part of the issue, I
13 would say the parties are still unresolved, but there
14 is, I think, some possibility that we will be able to
15 close on that issue, as well.

16 MS. EVANS: Yes. On the second part,
17 which is the point of conversation here, is just to
18 reinforce why it's so important.

19 When Covad files claims, usually it's
20 numerous claims that we have to file before we get
21 something resolved, because if it's broke one month,
22 it gets broke the second, third and fourth month, and
23 we keep filing claims.

24 So when Verizon sends us any

1 correspondence, a lot of times we will have numerous
2 claims against that one billing item.

3 And when we get a bill, and it just says
4 a credit for \$20,000, and we don't know what it's
5 for, all that sends us through is a process where, in
6 order to buy time with Verizon's billing people to
7 try to get to the root of that.

8 So by putting the identification, and I
9 think Verizon recognizes this, too, it will assist
10 both entities in identifying what the credit is for.

11 So I think the need has been understood,
12 it's just the capability and the ability for Verizon
13 to do it, and to communicate what they can do.

14 The parties are very close to
15 identifying what the capabilities are, and Verizon is
16 willing to identify that with some supporting
17 language.

18 So I think we're close.

19 MR. HANSEL: Yes.

20 JUDGE LINSIDER: This one is worth
21 continuing discussion.

22 MR. HANSEL: I just want to say that in
23 the past, just like any other company, when a
24 customer submits a claim to you, we assign a claim

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1 number, just as you do when you put in your claim
2 with a credit card company.

3 It was through our VIP sessions where
4 Covad had indicated that it would be more helpful to
5 us if we used our claim number, and clearly we have
6 done that for them, we did make provisions so they
7 can submit a claim to us with their claim number, and
8 we do respond back with the acknowledgment, and the
9 reply, or response, once it's closed, with their
10 claim number, for tracking purposes.

11 That was, I think, a big accomplishment
12 actually.

13 MR. PANNER: Just to clarify the record,
14 when we provide a credit, we actually identify,
15 itemize --

16 MR. HANSEL: A line item.

17 MR. PANNER: Which would explain what
18 the adjustment is for?

19 MR. HANSEL: Yes, but by our claim
20 number that was assigned to that claim.

21 MR. PANNER: How do we inform them how
22 the credit will show up?

23 MR. HANSEL: It's a standard response.
24 It says that your claim has been concluded or

1 completed, adjustment will appear on your X, July 7th
2 UNE bill.

3 It will have the Y40, whatever the
4 account number is.

5 MR. ANGSTREICH: That letter will have
6 Covad's claim number on it, as well as Verizon 's.

7 MR. HANSEL: If they supplied one when
8 the claim was opened, yes, we will provide it.

9 MR. ANGSTREICH: The amount of credit
10 can be matched up to the credit on the bill?

11 MR. HANSEL: Yes.

12 MS. EVANS: In a perfect world, that's
13 how it would work. But what happens is, like I said,
14 we may get two or three notices saying you will get
15 this credit, and when you look at the bill, it
16 doesn't match.

17 And then you play a game of trying to
18 figure out what is missing.

19 In some cases all the credit won't
20 appear, for some reason they will credit
21 three-quarters of the claims, and not the fourth one.

22 These things happen, because there is a
23 timing issue.

24 And so, that's why it's important to

1 have the exact referenced information to the amount
2 to be able to match them up.

3 MR. HARTMANN: During preparation for
4 this session, I raised that same -- you mentioned
5 that to us last week, for example, if there is a \$500
6 credit, that you will see that, and that may be an
7 aggregation of three different credits that relate to
8 three different claims.

9 And when I talked to our folks about
10 it -- Ron can tell us better -- they said that there
11 is an aggregation, but there is also a place on the
12 bill where it's disaggregated, where you can see the
13 dollars is made up of three different amounts that
14 relate to three different claims.

15 MR. HANSEL: Line items per adjustment.
16 Each adjustment one has a serial number with the
17 total amount. That it is totaled up at the bottom.

18 A CLEC, a large CLEC, if they had a lot
19 of claims, would see a lot of line entries
20 individual, but then totaled out at the bottom.

21 MR. CLANCY: So where would the claim
22 number be, Ron? Would it be on the individual line,
23 or with the aggregation?

24 MR. HANSEL: The individual line. There

1 is usually a serial number.

2 It will have the date, a serial number
3 which is your claim number, and then the dollar
4 amount due below that, to the right.

5 MS. EVANS: I think, though, in some
6 cases, when we get the correspondence back -- I
7 forget this, but I think it was mentioned in
8 Verizon's testimony -- the actual amount may not be
9 identified.

10 So sometimes they calculate it, late
11 charges and all that. They don't necessarily give
12 us the --

13 MR. HANSEL: Your acknowledgment.

14 MS. EVANS: In the acknowledgment back,
15 it doesn't always give you the dollar amount.

16 It just says we have concluded that this
17 claim is closed out in your favor, and you should get
18 it on your next statement, or something, but it
19 doesn't always have the dollar amount.

20 MR. HANSEL: I'm not aware of that.

21 MR. ANGSTREICH: I don't know where Ms.
22 Evans would have seen it, but it wouldn't have been
23 in the papers that we filed here.

24 We certainly didn't say anything to that

1 effect.

2 MS. EVANS: I don't know if we need to
3 even go through all of this, but I think we're close
4 to closing the issue.

5 We can talk about it later if you want.

6 JUDGE LINSIDER: I thought you were
7 closing the issue.

8 MS. EVANS: Yes, I thought so, too.

9 MR. HARTMANN: I don't think we
10 disagree.

11 MR. HANSEL: I think we're closed on it.

12 JUDGE LINSIDER: That's one that I'm
13 looking forward to the brief on, saying that the
14 issue is resolved.

15 Numbers four and five, which are really
16 related.

17 MR. ANGSTREICH: Verizon respectfully
18 disagrees with Covad's collapsing these two issues as
19 one issue. We would like to treat them separately,
20 if we can.

21 JUDGE LINSIDER: We will treat them
22 sequentially, in any event.

23 Number four.

24 MS. EVANS: Okay.

1 JUDGE LINSIDER: Yes.

2 MS. EVANS: Covad requests that when the
3 billed party disputes a claim filed by the billing
4 party, the billing party should provide its position
5 and a supporting explanation regarding a disputed
6 bill within thirty days of receiving notice of the
7 dispute.

8 This request is consistent with
9 Commission regulations, and the carrier to carrier
10 billing metrics.

11 In the past, Verizon has often failed to
12 respond to disputes filed by Covad, or has responded
13 at an excessively low slow pace, thereby denying
14 Covad from having a meaningful opportunity to
15 compete, as the SEC recognizes.

16 As Verizon notes, Verizon is required to
17 resolve 95 percent of claims within twenty-eight
18 calendar days of acknowledgment.

19 It is clearly reasonable for Covad to
20 ask Verizon to provide a position, an explanation on
21 its claim within thirty days.

22 Also, Covad purchases facilities via
23 Verizon's retail tariff. Verizon should be required
24 to respond within thirty days for these disputes, as

1 well.

2 In its reply brief, Verizon states that
3 Covad has only identified a single issue in New York
4 where a claim has been opened since April of 2002.

5 Covad used this claim as an example,
6 because it has been opened for eight months.

7 Currently, Covad has over ten New York
8 billing disputes that have been opened for over
9 thirty days. This does not include resolved New York
10 claims that took well over the thirty days to
11 resolve.

12 MR. ANGSTREICH: Your Honor, Verizon's
13 position is that this is much like issue 13.

14 The New York Public Service Commission
15 has adopted, as Ms. Evans mentioned, two billing
16 dispute measurements.

17 Those measurements address the amount of
18 time Verizon takes to respond, to acknowledge that it
19 has received a billing claim from a CLEC, and also
20 measures Verizon's responsiveness in giving an answer
21 to the CLEC on its billing claim.

22 Currently, as recently as the 30th, both
23 Covad, and Verizon and others participated in a
24 conference call to work out final language for these

1 measurements.

2 It is going on simultaneous with this
3 proceeding.

4 And again, once final language is
5 adopted, Verizon will report its performance pursuant
6 to Commission Order, under those measurements.

7 Those measurements will be included in
8 the insurance plan, and Verizon's position is that,
9 though Covad claims it needs a better assurance of
10 performance than that provided by the metrics,
11 Verizon isn't sure why Covad should get anything
12 different than what the industry is working out
13 collaboratively.

14 As to issue 13, we note that they have
15 not copied over the entire performance measurements.
16 You can see an example of an attachment with our
17 opening brief, it's two pages long.

18 Those are the business rules currently
19 in use in the New York, New England states.

20 The company included six words, not the
21 entire measurement, in the parties' agreement.

22 MR. CLANCY: Just to comment on this
23 statement that the carrier working group metric will
24 cover all the bills, that's still a question that

1 remains to be answered.

2 During the call on the 30th, I asked
3 Verizon for -- actually, prior to the call on the
4 30th, and again, on the call on the 30th, I asked
5 Verizon if our collocation bills are included in
6 these metrics.

7 They were not sure that they were or
8 not. And I'm still waiting for a list of billing
9 account numbers that would be included in the
10 metrics, and those that would not.

11 So clearly, we would, as a threshold
12 issue, need this language to cover the bills that are
13 not included in the metrics.

14 MS. ABESAMIS: I would like to clarify
15 that a bit.

16 I know that the question came up
17 specifically on collocation. However, the billing
18 claims measures that are in the carrier guidelines
19 today are for local services.

20 So, if you have collocation that you use
21 to provide local uniservices, those bills will, in
22 fact, be included in the claims resolution measures.

23 If you have unbundled network elements
24 for DS1's, or DS3's, those will.

1 Anything that you purchase that is not
2 considered unbundled, or local service, would not be
3 part of this billing claims measure.

4 MR. CLANCY: So, as an example, a bill
5 for a UNE T-1 -- well, not a UNE T-1, a T-1 where
6 there were no facilities, that I had to go into
7 retail services, access services, to get the service,
8 which would then be billed as an access service, even
9 though three months later I converted it back to a
10 UNE, it would stay for billing purposes an access
11 service, where I would have to continually get a
12 credit for overtime on that service, that would not
13 be covered by these metrics.

14 MS. ABESAMIS: You raised a point with
15 that, and the answer is in the interim, yes, because
16 in the process there was a process established to,
17 business-wise, get around the policy issue of
18 facilities.

19 Therefore, that interim process isn't
20 set up mechanically to identify it.

21 However, if the process becomes
22 mechanized, and you have a special access product,
23 that then becomes a UNE, and it's identified as a
24 UNE, and you submit a claim, we would count those

1 claims.

2 All I'm saying is that the carrier
3 guidelines are very specific that special access, you
4 know, meaning special access services, are not
5 included in any of our measures, in any of the areas,
6 so they wouldn't be included in the billing
7 resolution measures in the guidelines, as well.

8 MR. CLANCY: So just to be clear, and
9 this is probably not a question that you will be able
10 to answer, this is the feedback that I've gotten from
11 Verizon on how our conversion from an access T-1 to a
12 UNE T-1 works.

13 There is no change in the service
14 identification, so it remains an access service
15 forever and ever and ever.

16 Maybe no one told Ron this.

17 So if Ron grabs his chest, be careful.

18 So, what will happen is, in perpetuity,
19 Verizon will issue a credit, say Verizon converts
20 this back into a UNE, Verizon will issue a credit,
21 which is the difference between a nonrecurring cost
22 for an access service. Is that going to be a billing
23 megillah, and it will not be covered by the metrics.

24 So, it's a problem.

1 MS. ABESAMIS: And that's probably best
2 left to discuss in our discussion on the billing
3 claims measure as an item that we would want to
4 identify and come back and revisit, because I think
5 it's going to be hard to determine how to count
6 something when there is another business process that
7 exists already on how to do that conversion.

8 All I'm saying is there is a bigger
9 process at stake there, we're probably going to need
10 to discuss that.

11 MR. CLANCY: Right, but it's a UNE,
12 that's not a UNE in terms of Verizon's OSS.

13 MS. ABESAMIS: Correct.

14 MR. CLANCY: And if those metrics are
15 only for local services, and not for access services,
16 are you suggesting that Verizon then would create
17 metrics for those particular ones separate from the
18 guidelines, like a different set of guidelines?

19 MS. ABESAMIS: No, I'm not suggesting
20 that.

21 What I'm suggesting is that we need to
22 identify that as an issue when we do the billing
23 claims in our own collaborative, identify that, and
24 that will probably spin off into another group,

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1 because we will have to look at that whole process.

2 MR. CLANCY: And that's why we are here.

3 MR. ANGSTREICH: This is the first time
4 we heard in the course of these negotiations that
5 this issue was pertaining to what I presumed to be a
6 narrow subset of items formally purchased as special
7 access, and then converted to UNE's.

8 MR. CLANCY: Also collocation up to this
9 time, you weren't able to say collocations include.

10 MR. ANGSTREICH: Our reply brief says it
11 does.

12 MR. CLANCY: Your reply brief does, but
13 then your people were saying no it doesn't.

14 MS. EVANS: Your VP of billing does not
15 believe it is, Ed Morton.

16 MR. ANGSTREICH: I defer to the metrics
17 person who works on metrics on that one who says it
18 is.

19 MS. ABESAMIS: That is our
20 understanding, it is. We will go back, too.

21 MR. CLANCY: Understand this is the
22 first time Covad is hearing from the metrics expert
23 that it is included.

24 MR. PANNER: That's why we're having the

1 technical conference.

2 MS. EVANS: It sounds like we're in
3 violent agreement.

4 If what I'm hearing is -- is this a
5 question where it's, I don't know which one it was
6 like, but if the issue is that Verizon understands,
7 and because it's part of the working group, is
8 willing to commit to, you know, the thirty-day, very
9 similar to what is in the metric, then you're okay
10 with incorporating that into our agreement?

11 MR. ANDERSON: Verizon's position is
12 that metrics establishes binding rules by this
13 Commission, those metrics cover this issue, they are
14 being currently worked right now.

15 Covad, as we understand, is
16 participating in the development of these final
17 measurements.

18 When they are established again by
19 Commission Order, Verizon will report its performance
20 under that final language.

21 The language that Covad proposes to
22 include does not track those measurements, certainly
23 does not include the final version of that
24 measurement, because it's still under review.

1 When it is established as a final
2 matter, that's when they are established, and it
3 applies to everyone.

4 MR. HANSEL: If I can clarify once more.

5 The performance plan is not the end all
6 of the relationship that we have with Verizon, and
7 so, the interconnection agreement establishes a
8 relationship, a contractual relationship, between the
9 companies, and is in addition to the performance
10 plans.

11 So the interconnection agreement does
12 not need to track the performance plan verbatim.

13 And what we're saying here, from what I
14 can understand, is that there are some services that
15 we purchase from Verizon that are not included under
16 the performance plan.

17 And so to continuously refer to the
18 performance plan does not address the needs and the
19 issue that we have here today.

20 JUDGE LINSIDER: I think that's how the
21 issues become refined today.

22 And it seems to me that with respect to
23 those areas where the performance plan will govern,
24 once the working group decides on the standard, that

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1 needs to be addressed in the brief in the same terms
2 that we discussed before.

3 Covad should try to show what it gains
4 by having something set forth in a generic document
5 reiterated in this contract, and Verizon should
6 attempt to show what it loses by doing that.

7 With respect to stuff not covered by the
8 generic standards, there I think Covad is absolutely
9 right, that this agreement needs to deal with them,
10 and the question is how.

11 MR. PANNER: I haven't understood from
12 this discussion that any such thing has been
13 identified. Special access is not purchased under
14 the agreement.

15 MR. HANSEL: I'm more than happy to go
16 back to issues 19 and 23, where Verizon's position is
17 that we're forced to buy special access, rather than
18 the UNE and convert back.

19 That's Verizon's policy, whether Covad
20 agrees to it or not.

21 And those are circuits that are not
22 addressed in the performance metrics.

23 If Verizon's policy is that we're forced
24 to use that process to get those circuits, then

1 that's a business relationship that should be
2 identified in the interconnection agreement with
3 respect to this performance metric.

4 MS. EVANS: And once we order them,
5 because we have to, they are converted back to UNE's,
6 from your perspective. But from a billing
7 perspective, or a claims perspective, you don't want
8 to treat them as a UNE.

9 But, clearly, they are a UNE.

10 So they are either a UNE or they are
11 not.

12 MS. ABESAMIS: I did not say we don't
13 want to treat them has a UNE, what I said is that we
14 have a collaborative now of the industry, we're
15 trying to work out the final billing measures that
16 are going to be included in the performance plan, as
17 well as in the guidelines.

18 This is something I think we need to
19 address in our own collaborative on when something is
20 a UNE that wasn't previously a UNE, how do we wish to
21 handle that.

22 I can't give you an answer for that.

23 But that's something that we will need
24 to discuss.

1 A, you don't have to buy special access.

2 B, if you do, you don't have to convert
3 it in to a UNE. That's choices, and business choices
4 that you make.

5 But if it is a UNE, and it's not
6 identified the way we normally identify them, we will
7 need to work on a process through our group, our
8 working group, to determine what is the best way to
9 do it, because it's not a Covad specific situation,
10 either.

11 It's an industry situation, it will be
12 good to give them our own internal working team,
13 which Mike and I are both a part of.

14 MR. HANSEN: Rather than write that into
15 the contract specifically, it's probably better to
16 find a way to identify them as they appear in the
17 metrics that is already there and established.

18 MR. PANNER: It's correct that Covad
19 orders special access things where there is no
20 facility.

21 I may have oversimplified it, but that's
22 true.

23 Ordering special access is a service
24 that is provided out of a retail tariff that Covad

1 can order from, and then they get billed pursuant to
2 that process. It's not covered by the
3 interconnection agreement. Then it converts.

4 There may be situations where they can
5 convert that to a UNE, and then there is a different
6 situation.

7 So what I think Ms. Abesamis clarified
8 is that Verizon has not taken the position here that
9 there is anything that is governed by the agreement
10 that is not within the rules, that is an issue that
11 is subject to discussion right now, because it's a
12 special situation where there are technical issues to
13 be resolved that need to be discussed.

14 And there is an ongoing proceeding in
15 which they are being discussed.

16 It's going to affect the industry,
17 because conversion of special access circuits to
18 UNE's is something that is common.

19 I should say it's a narrow situation,
20 but it's common across the industry.

21 MR. CLANCY: So, Aaron, can I ask kind
22 of a business question.

23 Let's say Beth and I, and the carrier
24 working group, bash this thing around for the next

1 eighteen months, whatever long, we bash things around
2 for a long time.

3 And we learn that there is just, you
4 know, like kind of a two-day interval.

5 There is no way it's going to happen, no
6 way it's going to happen.

7 The OSS won't support it, there is no
8 way to measure it, it's a funny, weird duck that was
9 created by a weird policy, and now there is no way to
10 measure it.

11 Do we reopen this arbitration? Do we
12 reopen the interconnection agreement?

13 What do we do?

14 How do we address the problem?

15 MR. PANNER: Through the carrier work
16 group, I assume --

17 MR. CLANCY: Hold on.

18 Let's say down the road we find out
19 there is no relief from the carrier work group.

20 Do we come back, do we reopen this
21 arbitration? Do we hold this case open until that
22 gets answered and then come back here, or not?

23 JUDGE LINSIDER: The question requires
24 one more avenue.

1 Really what you are saying is, is there
2 a default position that would govern in the absence
3 of the position by the carrier working group.

4 And, if so, what provision is there for
5 changing it, in the absence of a decision by the
6 carrier group.

7 MR. CLANCY: So although it's the
8 decision of the carrier working group, what I'm
9 really talking about is the technical feasibility
10 that Verizon has to actually measure something that's
11 called special access in their system, but actually
12 has to be credited back as a UNE over a
13 month-to-month basis.

14 And there will be a growing volume of
15 those, as long as that policy stands.

16 So just my experience in the business,
17 and working with these great people over the last
18 couple of years in this relationship, some of the OSS
19 issues are just not -- they're unresolvable.

20 You end up with work arounds.

21 MR. ANGSTREICH: If I could just
22 clarify -- and Beth, correct me when I step over the
23 line.

24 In the past in the carrier working

1 group, to the extent that consensus has not been able
2 to be reached, New York PSC has been presented with a
3 CLEC position, and a Verizon position on a metric,
4 and has ordered a resolution of that.

5 If this were to reach impasse, if it
6 were important to the CLEC community to capture these
7 in this metric, and Verizon's position was it was
8 very expensive, impossible, whatnot, and this
9 Commission were to find, too bad, so sad, measure it,
10 it would so order, and that's how it would get
11 resolved.

12 MR. CLANCY: If the OSS can't be fixed,
13 how is it resolved?

14 MS. EVANS: Here is where I'm sensing we
15 are.

16 It sounds like we need to tailor the
17 language that allows for the reality.

18 The reality of it is that, first of all,
19 again, we surfaced this issue two, two-and-a-half
20 years ago, now the carrier working group is working
21 on this issue, but there still seems to be this
22 uncertainty in terms of the scenario that Covad knows
23 as an issue, one, potentially others.

24 Is there an opportunity for there to be

1 language that allows us to address that scenario?

2 Again, we have to go off line and look
3 at that.

4 But I think is there the ability to, you
5 know, identify what the scenario is today, and build
6 in language that says, you know, the carrier working
7 group is addressing this issue. However if, blah
8 blah blah, this is how the parties can come to
9 agreement on this issue.

10 MR. HANSEL: Can I just add that
11 regardless if it's a conversion, the center that's
12 striving for this metric, so regardless of it being a
13 converted -- or not, the reality is that the people
14 handling that claim are striving for the same thing.

15 They don't know they get a claim, they
16 have to respond in two days, they will attempt to
17 resolve within twenty-eight calendar days from that
18 date.

19 MS. ABESAMIS: For some clarification, I
20 think it would be more, Mike, from our perspective
21 is how would we identify it to put in our pocket.

22 I know you said the eighteen months,
23 and I notice there are things in our carrier group
24 that take a while to gain consensus, which is really

1 unanimous.

2 However, we have been told, and we have
3 been marching towards that Order from Judge Brillig,
4 that they want some position from the group for the
5 April Commission meeting.

6 So, I think that is the reason why we
7 have been on this accelerated agenda with a Verizon
8 proposal, a CLEC proposal, and that we're having our
9 discussions.

10 I think it would probably be in all of
11 our best interest to bring up this piece of it,
12 which, quite honestly, in reading all of the
13 testimony, this did not jump out at me until you
14 brought it up today as this being the issue, not that
15 the claims weren't an issue, the specific conversion
16 of access as being a specific issue.

17 MR. CLANCY: Well, the issue is things
18 that aren't measured.

19 MS. ABESAMIS: Well, now it's very clear
20 to me specifically what you are looking for.

21 But I think we can discuss that, either
22 come to consensus or not, as you mentioned, Scott,
23 and file our positions with it.

24 But clearly, if it's a UNE, it's

1 difficult to measure, we may have to come up with
2 some interim way to identify it, and we would work
3 that through and try to get that into our claims.
4 Because we should be measuring every claim as part of
5 our process resolution for unbundled elements.

6 MR. CLANCY: From an economic
7 perspective -- I'm sorry, Ron, did you have to
8 something to add?

9 From an economic perspective, if we went
10 down the road where the carrier working group
11 decided, and there could be lack of consensus,
12 because it could be very costly for Verizon to come
13 up with an OSS solution, so Verizon's position would
14 be too costly.

15 CLEC's position would be, like we want
16 this.

17 And then the Commission is left with
18 this really, really bad choice. Is this industry
19 saying this is a good idea, is this business saying
20 it's going to cost millions and millions of dollars
21 for something that's pretty, you know, pretty minor?

22 So if we cover the exceptions in a
23 contract, rather than forcing the Commission to order
24 Verizon to spend millions of dollars to fix the OSS,

1 to figure out how to get these UNE's that aren't
2 really UNE's to make believe they are UNE's, that, I
3 think, is a solution that benefits both parties.

4 MR. HANSEL: If I can point out again an
5 overarching issue here, and that is, not Verizon's
6 response on numerous occasions that this is something
7 that can be handled in the collaborative just doesn't
8 work, and the reason it doesn't is because there is
9 an immediacy for Covad, and for other CLEC's, I would
10 assume, to get issues resolved, and to say well, we
11 can address this in a collaborative, and there is
12 acknowledgment that it may take eighteen months to
13 resolve.

14 Well, that's fine, that's what change in
15 law provisions are for.

16 To the extent that the collaborative
17 revolves that issue, we are happy to incorporate that
18 into our interconnection agreement.

19 But in the pendency of that
20 determination, we have an issue at hand, and it's in
21 front of your Honor to be resolved in terms of an
22 interconnection agreement.

23 And so I don't believe that there is a
24 reason why the issue should be deferred for eighteen

1 years, because -- I'm sorry, eighteen months --

2 MR. HANSEL: My life is almost over now.

3 Just because it could potentially be
4 resolved in a collaborative doesn't mean that that is
5 where it should be resolved, although, again, we're
6 more than willing to incorporate those decisions once
7 they are made into our agreement.

8 JUDGE LINSIDER: What occurred to me
9 when Scott mentioned when the carrier working group
10 can't come to any working decision, that could happen
11 here, too.

12 And the Commission could simply decide
13 it and say here is what you do for now, recognizing
14 that there is some generic discussion in the carrier
15 working group, and if the carrier working group comes
16 up with something else, it will supersede the
17 Commission's decision here.

18 All right, the issue again, I think, has
19 been recast and narrowed, and let me encourage you to
20 continue talking about it, and report in the brief.

21 Number five.

22 MR. ANGSTREICH: Yes, your Honor.

23 This issue involves, at least as
24 originally presented, two issues related to the late

1 payment charges, having to do with late payment
2 charges due on disputed bills.

3 And Verizon's position is that just as
4 with its retail customers, late payment charges
5 should be due for the -- in the event that a dispute
6 -- a customer, whether it's a wholesale customer, a
7 retail customer, disputes a bill, if that dispute is
8 resolved in Verizon's favor -- for the entire time it
9 was due.

10 It applies to retail customers, it
11 should be the rule that applies to wholesale
12 customers, as well.

13 Covad has also added in the course of
14 briefing a third issue, which is not covered by its
15 proposed language, which has to do with the question
16 whether, during the pendency of the dispute, Verizon
17 should stop showing late payment charges on Covad's
18 bill.

19 And Verizon has made clear in its reply,
20 and Mr. Hansen can reiterate today, that in the event
21 the dispute is resolved in Covad's favor, they
22 dispute a thousand dollars, it's resolved in their
23 favor, they will be credited a thousand dollars, and
24 any late payment charges that have been assessed in

1 the interim, without any need for Covad to raise
2 disputes in the interim with respect to those late
3 payment charges.

4 Covad claimed they were required to
5 raise those disputes. They don't have to.

6 MR. HANSEL: That is correct.

7 That's the same way it's handled in
8 retail, as well.

9 If the CLEC chooses hold the funds, and
10 then late charges do accrue, once the claim is
11 resolved, if resolved in CLEC's favor, then we issue
12 the adjustment, plus calculate the late payment
13 charge and issue that credit on top. It's a bulk
14 adjustment.

15 It's automatically done.

16 MR. HANSEL: I will pose a hypothetical
17 here.

18 Let's look at the \$1.1 million in
19 billing that we received from Verizon on an invoice
20 with essentially no supporting documentation.

21 It takes us eight months to work with
22 Verizon to finally figure out what that \$1.1 million.

23 In the end, approximately 30 percent of
24 it was incorrectly build, but it took eight months

1 for us to clarify that point.

2 What happens, first, to the other
3 \$700,000 of the late charges applied to that?

4 Second, what if, after nine months, all
5 \$1.1 million actually was owed to Verizon, but at the
6 same point, we never received any supporting
7 documentation, and it legitimately took nine months
8 of working back and forth to resolve that issue.

9 We lost that with respect to, yes, it
10 was owed; but now we've got nine months worth of late
11 payment charges added onto each other over the
12 nine-month period that Verizon claims we owed to
13 them.

14 MR. HANSEN: If I may?

15 What was cited was an actual example of
16 delayed billing, back billing, it had to do with an
17 issue. I don't know if we want to go into the whole
18 issue.

19 What I will say is all late payment
20 charges in that instance were credited back to you
21 throughout the resolution process. We did negotiate
22 with you.

23 Yes, we did send a spreadsheet
24 detailing, there was confusion on it, we negotiated.

1 I don't know that we want to go through
2 the whole thing.

3 The bottom line is we do issue
4 adjustments for late payment charges, just as we did
5 in that case, to hold you free from harm on that.

6 MS. EVANS: Well, in most cases, Ron,
7 the reality of it is that we end up having to file
8 claims to get all the late payment charges back,
9 because in a lot of cases, even the bill in which you
10 issued the credit to us on, normally late payments
11 charges are assessed on that one.

12 So in order for me to get the late
13 payment charges against that credited statement, I
14 have to put in another claim.

15 And Verizon's position is always when it
16 comes to late payment charges, oh, just submit
17 another claim.

18 We're trying to get out of the claims
19 business.

20 We would like to, when we submit a
21 claim, and Verizon's position is that if they
22 suspended the late payment charges, it's no different
23 than your credit card.

24 When you submit a claim into your credit

1 card and say, I am disputing this \$100, it's not
2 valid, they don't accrue the charges against that
3 \$100, they take it out of your balance, and then it
4 goes to dispute.

5 They don't assess it as an owed fee.
6 They take it completely out of your balance, and then
7 the issue gets resolved.

8 In this case, it's almost like we owe
9 it, and then we owe it, and then we owe late payment
10 charges and late payment charges on top of that.

11 And Verizon's reason for saying that
12 they take that approach is otherwise CLEC's would
13 just submit frivolous claims to get out of paying the
14 bills.

15 That's insane.

16 We are trying to get out of having to
17 increase the number of people in our billing
18 organization, and we're going in the wrong direction,
19 because every time we run into these scenarios, the
20 response is file a claim.

21 I've got too many claims going on. I
22 want to fix the billing issues.

23 And that's what a lot of the issues that
24 you see in this are trying to get to the root of the

1 billing problems, so that we don't have to keep
2 filing claims.

3 The late payment charges, although
4 Verizon says that they make an attempt to resolve
5 them, along with the dispute, that's not the case.
6 We end up having to file a number of claims to get
7 the late charges resolved.

8 Even in the \$1.1 million, we had
9 numerous claims on all those late payment charges, to
10 get those resolved. That's what you directed us to
11 do.

12 MR. HANSEN: I'm going to say there was
13 mention of this in one of the forum issues, I don't
14 know whoever attended the forum, made mention of some
15 of these issues.

16 I did go back to make sure that some of
17 the centers that are handling the claim, regardless
18 of location, that it was handled the same way.

19 If a claim is resolved in a CLEC's
20 favor, are late charges being credited back. The
21 answer is yes, they are being credited back.

22 Even in a center where maybe that wasn't
23 the process at the time, which wasn't New York, but
24 that process is now being held there, and I think you

1 would confirm, if I asked you today, when you submit
2 a claim, it's resolved in your favor, are you seeing
3 the late payment charge credit, as well.

4 MS. EVANS: And I guess, again, this is
5 one of those scenarios where it sounds like Verizon
6 agrees.

7 So, the issue needs to be what language
8 can we say to ensure that this will be the way that
9 we will do business going forward, that it's not
10 just, you know, at Verizon's discretion. Sometimes
11 we get it, sometimes we don't.

12 All we're trying to do is get that
13 codified.

14 MR. PANNER: Would it be Verizon's
15 discretion whether they get it or not?

16 MR. HANSEN: No. It is our policy that
17 if a credit resolved in the CLEC's favor, then we
18 apply a credit of late payment charge to them.

19 MR. CLANCY: Ron, just to be clear, Tony
20 described a scenario before, you responded that there
21 was a negotiation where --

22 MR. HANSEN: That's unique.

23 MR. CLANCY: -- that there was
24 absolution for that because, you know, Verizon's .

1 opinion, that was kind of a unique instance.

2 So, is there a way to describe the type
3 of unique instance, so manual billing where
4 mechanized billing hasn't yet been deployed for a
5 particular product, whatever it is, where back
6 billing occurs, Verizon will consider absolving the
7 late payment fee, even if for part of that is decided
8 in the CLEC's favor.

9 MR. HANSEN: What I would rather do is
10 walk you through a normal claim, where you submit a
11 claim, it is entered into the billing system, we
12 accept the claim, enter it, investigate it, resolve
13 it.

14 If it's resolved in your favor, we then
15 issue you the adjustment, and any late payment charge
16 that had been assessed. That's the normal process.

17 MR. CLANCY: Yes, I kind of feel better
18 about the normal process than I do about the weird
19 one or the unique one.

20 So the odd ones are -- I'm having
21 problems with a long distance company now, myself,
22 because they did funny things to my service when they
23 were my long distance company.

24 But they're a bit more inflexible than

1 you guys.

2 So the situation I'm having there is
3 going to give me a little idea for just think if the
4 bill was \$1.1 million, and they were whacking me
5 every month for late payment charges, when the reason
6 the bill is so high is their fault, they made a
7 mistake.

8 So I can't ask the PSC to help me,
9 because it's along distance company.

10 MR. HANSEN: Who is it? I'll make a
11 call.

12 MR. CLANCY: The situation that Tony
13 described is, we had an event.

14 MR. HANSEN: Right.

15 MR. CLANCY: It was associated with a
16 new service, and it was associated with manual
17 billing, and it was associated with historical
18 charges, and there was a lot of research that had to
19 go into actually figuring out what was on that bill.

20 So is there a way to write something
21 into the interconnection agreement that covers those
22 events?

23 MR. HANSEN: Because it --

24 MR. PANNER: I was going to make the

1 point -- go ahead.

2 MR. HANSEN: Because that is so rare,
3 and it happened -- I can count on one hand how many
4 times something like that happened to you, because,
5 in this instance, it had to do with a service that we
6 were in a rush to provide, so that you could sell it,
7 and market it, and we kind of -- you were very
8 anxious at the time to be sure that we adhered to
9 that June, 2000, date so you could provide those
10 services. We did.

11 As we know, it's much easier to
12 provision and provide you a service before we can
13 actually figure out how to bill it. That's the
14 problem we got into.

15 There was a case of what I will call
16 delayed billing, where we then submitted all of
17 this -- these were services that you requested,
18 ordered, we provided. It wasn't something that
19 wasn't asked for.

20 So then we provide to you at a later
21 time a spreadsheet which showed all the states, what
22 the charges were, totaling up to \$1.1 million, and we
23 did put it, for ease, on one bill.

24 And then, once it was applied to the

1 bill, that's when the late payment charges did start.

2 That's true.

3 And in this instance, through
4 negotiation, you know, we did waive all late payment
5 charges on that bill.

6 MR. CLANCY: Now, just take that as an
7 instance, right, and we talked about other issues
8 that were technical issues earlier, where Verizon's
9 comeback was, well, it was a new product, we had to
10 develop a new product.

11 And you know, all I can hear in the
12 background in my head was different levels of
13 ka-ching, because \$700,000, plus 1.9 percent per
14 month compounded, is not a small number.

15 So the issue is that when we went and
16 developed line sharing in the collaborative prior to
17 June, 2000, part of that development was interim
18 rates for all of the billing elements, and an interim
19 Appendix A, which was provided by Amy Stern to all
20 the CLEC's, and the agreement was these were the
21 interim rates until we go through proceedings and
22 create permanent rates in each and every state.

23 And then there would be a process of
24 trueing up.

1 So, my understanding would be that you
2 had the rates, you had the billing elements, what's
3 next, a -- and then boom, it goes into the billing
4 system, and I get a mechanical bill.

5 And instead, a year-and-a-half later we
6 got a manual bill for those billing elements.

7 So, what I don't understand is, you had
8 all the elements you needed to mechanize the bill,
9 and it wasn't mechanized.

10 And when we talk about further new
11 products, I just have this vision of this event
12 occurring more than once, making it not unique.

13 MR. WHITE: You highlight line sharing.
14 There were 1,100 calls that we did, most of it was
15 done on a handshake, with spreadsheets that you
16 provided, so we could accelerate a bill in three
17 months that was monumental, and we accomplished it.

18 MR. CLANCY: This was for orders.

19 MR. PANNER: I think the point is this
20 is an incident that happened and the parties
21 resolved, and we have said, and I think we would be
22 willing to make -- we made clear here, we can talk
23 about language, that when a dispute is resolved in
24 Covad's favor, that any late fees are credited, and

1 unique circumstances, if Covad has proposed language
2 about that, then that's part of what we can continue
3 to do.

4 But it seems to me that certainly this
5 discussion suggests that the basic issue is one where
6 Verizon is doing what Covad asks, and that the scope
7 of what happens in the unique circumstance, by its
8 nature, it's hard to anticipate unique circumstances.

9 JUDGE LINSIDER: So is it --

10 MR. CLANCY: It's not hard to be
11 prepared for them.

12 MR. PANNER: Sometimes it is.

13 JUDGE LINSIDER: Which is why there may
14 need to be something in the contract to deal with it.

15 But I think it may be another wording
16 issue.

17 MR. HANSEL: I think if we can take a
18 step back and talk about the kind of quirky things
19 that may happen.

20 But let's talk about a standard bill in
21 dispute.

22 We discussed in the performance plan
23 that there is a twenty-eight-day performance metric,
24 that 98 percent of those claims should be resolved

1 within thirty days.

2 If that's the case, there is confidence
3 on Verizon's part that 98 percent of the claims will
4 be resolved in thirty days.

5 And in the interconnection agreement
6 let's say you can get thirty days worth of late
7 payment charges, okay.

8 But it's in those instances where the
9 claims go beyond thirty days, and it takes nine
10 months to resolve a claim.

11 Why should we have nine months worth of
12 late payment charges imposed on us if it takes
13 Verizon eight months to resolve the claim? If it's
14 in their favor, fine.

15 But it took nine months, or eight
16 months, to get to that point.

17 And we shouldn't have nine months of
18 late payment charges imposed on us, it should be
19 thirty days, based on the metrics.

20 JUDGE LINSIDER: Covad's concern isn't
21 about having late payment charges refunded if Covad
22 wins the dispute, it's having late payments charged
23 at all beyond thirty days, if Verizon wins the
24 dispute, on the premise that the reason the dispute

1 took so long was essentially Verizon.

2 All right. But is the late payment
3 charge designed to do any more than handle the time
4 value of money, in which case, it really shouldn't
5 matter?

6 Presumably, at that point, Covad is
7 holding the funds, and had the use of the funds.

8 MS. EVANS: Well, what happens, though,
9 is that your outstanding balance gets larger and
10 larger, and you get to a point where Verizon will
11 send you a notice saying that your bill is so far
12 behind that your chance of being terminated --

13 JUDGE LINSIDER: That shouldn't happen
14 while negotiations are going on, that's different
15 from a late payment charge.

16 MS. EVANS: I agree.

17 But we have scenarios where, because of
18 billing issues, and credits being applied
19 incorrectly, we get statements as if we are in
20 arrears of our bill, and therefore, we're in chance
21 of termination.

22 So when Verizon takes a look at their
23 accounts and see that we owe all this money, it's not
24 the same as saying, oh, by the way, there's a dispute

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1 involved, they just look at the big picture.

2 And again, the outstanding balance
3 continues to toll on our side.

4 So for accounting reasons, with the SEC,
5 and all the corporate scandals, at the end
6 of a certain period of time, we have to attest as to
7 how much money we actually owe.

8 If our late payment charges show, and
9 they are huge amounts, like we said, they run into
10 hundreds of thousands of dollars, in a couple of
11 months, they will all get wiped out, but what I'm
12 showing to my stake holders, and to the corporate
13 entity, is that I have all this outstanding, it
14 appears on my balance sheet as if I actually owe
15 Verizon all this money, when, in fact, I don't.

16 JUDGE LINSIDER: That's back to the
17 issue where Covad wins the dispute.

18 MS. EVANS: Yes, absolutely.

19 And so Verizon's reason for saying that
20 it assesses late payments charges, it wants to make
21 sure that CLEC's don't file a frivolous claim.

22 That if we file a claim, we would hold
23 the money. If we didn't have late payment charges,
24 that would be our way of getting out of paying money

1 for a couple of months. We would just sit there, and
2 hold the money, and then we'd pay it later.

3 What we see is if the late payment
4 charges are allowed to be tolled for the first thirty
5 days, if Verizon has not resolved that claim, or, of
6 course, if the instance where we're legitimately
7 going back and forth to resolve that claim, that's a
8 different scenario.

9 But if that's the case, and Verizon has
10 more of an incentive to get the claim resolved, so
11 they can get paid, that puts the onus on them, which
12 is to take the late payment charges away, and put
13 more pleasure on them to resolve that claim.

14 Now the pressure is on us. We've
15 already said we're trying to fix the problem with
16 your bills.

17 MR. ANGSTREICH: Your Honor, if you
18 could just sort of step back.

19 The issue as presented, the language
20 that has been proposed to us has to do with certain
21 billing of late payment charges.

22 We can't speak to, nor do we know
23 Covad's internal accounting on its balance sheets of
24 how it tracks late payment charges that are owed.

1 The language that Covad proposed
2 wouldn't stop or alter in any way the way that they
3 get to account for their own late payment charges
4 that may or may not be owed.

5 As your Honor pointed out, to the extent
6 that we're talking about the time value of money,
7 they owe the money, they were the ones holding it
8 during the pendency of the dispute.

9 To the extent that we're talking about
10 disputed charges, I believe Ron will tell you, you
11 don't get cut off for charges that you're disputing,
12 but whether they are late payment charges or --

13 MR. HANSEN: Those disputed charges are
14 separate on the bill, where it shows total amount
15 disputed, it shows late payment charges assessed. So
16 it's clearly indicated on the bill.

17 And we would not disconnect a customer
18 for a pending claim that is still pending resolution.

19 MR. ANGSTREICH: What Covad seems to
20 want is a presumption that any time it takes longer
21 than thirty days to resolve the dispute, it's
22 necessarily Verizon's fault, therefore, Verizon
23 should not get the amounts under the late payment
24 charges set forth in the tariffs -- retail customers.

1 Somehow Verizon should be precluded from
2 that, because it must have been Verizon's fault.

3 Now, I can't say it's never Verizon's
4 fault. I can't say it's never Covad's fault.

5 But the dispute here seems to be about a
6 relatively narrow issue, a unique issue, apparently,
7 that --

8 MR. HANSEN: There is parity between ur
9 retail and our wholesale customers.

10 That late payment charge is the same on
11 both sides of the fence. There is a reason it's
12 applied, and how it's credited is again, the same on
13 both sides of the fence.

14 MR. CLANCY: Ron, how many manual bills
15 have you sent to your retail customers?

16 MR. HANSEN: We're not talking about one
17 particular instance?

18 MR. CLANCY: That's parity.

19 MR. HANSEN: There is a unique situation
20 in wholesale.

21 MR. CLANCY: Unique isn't parity.

22 MR. HANSEN: The application of it is.

23 JUDGE LINSIDER: It seems to me -- well,
24 I think the issue, the factual aspects of the issue

1 are clear. It needs either -- this one really
2 strikes me as one that can benefit from some
3 facilitated negotiation, which we are not about to do
4 now.

5 I think it should be one that's
6 resolved. If it's not, the Commission will resolve
7 it for you.

8 But I think all the factual issues are
9 out on the table.

10 Let's move on to the next one. And this
11 is number eight.

12 MR. PANNER: *Eight is fine.*

13 JUDGE LINSIDER: *Okay, number eight.*

14 Now, this one I'm going to take the lead
15 on. This one strikes me as really a legal issue.

16 I think it relates to issues of general
17 contract law.

18 Clearly, Covad has, or CLEC's has an
19 interest instability, but I think the way it's
20 handled is a matter of law.

21 MR. HANSEL: *Just one point.*

22 In response to Verizon's reply brief,
23 they suggested that we did not attempt to change the
24 ninety-day notice period with respect to this

1 provision.

2 And to the extent that there were going
3 to be facilitated discussions, or discussions to try
4 to come to some resolution on this issue, Covad was
5 prepared to talk about that particular aspect of the
6 issue.

7 JUDGE LINSIDER: The ninety-day notice?

8 MR. HANSEL: Yes, as a possible way of
9 reaching an agreement.

10 JUDGE LINSIDER: WELL, we can do that
11 now.

12 What is the suggestion?

13 MR. HANSEL: Our proposal would be,
14 essentially, we need the opportunity to negotiate a
15 new interconnection agreement with the purchasing
16 carrier.

17 So, a proposal would be basically the
18 time frame that we're provided to negotiate an
19 interconnection agreement with Verizon should be the
20 time frame that is also provided in this provision
21 with respect to notice.

22 And mind you, our ability to negotiate
23 this particular agreement with Verizon isn't
24 necessarily possible to do within that allotted time

1 frame, but we are still willing to propose that as a
2 negotiation proposal.

3 JUDGE LINSIDER: You mean the period
4 being the one that the act provides for?

5 MR. HANSEL: Yes.

6 MR. HARTMANN: Your Honor, I'm happy to
7 take up with my clients a way to resolve this by
8 playing with the timetable.

9 I have to say that my inclination -- I'm
10 not optimistic that that is going to be a way to
11 solve this.

12 I guess I'm not even sure I actually
13 understand the Covad proposal.

14 Is Covad saying that it could live with
15 Verizon's language, instead of saying not less than
16 ninety calendar days, we said not less than 120
17 calendar days, or some different time.

18 MS. HANSEL: Nine months.

19 MR. HARTMANN: I will have to take this
20 up with my clients.

21 To me that sounds like a long time.

22 MR. CLANCY: It's significantly less
23 than it took us to do this one, right?

24 JUDGE LINSIDER: Where it says 150

1 calendar days, it will be 270 calendar days.

2 MR. HARTMANN: It sounds like they are
3 saying Verizon should provide Covad with 270 calendar
4 days, and then striking the "if possible, but not
5 less than ninety calendar days by written notice."

6 MR. HANSEN: Not less than 270 days.

7 MR. HARTMANN: I understand.

8 Instead of there being two time periods,
9 there would be one time period, of 270.

10 MR. HANSEN: Yes.

11 JUDGE LINSIDER: You need to discuss
12 that with your client.

13 MR. HARTMANN: Yes.

14 JUDGE LINSIDER: Do so, and then get
15 back to each other and to me on how far you get.

16 All right, No. 38.

17 MR. PANNER: I would like to introduce
18 Tom McCarroll, of Verizon, who may want to speak to
19 this issue to the extent that we have any kind of a
20 discussion on 38.

21 I should note he's not sworn, so if you
22 want to take care of that.

23 JUDGE LINSIDER: All right, we can do it
24 now.

1 Why don't we do it now.

2 Mr. McCarroll, raise your right hand to
3 be sworn.

4 (Witness sworn by Judge Linsider.)

5 MS. EVANS: Do you want us to start?

6 JUDGE LINSIDER: Please.

7 MS. EVANS: Okay. The issue here is
8 that the IA acts as a contract, and in there is what
9 is called Appendix A, which outlines the rates and
10 charges that the parties have agreed to pay for the
11 services.

12 Throughout the life of the contract,
13 because of, you know, mostly tariff provisions, or
14 things that may go on in the regulatory process, the
15 Appendix A gets outdated, and the reality of it is
16 that Covad and Verizon struggle to be able to
17 identify what the correct rates are.

18 We are currently in the process, and I
19 wish Ms. Clayton were here -- she is probably working
20 on the issue now -- but we've been working on an
21 issue literally or over six months to identify where
22 Verizon, what the basis is for some of the rates we
23 get charged.

24 It seems like this would be a no

1 brainer. We have a contract Appendix A when we
2 signed this deal.

3 Like I said, tariff changes occur.

4 Verizon does send out notices,
5 informing the CLEC's that, you know, they submitted a
6 tariff request.

7 And then there is a process that goes
8 along with that.

9 However, when a tariff, or rate,
10 typically gets set, there is a whole bunch of
11 information in there.

12 There could be up to 200 elements that
13 could be resolved in a decision.

14 And obviously, we don't order all those
15 things, we order a subset of those.

16 And the billing changes that need to get
17 incorporated into our billing tables, or whatever it
18 is that Verizon supplies to maintain those, that's
19 Verizon's responsibility to update those tables to
20 ensure that as of the effective date of the new
21 tariff, those rates go into effect.

22 That doesn't happen.

23 To be honest with you, that's possibly
24 one of the largest reasons for all these claims, in

1 addition to we talked about the new product.

2 The other part of it is when there are
3 tariff changes that occur. Verizon has a difficult
4 time in keeping up with those rate changes to apply
5 those to a CLEC.

6 Our solution to that would be that the
7 contract, along with Appendix A, which is where the
8 rates are clearly identified on a per state basis
9 would reflect what are the applicable rates.

10 So we're suggesting that in order to
11 manage the billing process, to eliminate the need for
12 all these claims to be filed, to get these charges
13 reconciled, and so that when we have a question about
14 where the rates are coming from, it would provide a
15 basis and an easy process for Verizon to be able to
16 say oh, well, those rates are because of X, Y and Z.

17 Right now, like I said, Rose Clayton is
18 going through -- and this has been several months --
19 trying to identify where they came up with the rates
20 for these particular charges.

21 And her last statement on our call was,
22 "The people that did this, I don't know where they
23 are, and I don't know where these rates came from."

24 So we're trying to put a process in

1 place that will eliminate all the confusion around
2 the billing changes that occur as a result of rate
3 changes.

4 MR. ANGSTREICH: Your Honor, as Ms.
5 Evans noted, Verizon provides CLEC's pursuant to a
6 notification list with notification tariff amendments
7 that it files with this Commission.

8 In prior arbitration this Commission
9 said that that process is sufficient to put the
10 CLEC's on notice of possible changes, and the tariff
11 process itself is sufficient for CLEC's to raise any
12 concerns or objections they have with respect to
13 those potential changes that Verizon has proposed.

14 Ms. Evans talks about the reality of the
15 situation, and things that don't happen, and
16 difficulties, and we disagree with that
17 characterization.

18 We've heard talk of one unspecified, and
19 vaguely referred to incidents that Rose is working
20 on.

21 But, to be honest, I don't know what she
22 is talking about, and in the absence of specific
23 facts, I'm sort of hard pressed, and I know we will
24 be hard pressed to speak to that.

1 But to the extent that Covad wants to
2 note on its copy of attachment A the fact that a
3 tariff amendment has been approved by this
4 Commission, changing a rate, they are perfectly
5 capable of doing so, and able to do so.

6 Verizon is also capable and able to do
7 so, but there is no reason that Verizon should be
8 forced to do this effectively administrative work on
9 Covad's behalf, when Verizon provides Covad with the
10 notification, Ms. Evans said, and Covad is equally
11 capable of reading the notifications.

12 For Verizon to say we just sent you a
13 package, I think you might be interested in what is
14 on page 5, when we have limited ability to read their
15 minds and discover what that might be.

16 And those changes that Verizon proposes
17 in the tariff apply to all CLEC's.

18 The thing in attachment A, the products
19 that Covad purchases is made available to all CLEC's
20 in New York, not just Covad.

21 This is something dealt with on an
22 industry-wide basis, through the tariff process, the
23 tariff notification process, followed by the tariff
24 approval process.

1 If they want to participate in that, and
2 if they would like to do so in the future, they could
3 be informed through that method of what changes have
4 been approved to the rates that are in the agreement.

5 JUDGE LINSIDER: What if -- I'm back to
6 thinking out loud -- what if Covad kept track of the
7 changes on its own Appendix A, and once every three,
8 four, six, however months, submitted it's revised
9 version of Appendix A to Verizon, for Verizon to
10 confirm as to accuracy?

11 MR. HARTMANN: Your Honor, I'm also
12 thinking out loud.

13 I'm not sure how that's better or
14 different than Covad saying, hey, I see you're
15 charging me X for a widget, and by my tracking of the
16 tariff that Verizon sends out -- by my tracking of
17 the New York PSC's effective orders, it ought to be Y
18 for a widget, not X.

19 It looks to me like the order became
20 effective two months ago. So, we really need to
21 correct three months worth of charges for that
22 widget.

23 JUDGE LINSIDER: Well, it might
24 duplicate some of those. It also might obviate

1 others.

2 If the accuracy of the appendix were
3 confirmed, then Covad might not make billing
4 challenges that it might otherwise have made.

5 I think it serves what Covad says to be
6 the interest in avoiding a degree of confusion about
7 the applicable rate.

8 MS. EVANS: And on that note, your
9 Honor, what I like about that idea is that the only
10 other way that we get around fixing that problem, or
11 whatever, is again, when that happens, I've got
12 thousands of loops that have been billed incorrectly.

13 And so, by having it be a, you know, a
14 check of the entire process, that would, like you
15 said, obviate me from having to file, again, a claim
16 to kind of get to the root of the issue and get it
17 resolved.

18 Whenever the billing is wrong, in a lot
19 of cases, it's wrong for a lot of loops, not just one
20 incidental case.

21 MR. MCCARROLL: I think what I heard
22 being suggested, too, just went to the reasonableness
23 of assuring that your Appendix A is accurate.

24 And as was indicated, notification is

1 sent out on all those wholesale tariff changes, along
2 with a cover letter, which I think proves
3 particularly valuable, in that it tells you exactly
4 what is changing in the filing that's attached to it,
5 gives you a specific reference where to look within
6 that.

7 Just looking back at the wholesale
8 tariff changes that have been made, Covad is a very
9 active participant.

10 So it's not as if the first notification
11 you are getting of what is taking place through the
12 tariff filing, it's the culmination of many cases,
13 collaborative efforts, or litigated proceedings in
14 which you've been a very active participant, in fact,
15 filed comments.

16 JUDGE LINSIDER: Well, my understanding
17 is that Covad is not concerned about using this to
18 have an opportunity to contest tariff changes, and
19 that will have been history by the time the appendix
20 changes.

21 The issue is more one of making sure
22 that both parties are on the same page as to how
23 tariff changes get translated into changes.

24 MR. HARTMANN: If Covad were to send us

1 their version of Appendix A, and every three or six
2 months, we had an obligation to look through every
3 rate, and confirm that we agree with every rate, as
4 opposed to the rates that they do have a question
5 about, or a problem with, it seems like we're
6 multiplying the work effort many times.

7 As a related matter, I'm not sure what
8 would the effect be of Covad sending us their
9 Appendix A, and Verizon agreeing with it, and then
10 one of the two parties thereafter saying, you know
11 what, I missed a rate, there was an Order that
12 neither of us saw the first time we did this checking
13 process.

14 What would be the effect of that?

15 To me, we're sort of buying trouble
16 unnecessarily with a new process of that type.

17 MR. MCCARROLL: I know Rose is not here
18 to speak to the issue that Valerie had referenced
19 before, but the tariff itself will have an indication
20 of what has changed, it will have an indication of
21 the effective date of that change.

22 MR. PANNER: If you are talking about
23 tariffs, if I can make this point up, having thought
24 a lot about the tariffs, and the function they

1 performed over the last few years, the basic idea of
2 the tariff is it's out there for everyone to see.

3 If you, or any other CLEC in the
4 industry state-wide, wants to know what the proper
5 charge is for some service, they look at the tariff.
6 That, it seems to me, is the core idea.

7 And to say that we should have to ensure
8 that, or to suggest that Verizon should have the
9 responsibility of assuring that every CLEC in the
10 industry state-wide has properly transcribed tariff
11 changes into their Appendix A, it strikes me defeats
12 the entire purpose of the public filing requirement
13 of the tariff.

14 MR. HANSEL: If I may address this?

15 As your Honor identified, there are two
16 issues here, and it is my belief that they are
17 starting to get blurred.

18 The first is, notification of tariff
19 changes. That's not what Covad is discussing at this
20 moment.

21 And then there is a second issue, which
22 you mentioned, which is Appendix A, which identifies
23 what the effective rates are between the parties.

24 And so, I continue to hear Verizon talk

1 about what's in the tariffs, what's in the tariffs.

2 If you look at Appendix A, if it's in
3 the tariff, it will refer to the tariff, okay.

4 What we're talking about is in cases
5 where it's not in the tariff -- and I can cite
6 several examples of when that might happen -- a
7 unilateral change by Verizon of a rate. I will use
8 D.C. and Virginia as an example.

9 MR. HARTMANN: Let's use New York as an
10 example.

11 MR. HANSEL: Okay, let's use New York as
12 an example.

13 Line sharing. Line sharing, we were
14 charged for line of station transfers based on a
15 Verizon cost study that was not a New York approved
16 rate.

17 That's a perfect New York example of a
18 rate that's not tariffed. However, we're getting
19 charged for it.

20 So, for purposes of Appendix A would be
21 this is what we think is effective, right?

22 Alternatively, Verizon would like Covad
23 to rifle through the thousands of pages that we get
24 on a bill to find "the error," or the rate that's not

1 Commission approved that has been unilaterally
2 imposed by Verizon.

3 And we're trying to find an easier
4 method, where we are both on the same page.

5 And again, Valerie referred to this
6 particular case, she is having where no one at
7 Verizon can find or identify where this rate is.

8 MS. EVANS: Let me just --

9 MR. PANNER: Is that New York?

10 MS. EVANS: Let me clarify what Scott
11 identified, he's shaking his head and agreeing.

12 There were two issues that I just
13 related that I'm working with Rose Clayton.

14 And one, I think John, you've been on
15 those calls with extension rates. That one is not a
16 New York issue, but we will put that one aside.

17 The line station transfer charge is a
18 perfect example.

19 Line station charges are something that
20 Verizon has in front of various commissions.

21 And this goes to a back billing issue
22 and this issue, specifically.

23 Covad got on one bill a charge for 19
24 thousand and something odd dollars, and didn't know

1 what it was for.

2 Verizon provides the spreadsheet and
3 says, "Oh, we're assessing you line of station
4 charges for rates throughout the entire footprint,
5 and we're putting it on," I think it was a New York
6 bill, I'm not sure.

7 The point of it is, though, the line of
8 station transfer rate is married by state, and we
9 could not figure out what the bases were for the
10 rates of these charges.

11 So in New York, for example, I think it
12 was \$169.

13 In another state it was some other
14 amount. But where are you getting these rates?

15 Verizon's position was, after several
16 months, numerous conference calls -- it's not like
17 they can just meet and say, oh, this is where we came
18 from.

19 This one has gone on for six or seven
20 months.

21 Verizon just the other day sends us a
22 matrix and says here is how we figured out the rates.

23 Most of the rates were based on rates
24 that they had submitted in tariff proceedings. That

1 doesn't mean it's approved. Just because Verizon
2 submits, it doesn't mean I'm obligated to pay it.
3 Appendix A would address that.

4 If it says I pay \$50 unless a Commission
5 approves it, I'm not paying what Verizon puts on a
6 piece of paper.

7 In this case, it was a New York issue.

8 And guess what the rate is in New York?

9 Zero.

10 So Verizon charged us -- most of the
11 loops on that \$19,000 charge were New York loops.
12 And they charged us \$169.

13 JUDGE LINSIDER: Was that a mistake?

14 MS. EVANS: Well, Verizon has a history
15 of they feel that if they send out an industry
16 notice, saying that they can charge the rates, that
17 that means the rates are applicable. And that's why
18 we want to have our contract should tell what rates
19 are applicable.

20 JUDGE LINSIDER: It's not an Appendix A
21 issue, it's something that's different.

22 If the concern is that Verizon is
23 applying rates in error, then sending out notices of
24 tariff changes won't necessarily help that.

1 MS. EVANS: Well, I agree, your Honor,
2 and we changed the language.

3 One of the things that we have come to
4 agreement on in our language is we have language that
5 specifically says that the rates have to be legally
6 effective.

7 So we covered for that from our
8 language.

9 But, unfortunately, the process -- the
10 language covers us legally, but the reality of the
11 process of how their folks go and try to bill us, by
12 putting in Appendix A, where both parties can look at
13 the contract and say these are the rates that we are
14 obligated to pay, that was our attempt to get through
15 the nightmare that we've been living for the past
16 three or four years, trying to figure out when rates
17 are not showing up on our bills properly, what
18 Verizon is using as a basis.

19 JUDGE LINSIDER: How often do rates
20 differ from the tariff.

21 MS. EVANS: You're asking how many
22 claims that we filed?

23 JUDGE LINSIDER: How often is there a
24 rate, a correct rate, that isn't in the tariff?

1 MS. EVANS: Sometimes there are three --
2 by and large, there have been three scenarios in
3 which our rates get established.

4 Either we negotiate them, so there is
5 like an amendment, an interim price.

6 There is an arbitration, and there is a
7 decision that comes up; or there is a plain old
8 vanilla tariff, if you will.

9 Those are the three scenarios that we
10 would agree the rates would agree.

11 But like line of station transfers,
12 that's kind of a gray area where, in our view, those
13 rates were not applicable. Verizon felt that they
14 were and applied the charges to us.

15 So I guess it comes -- you can probably
16 categorize the scenarios into which this happens.

17 Again, new products, a lot of times is
18 where it comes up, where there is a new element, and
19 Verizon feels that they can charge for it, yet the
20 rate hasn't been established.

21 I'm not sure I can figure out some of
22 the other ones.

23 MR. PANNER: Judge, this an issue about
24 when we are required to provide notice of tariff

1 revisions, that's what the language says.

2 There are all kinds of complaints being
3 aired here. We don't agree with the characterization
4 that is being put forward.

5 The point is that, in having this kind
6 of a back and forth, the parties need to talk about
7 this, there are discussions going on about a specific
8 issue with Rose Clayton.

9 This is about, if you look at the
10 language that Covad has proposed, it goes to
11 provision of notice, and what we need to do after the
12 tariff becomes effective.

13 It's on page 21 of the proposed language
14 matrix, proposed new 1.9.

15 Now, that, as I understand it, there is
16 agreement that we provide this notice, and we talked
17 a little bit about whether, once a tariff becomes
18 effective, it makes sense for -- what should happen
19 at that end of it.

20 Are there factual issues, technical
21 issues, that are relative to anything else?

22 Excuse me, that are relevant to that.

23 Any other factual or technical issues
24 that are relevant to that proposed language, which we

1 believe is unnecessary.

2 JUDGE LINSIDER: I take it Verizon has
3 no problem with that one, but that Verizon's problem
4 is only with the final sentence of that language?

5 MR. MCCARROLL: As a practical matter,
6 we are providing that notice. And then, within
7 thirty days of the effective date, which is noted on
8 the notice that we provide them.

9 So it's like sending notice and then
10 saying this is going to be effective in two weeks, or
11 three weeks, or a month, and then, following that,
12 saying, this was effective three weeks ago.

13 We're giving them notice, we're
14 providing them the effective date, we're telling them
15 specifically what is changing, we're giving them the
16 tariff changes.

17 MR. PANNER: As a matter of contractual
18 obligation, our obligation to provide notice about
19 tariff changes have been set forth and have been
20 dealt with on an industry-wide basis.

21 FCC tariff issues are dealt with through
22 a process that is set forth in Federal rules, and
23 there should not be a separate, contractual, special
24 Covad entitlement with respect to the tariffing

1 process that is different from what is set forth
2 through this Commission's procedures and SEC
3 procedures.

4 JUDGE LINSIDER: Are there situations in
5 which the Appendix A rates are changed other than by
6 a tariff filing?

7 MR. PANNER: You mean without agreement
8 of the parties?

9 JUDGE LINSIDER: Yes.

10 Is there any instance in which, for one
11 reason or another, Verizon can change a rate in
12 Appendix A, other than through a tariff filing?

13 MR. HARTMANN: Your Honor, I think the
14 answer is no.

15 As I read Verizon's proposal for this
16 contract, it doesn't appear to contemplate changes to
17 the prices in Appendix A, except for by tariff.

18 But I say that having thought about the
19 first time now, and not having Barbara Crawford, my
20 pricing expert, at my elbow.

21 JUDGE LINSIDER: Is that Covad's view,
22 as well?

23 MR. HANSEL: No, your Honor. Not having
24 siphoned through the agreement, there are several

1 ways that a rate is imposed upon Covad without having
2 gone through a tariff process.

3 MR. HARTMANN: Well, that wasn't the
4 question.

5 I'm sorry, Tony.

6 JUDGE LINSIDER: Well, a change in
7 Appendix A means not simply a rate being changed, but
8 a rate not in Appendix A being added.

9 MR. HANSEL: New services are
10 established, tariffs are filed, these new services
11 are subsequent to a contract being negotiated.

12 If the CLEC orders those services, the
13 tariff rates are going to be billed.

14 JUDGE LINSIDER: That's a tariff?

15 MR. HANSEL: Yes.

16 That's an instance where there could be
17 a rate element not in Appendix A.

18 MS. EVANS: But also, would we not agree
19 that there are instances where an element like line
20 of station transfers, that the Commissions have not
21 ruled on what the rates are in some states, yet
22 Verizon is attempting to apply those rates to CLEC's.

23 MR. McCARROLL: In the case of line of
24 station transfers, it was as a result of a settlement

1 that the parties negotiated, Covad being a party to
2 that.

3 And that settlement was set forth in the
4 Commission's October, 2000, Order in the DSL case,
5 and attachment 2 to that Order laid out that line of
6 station transfer process, setting forth that there
7 was a charge associated with it. That was part of
8 the settlement.

9 MR. CLANCY: Really?

10 MR. HANSEL: Then we go to the
11 underlying question, what is the rate?

12 Was there a rate identified in that
13 settlement?

14 If not, then let's negotiate one. It
15 shouldn't just show up on a bill.

16 MR. HARTMANN: You asked the question is
17 there a way that a rate can change.

18 I don't have Covad's current contract in
19 front of me, but the contract that we agreed to,
20 going forward, while this arbitration is pending,
21 says -- and I'm reading from the pricing attachment,
22 this is the very end of the contract.

23 If you want to follow on, you can look
24 at this proposed matrix.

1 At the very end, it's 1.3, which shows
2 at the bottom of page 20 in the matrix.

3 What is contemplated by the parties,
4 first reading 1.3, is, "The charges for a service
5 shall be the service for a" -- I'm sorry, I will read
6 more slowly.

7 "The charges for a service shall be the
8 charges for the service stated in the providing
9 parties." It says in the matrix -- applicable
10 tariff.

11 That's the first thing that we look for.

12 1.4, which is the top of page 21, is the
13 next step down in the hierarchy.

14 "In the absence of charges for a service
15 established pursuant to Section 1.3, the charges
16 shall be as stated in Appendix A, in the pricing
17 attachment."

18 That's the second thing we look to.

19 1.5, which follows, "The charges stated
20 in Appendix A shall be automatically superseded by
21 any applicable tariff charges.

22 "Charges in Appendix A of this pricing
23 attachment also should be automatically superseded by
24 any new charges when such new charges are required by

1 any Order of the Commissioner of the FCC, approved by
2 the Commissioner or the FCC, or otherwise allowed to
3 go into effect by the Commission or the FCC."

4 I won't read the parenthetical.

5 "Provided such new charges are not
6 subject to a stay issued by any court of competent
7 jurisdiction."

8 That's the framework that we have agreed
9 upon going forward here.

10 I think that is probably what is part of
11 the current agreement.

12 MR. HANSEL: If I can read an additional
13 phrase, in this particular agreement, and then kind
14 of discuss an instance in the current agreement.

15 1.8, "In the absence of charges for a
16 service established pursuant to Section 1.3 through
17 1.7, the charges for service shall be mutually agreed
18 to by the parties in writing."

19 And what I'm hearing now is that
20 pursuant to a settlement agreement, we agree to a
21 line of station transfer charge, however no charge
22 was identified.

23 This sentence, to me, says it must be
24 done in writing.

1 What is happening is we're just getting
2 them, and they are showing up on bills.

3 Now, what them providing us a new
4 Appendix A will do will be the equivalent of putting
5 us on notice that they are changing a rate pursuant
6 to what they believe is an agreement in writing.

7 And that's what's in the current
8 agreement, sorry, in the agreement before this
9 Commission.

10 In the current agreement, there is also
11 language that states, you know, should a new service
12 be comparable to an existing service, then the
13 existing service's rate will apply until a tariff
14 rate supersedes it.

15 So there are different ways for a rate
16 to apply without being tarified.

17 So providing us an updated Appendix A is
18 a way of notifying us that, hey, Covad, we're putting
19 these on your bills.

20 We shouldn't have to find out through
21 bill verification that a new rate has been imposed.

22 JUDGE LINSIDER: It seems to me that
23 that's something that Covad is entitled to, and that
24 Verizon is raising legitimate concern that those

1 situations are a tail wagging a very large
2 administrative dog of providing new Appendix A's
3 periodically.

4 So it seems to me that a fruitful line
5 of negotiation, or a likely basis for a Commission
6 determination, would be some mechanism by which Covad
7 could get the notice that it's clearly entitled to,
8 that it doesn't otherwise get through tariff filings
9 of rates that it might find applicable to it.

10 And I don't think we can come up with
11 that mechanism here, now, but I encourage the parties
12 to pursue it.

13 And if there is no agreement, I think we
14 have the factual information that is needed for a
15 Commission determination.

16 Let me throw out a suggestion.

17 It is now clear that we can finish
18 today. We have one more issue.

19 I'm planning to take a ten-minute break
20 or so now. People here may need it, the Reporter may
21 need it.

22 I need to make a phone call.

23 But is there any interest, recognizing
24 that we're finishing this today, is there any

1 interest in doing mediation on some of these issues
2 tomorrow?

3 We can go into it tomorrow, or you can
4 try to negotiate, and we can reschedule some
5 mediation session.

6 This one is entirely your call, because
7 mediation has to be by the request and agreement of
8 both parties.

9 Do you want to caucus on it and come
10 back to that, or do you have any suggestions now, or
11 is it clear that it doesn't make sense to do it
12 tomorrow, it makes more sense for you to negotiate
13 without our involvement.

14 Actually, we should decide before I
15 break.

16 The call I have to make is to the hotel.

17 MR. HARTMANN: Your Honor, speaking for
18 me, without having caucused, for me personally, I
19 would love to be able to get back to the D.C. area
20 tonight.

21 That simply relates to an obligation
22 that I have tomorrow that's up in the air. If I can
23 make it, I would like to.

24 That doesn't answer, I think, for the

1 Verizon side.

2 Obviously, we have a bunch of people in
3 New York.

4 Maybe my circumstance aside, it makes
5 sense to stay in New York.

6 MS. GOMEZ: It seems to me that we might
7 need some people for those facilitated discussions
8 that might not be free tomorrow, might not be
9 available.

10 We should have some internal
11 discussions, so should Covad. I think we can all
12 benefit by putting it off.

13 JUDGE LINSIDER: Go back and digest
14 this.

15 MS. GOMEZ: There is a lot that we
16 haven't digested.

17 In any case, neither side may be ready
18 with the people that they need to have facilitated
19 discussions in the most fruitful way.

20 JUDGE LINSIDER: I offered it just as a
21 practical matter, since we are in New York. It could
22 be another time.

23 I don't guarantee that I won't ask you
24 to come to Albany.

1 MR. HANSEL: Covad is fine with that.
2 We would like to say that we strongly
3 would welcome facilitated discussions.
4 We do agree, however, that they may be
5 more fruitful if Verizon and Covad had the
6 opportunity to read the transcript, attempt to
7 negotiate on our own, and then, if we can schedule a
8 facilitated discussion with your Honor in a couple of
9 weeks, I believe that would probably be a very
10 beneficial process.

11 JUDGE LINSIDER: That's fine.
12 Let's take a fifteen-minute break. We
13 will come back and talk about the final issue and the
14 schedule.

15 (Recess had.)

16 JUDGE LINSIDER: All right. Power
17 increments.

18 MR. ANGSTREICH: On the last issue of
19 the day, it's the increments and minimum amounts for
20 DC power.

21 Verizon's position is that the terms of
22 its tariff, its collocation tariff, the
23 Commission-approved collocation tariff, governs the
24 rules of collocation in the State of New York by all

1 CLEC's.

2 Currently that tariff specifies that
3 CLEC's can order power in one amp increments from
4 whatever basic power they ordered.

5 It currently contains no language with a
6 specific minimum amount that Covad has to order.

7 In the event that Verizon, in the
8 future, were to propose a tariff change to put in an
9 explicit minimum, Verizon's position is that Covad
10 may object to that, if it has any objections, through
11 the tariff process.

12 In the event such a tariff were
13 approved, it should apply to every CLEC operating in
14 New York, just as the current collocation tariff
15 does, and that there shouldn't be any language in a
16 particular agreement -- which is what we understand
17 Covad to be seeking here.

18 MS. EVANS: To give you a little
19 background on this issue, this became a particular
20 issue for Covad -- I can't speak for other
21 carriers -- about a year, year-and-a-half ago, when
22 Covad looked to more efficiently have its
23 co-arrangement set up.

24 And when we got into that scenario,

1 Verizon objected, saying that your equipment needs to
2 meet a certain minimum.

3 And we were able, at that time, to
4 successfully work with them, to come to a minimum
5 amount of power, in this case, it was two amps, and
6 then we could order in one-amp increments.

7 But because of the fact that that was a
8 kind of a mutually one off agreed scenario, what
9 Covad is looking to do is memorialize that.

10 And the fact that the tariff is silent
11 the minimum, it does not, in our view, protect us
12 from the fact that Verizon could impose a minimum
13 requirement, as they did in the past.

14 So what we're looking to do is have
15 language that basically says -- and we're flexible on
16 the language -- that basically says in the event that
17 there is no minimum, identify the tariff, then there
18 is no required minimum, which would basically give us
19 what Verizon is saying it's willing to do.

20 But the fact that the issue is silent on
21 the minimum does not, in our view, openly suggest
22 that Verizon can't impose a minimum.

23 JUDGE LINSIDER: You are concerned
24 because the tariff is silent -- well, both sides are

1 satisfied with the present arrangement.

2 Covad is concerned that because the
3 tariff is silent.

4 Verizon could change the present
5 arrangement unilaterally.

6 Verizon seems to take the position that
7 the tariff permits it, and that if the tariff were to
8 be changed, Covad would be on notice, and could
9 comment in the tariff process.

10 But doesn't Covad have a legitimate
11 concern if the tariff is silent, then Verizon could
12 change it without going through the tariff process?

13 MR. HARTMANN: Verizon's position is
14 this.

15 Collocation is for interconnection
16 and/or access to unbundled network elements, and as
17 long as collocation is used for that, for one of
18 those purposes, then we have no particular problem
19 with a Covad collocation arrangement that uses a
20 small amount of power.

21 Covad came to us a year ago, or two
22 years ago, as Valerie indicated, and wanted to draw
23 less power in a variety of collocation arrangements.

24 It was, and is, Verizon's concern that

1 maybe what Covad wanted to do in those situations was
2 keep a collocation space, but not really use that
3 space to actually interconnect or access UNE's, as
4 part of the financial belt tightening, wanted to now
5 keep operational their collocation arrangements in
6 secondary markets.

7 Because Covad was able to explain to
8 Verizon how it was going to use these two-amp
9 increments to actually keep those collocation
10 arrangements lit, and interconnect with Verizon, or
11 by UNE's, some of my clients were unhappy, but said,
12 okay, Covad can purchase power in the manner that it
13 desires to do so.

14 In fact, I think that Covad never ended
15 up turning down those arrangements from 20 or 40
16 amps, whatever it had, down to two amps.

17 MS. EVANS: We did.

18 MR. HARTMANN: Okay.

19 MR. CLANCY: Evidently, they are still
20 billing us for 40.

21 MR. HARTMANN: The reason I say that is
22 I was told very recently, while we working on this,
23 in some of those arrangements, Covad shut it down, in
24 others, it's getting larger amounts of power.

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1 I never ran it around it to make sure
2 that Covad took those lesser power arrangements in
3 all the cases in New York.

4 MR. WHITE: I think, from a technical
5 standpoint -- and this is somewhat technical -- if
6 you have zero equipment, you are not going to need
7 power.

8 But that isn't an interconnection, and
9 you don't need any power.

10 But if you are saying at these locations
11 you have equipment, and you're powering them up, and
12 I'm at a loss other than the theoretical calculations
13 of some two-card equipment that I haven't seen in any
14 of Covad's cases that you could do a two-amp
15 arrangement.

16 You can't even add a test. The Harris
17 test equipment that we talked about this morning uses
18 19 amps.

19 So I really think, when you're down at
20 this level, I question that this is real, that this
21 isn't just a ruse to cover that you don't have any
22 equipment in there, and that you're mothballing
23 these.

24 MS. EVANS: Well, I don't know if we

1 want to go down that path.

2 When the issue came up, Covad provided
3 the actual configuration, and was willing to meet
4 with the Verizon folks and say, you know, tell me
5 that my equipment, given this configuration, will
6 draw more power than it will. And Verizon was unable
7 to do so.

8 MR. WHITE: That's not factually true.

9 MS. EVANS: Okay.

10 MR. WHITE: Because the configuration
11 that was shown, 1.27 amps, is not one that you
12 deployed, it was not one that has redundancy.

13 If it had it, you would be over the 2
14 amps right off the bat.

15 MS. EVANS: Well, I guess as we would
16 say, what Covad wants to do is the flexibility.

17 So if we need less power, allow us to
18 use less power.

19 What I hear you saying, John, is we
20 actually provided that, but we never went to that
21 configuration. Great.

22 The point is that whatever power we
23 need, that's all we want to pay for, and that's what
24 this issue is about.

1 MR. WHITE: We agree. That's what the
2 tariff says in New York.

3 MR. HARTMANN: Let me try and finish one
4 more thought I had before.

5 To Verizon's way of thinking, the New
6 York tariff adequately addresses the issue currently.

7 It says that collocation is going --
8 and/or access to unbundled elements, and if Covad
9 comes to us with an arrangement that satisfies those
10 conditions, then Verizon will not raise its hand and
11 say, hey, this is inconsistent with the tariff.

12 But we don't need a minimum amperage
13 written into a contract in order to address the
14 issue. The current tariff addresses the issue.

15 JUDGE LINSIDER: Could Verizon, under
16 the current tariff, impose a ten-amp minimum, without
17 going through the tariff filing process?

18 MR. HARTMANN: No.

19 MR. HANSEL: Okay. I'm hearing
20 different things, I think.

21 What I'm hearing, on one hand, is that
22 there is no minimum identified in the tariff, and
23 Verizon does not have the ability to impose a minimum
24 without going through the tariff process. That's

1 great.

2 Covad wants assurances of that, and
3 basically, all we want is for the agreement to say,
4 if there is no minimum stated in the tariff, then no
5 minimum applies.

6 That appears to be right there. I think
7 that's a meeting of the minds.

8 What I'm also hearing, on the other
9 hand, however, on the other hand, if we feel that you
10 are not "interconnecting," we're reserving the right
11 to jack up the minimum in order to get you out.

12 That's what I'm hearing, and correct me
13 if I'm wrong.

14 MR. WHITE: That's not what I said.

15 MR. HANSEL: Between the two of you
16 that's what I understand.

17 I'm not trying to make a decisive
18 statement, that's what I understood.

19 JUDGE LINSIDER: Let me try something.

20 I think the first meeting of the minds,
21 the first prong of the dichotomy you just drew, is
22 what, obviously, I was hearing, as well, and I think,
23 I hope, that you've got agreement on this one.

24 The second one relates to a rather

1 different issue, which is can Verizon expel Covad
2 from a collocation sites on the premise that it's not
3 using the sites for purposes contemplated by the
4 tariff?

5 And the only way, and that's an issue
6 not being addressed here, and the only connection
7 between that issue and the issue being addressed here
8 is whether Covad's use of only two amps is evidence
9 of that nonconforming use at the site.

10 It seems to me Verizon is entitled to
11 make that claim that Covad's low power use is
12 evidence that the site isn't being used for the
13 contemplated tariff purpose, even though Verizon is
14 not entitled to jack up the minimum.

15 I think those are two distinct issues,
16 and I think if they're kept distinct, we have an
17 agreement.

18 MS. EVANS: When you say we have
19 agreement --

20 JUDGE LINSIDER: On the first issue.
21 The second issue is not at issue here.

22 MS. EVANS: When you say we have
23 agreement, we agree with what you said, but I'm not
24 sure that I'm hearing that Verizon is willing to

1 codify that.

2 That's the issue.

3 MR. HARTMANN: If I understand what
4 Covad is saying, Covad wants written into the
5 agreement that there is no minimum amperage
6 requirements.

7 MR. HANSEL: Unless one is identified in
8 the tariff.

9 So, if you want one in the tariff, go
10 through the tariff process.

11 That's it.

12 And if the tariff is silent --

13 MR. WHITE: That means you can have
14 zero, so there is no power requirement.

15 And I'm saying if you have no power
16 requirement, you have no equipment, therefore, you
17 weren't doing interconnection. There is a different
18 avenue, but it doesn't make any sense.

19 It's a disconnect from a technical
20 standpoint.

21 MR. CLANCY: As well as from a business
22 perspective.

23 Unless I'm homeless, and I need a place
24 to live, and then I'm going to use a probably hot

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1 plate.

2 MR. WHITE: If you're trying to -- a
3 location without doing any investment, then that's
4 not the use of collocation, that's for
5 interconnection.

6 JUDGE LINSIDER: That's not the issue
7 41, that's somewhere else in another proceeding.

8 Issue 41 is can -- I've lost the
9 language that I had before.

10 But Issue 41 is what Steve agreed to,
11 and what Ms. Evans said Covad wanted.

12 MR. PANNER: This is not why we are
13 here, in the sense that what was clearly identified
14 was Covad wanted to lock in something that could not
15 be changed through the tariff.

16 That's the way issue was discussed.

17 Now Covad has changed its position and
18 said you can change it through the tariff, if there
19 is a minimum in the tariff, we would be bound by
20 that.

21 Our view is if it's clear to the parties
22 that the tariff imposes no minimum, per se, why -- I
23 don't think we have an issue, and maybe we can --

24 JUDGE LINSIDER: I don't think you have

1 an issue, either.

2 But I think Covad needs the protection
3 that Verizon can't impose a minimum without it being
4 a tariff.

5 MR. HARTMANN: To the extent that that
6 wouldn't preclude us, Verizon, from arguing that
7 Covad is, you know, misusing, or under-using a
8 collocation site, in part, by holding up their very
9 small power requirements, I think we can come to
10 language.

11 JUDGE LINSIDER: I think the wording can
12 say that, at a minimum, something along the lines of
13 a minimum -- a minimum may not be imposed in the
14 absence of a tariff provision through the normal
15 tariff process imposing the minimum, and Verizon's
16 agreement to that in no way compromises its right to
17 argue that low power usage is evidence of
18 nonconforming use, without in any way implying that
19 Covad agrees that it is.

20 Lawyers know how to reserve rights.

21 MR. HARTMANN: Yes. I think the parties
22 ought to be able to work out language along those
23 lines.

24 MR. HANSEL: One clarification that I

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1 have.

2 What we have stated today is not what is
3 identified as new item three, but unfortunately, the
4 language in the petition, you know, stands as it
5 stands.

6 But through discussions, obviously, the
7 issue has evolved over time, and I kind of want to
8 make it clear that this proposal -- this is not the
9 first time that it's being put forth as kind of
10 indicated by Mr. Panner that we're coming in here and
11 just throwing out a new issue.

12 This has been in discussions, and in
13 kind of in light of the facilitated discussion, the
14 purpose of this meeting, as well, I tried to start at
15 what I considered a somewhat negotiated position, and
16 that's the only reason it may sound as though it's
17 not identical to what is in the petition.

18 MR. PANNER: And I just want to clarify,
19 this is part of what today was for, to come to an
20 agreement.

21 We have put things forward that
22 s new in this hearing.

23 I'm not trying to accuse Covad of
24 anything. I just want to give you a context of why

1 there seemed to be a disconnect coming in compared to
2 where we are now.

3 JUDGE LINSIDER: Fine.

4 All right, that's forty-one. That one
5 we seem to have agreement on, we just need to come up
6 with the language.

7 All right. There are a couple of things
8 that need to be scheduled.

9 I guess the first one is some deadline
10 for advising me that the parties have agreed that
11 they want mediated discussion, and the issues on
12 which you want that mediated discussion.

13 Is ten days enough to -- we have the
14 usual issue of, on the one hand, wanting to move
15 things along, and on the other hand, not to rush.

16 MR. PANNER: Ten days is more than
17 adequate, because of things that are going on in
18 parallel proceedings, we will have to try to get
19 together on that.

20 JUDGE LINSIDER: Okay. So within ten
21 days you will let me know the issues on which you
22 want mediated discussion, and I will get back to you
23 with the proposed times and places.

24 All right, now briefs.

1 I guess the threshold issue is, before
2 deciding how much time you need for briefing, do you
3 want to see what mediated discussion might take
4 place, or can we set a briefing schedule now and
5 somehow work the results of the mediated discussion?

6 I can say that I really don't want to
7 see briefs that are as exhaustive as the ones that
8 have already been filed. I really like briefs that
9 focus on the refinements to the issues as they
10 developed today.

11 And on a couple of issues, and you will
12 hear it's good that we're on the record, I identified
13 a couple of things that I asked you to brief, on
14 others, you can use your judgement.

15 But please focus on the refinements that
16 we made today.

17 I think a lot of issues have been
18 narrowed, but have not been resolved.

19 That said, do you want to set the
20 briefing schedule now, or do you want to wait until
21 we see where we are going with mediation?

22 MR. PANNER: I think, if Covad wants to
23 set it today, we're willing to, we don't have any
24 objection.

1 But it may be worthwhile for the parties
2 to talk, then make a proposal to you, as we've done
3 with respect to other issues as to a briefing
4 schedule.

5 MR. HANSEL: I would like to, if I could
6 go briefly back to actually the mediation schedule.

7 I think today was extremely helpful. I
8 think that the mediation session may be even more
9 helpful to the extent that we can solidify some
10 language.

11 And while we're happy to propose an
12 issues list and a date within ten days, I would be
13 more anxious to sort of plan a tentative date for
14 that mediation session, and then provide you with the
15 issues perhaps that we will discuss there.

16 I agree that, I think, a briefing
17 schedule could be discussed once we have kind of
18 figured out a mediation schedule.

19 But rather than coming to you in ten
20 days and proposing a mediation schedule at that time,
21 I'd be interested in having a discussion about when
22 we could meet for mediation tonight, and following up
23 with an issues list within ten days.

24 MR. ANGSTREICH: First of all, we need

1 to still figure out about mediation as an idea.

2 But going beyond that, assuming that
3 that is something that we will agree to do, we need
4 to, in order to schedule that, we need to talk to the
5 different people who are going to have a piece of
6 that, to be able to talk with any intelligence about
7 what a likely schedule will be.

8 We're happy to have those discussions.
9 If you want to propose a shorter drop, a shorter
10 proposal period, something by Tuesday of next week,
11 for instance, within a week, we would be happy to do
12 that.

13 And I understand the need, the desire to
14 try to get through this.

15 JUDGE LINSIDER: Let's try for Monday,
16 Monday, the 10th.

17 And then we will set a briefing schedule
18 after that?

19 MR. PANNER: Yes.

20 MR. HANSEL: Covad is fine with that,
21 your Honor.

22 JUDGE LINSIDER: One other thing that I
23 need to mention, the parties are probably aware of
24 it.

1 Ones we go into actual mediation, where
2 I serve as a mediator, either party has the right to
3 boot me out as litigation Judge, having had my
4 judgment tainted by what parties have said in the
5 throes of mediation, rather than with the caution of
6 on-the-record litigation.

7 And I'm treating the issue lightly, but
8 it's a serious issue.

9 Once I become mediation Judge, then I
10 continue to serve as litigation Judge only with the
11 consent of both parties. If that consent isn't
12 forthcoming, my office will assign a different
13 litigation Judge for the remainder of the case, at
14 least with regard to the issues that were submitted.

15 It would be an interesting issue of
16 first impression, I don't think it has come up
17 before, where only specific issues were set for
18 mediation, and there would be a theoretical
19 possibility of my not being able to handle the
20 litigation of those issues, but being able to retain
21 litigation of the other issues.

22 But I need to mention it.

23 And I think I have got to go back and
24 check, I think just for the formality of it, I think

1 our internal procedures would require getting the
2 consent of both parties in writing for me to continue
3 as litigation Judge, even though I'm involved in
4 mediation.

5 MR. HANSEL: Covad will provide our
6 consent right now at least orally.

7 As you recall, that at our original
8 procedural conference, we had the same discussions
9 with respect to the technical conference, and both
10 parties agreed to consent.

11 So Covad consents, and we will provide
12 that in writing, as well.

13 MR. ANGSTREICH: I don't anticipate any
14 problem. We will go ahead and document that.

15 JUDGE LINSIDER: Fine.

16 Anything else for today?

17 We did good work today. I think we made
18 a lot of progress.

19 I'm very pleased.

20 And I think there remains some very
21 serious differences, and I don't expect that all of
22 them are going to resolve, but I think that we've got
23 a record that is going to enable the Commission to
24 resolve them in accordance with -- off the record

1 please.

2 (Recess had.)

3 JUDGE LINSIDER: Back on the record.

4 Again, I'm speaking lightly, but I think
5 that's important, necessarily in a situation like
6 this, there is no way for both sides to win all
7 issues, it just doesn't happen.

8 And the goal is to resolve disputes,
9 which necessarily means that each side doesn't get
10 everything that they are looking for.

11 All right. Thank you very much.

12 This went well.

13 And I'll hear from you on -- do you want
14 to do it in writing, e-mail?

15 Clearly not writing, either e-mail or
16 conference call.

17 Do you want to schedule a conference
18 call for Monday, the 10th now, or should we do it by
19 e-mail?

20 MR. PANNER: I think e-mail will be
21 adequate.

22 MR. HANSEL: E-mail. If we can check
23 our calendars tomorrow morning, upon returning to the
24 office, I think we can set a schedule meeting for

1 Monday first thing tomorrow, if that's fine with your
2 Honor.

3 JUDGE LINSIDER: Great.

4 Okay. Thank you.

5 MR. HANSEL: Thank you.

6 MR. PANNER: Thank you.

7 MS. EVANS: Thank you.

8 (Time noted: 5:30 o'clock p.m.)

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