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January 17, 2003

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

DOCUMENT FOLDER

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

Dear Secretary McNulty:

Enclosed for filing with the Commission in the above-captioned proceeding are originals and nine (9) copies each of the Prehearing Brief of Covad Communications Company. Copies of this Prehearing Brief are being served upon the parties of record as shown on the attached Certificate of Service.

ORIGINAL

Very truly yours,

John F. Povilaitis

Counsel for
Covad Communications Company

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Administrative Law Judge Chestnut

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIECA Communications, Inc. t/a Covad Communications Company	
Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Verizon Pennsylvania Inc. and Verizon North Inc. Pursuant to Section 252(b) of the Communications Act of 1934	Docket Nos. A-310696F7000 A-310606F7001

PRE-HEARING BRIEF OF COVAD COMMUNICATIONS COMPANY

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Dated: January 17, 2003

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIECA Communications, Inc. t/a Covad
Communications Company

Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Verizon Pennsylvania Inc. and Verizon North Inc., Pursuant to Section 252(b) of the Communications Act of 1934	Docket Nos. A-310696F7000 A-310606F7001

Pursuant to the direction of the Administrative Law Judge ("ALJ"), Covad Communications Company ("Covad") respectfully submits its Pre-Hearing Brief.

I. INTRODUCTION AND SUMMARY

On September 10, 2002, Covad Communications Company ("Covad") filed its petition for compulsory arbitration of its interconnection agreement ("Agreement") with Verizon Pennsylvania Inc. ("Verizon"). While the parties were able to agree as to most aspects of the Agreement, there are a number of areas of disagreement. In a number of instances of disagreement Covad's position is based upon its experience with Verizon under the parties' previous agreement. Significantly, Verizon's unmistakable position throughout both the negotiation and the arbitration has been to attempt to force Covad into the standard agreement that Verizon offers to all CLECs. In addition, Verizon has taken an unreasonable position regarding basic terms and conditions and has been insistent that Covad accept many one-sided terms that expose Covad to numerous business risks.

Covad seeks an agreement that properly reflects the fact that it is an advanced services provider and its associated business requirements. Verizon's position, however, that Covad can

fit into an identical agreement that a voice service provider or other CLECs enter into with Verizon regarding interconnection agreements is unreasonable and contravenes the fundamental purpose of 252 of the Telecommunications Act of 1996. Indeed, pursuant to 252(b), the purpose of this arbitration is to generate an interconnection agreement that (1) meets the needs of each of the parties and (2) is fair, commercially reasonable, consistent with the rights and obligations created by Section 251 and 252 of the Telecommunications Act (the "Act") and, importantly, practicable. In this case, Verizon's one-sided generic agreement is not one that Covad is willing to accept.

In this brief, we address the following arbitrated issues 2, 3, 4, 5, 8, 9, 13, 19, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 34, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53 and 56. In four instances,[1] these issues are addressed several at a time because of the similarity of the issues and the corresponding legal arguments. The issues addressed cut across terms and conditions related to dispute resolution billing, , waiver, , UNE attachments, dark fiber, pricing and collocation issues. Many of these issues are a matter of law and policy. Other issues raise largely pragmatic questions concerning what constitutes reasonable commercial terms and conditions between Verizon and Covad and how these commercial relations should be specifically articulated in the agreement and rendered operational.

In addressing and resolving these issues, Covad asks that the Pennsylvania Public Utility Commission ("Commission" or "PaPUC") keep certain fundamental legal principles in mind. First, in Section 252 of Act, Congress provided CLECs the right to negotiate rates, terms and conditions for interconnection, services or network elements pursuant to section 251 of the Act. Section 252(f) of the Act permits an ILEC to prepare and file with a state Commission a

Statement of Generally Available Terms, similar to Verizon's tariff, that set forth "the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations there under and the standards applicable under this section." Such a filing permits an ILEC to offer a generalized form of interconnection agreement that it believes may be attractive to a typical CLEC. Congress recognized, however, that different CLECs may have different needs in an interconnection agreement. Section 252 (f)(5) therefore provides that "The submission or approval of a statement under subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251." Hence, the Act full contemplates customized and negotiated interconnection agreements and explicitly rejects the notion that an ILEC could meet its section 251 and 252 obligations solely through a "one size fits all" service offering. Therefore, it is inappropriate to defer an issue to a tariff provision if it does not meet or address the needs of the parties. In this arbitration, there are many instances where this is the case and the Commission must establish contract language that does meet and/or address the needs of the parties.

Second, the Commission must fully recognize the backdrop of this arbitration and the fact that, with few exceptions, the terms being established define the rights of a CLEC to buy services and goods (UNEs) that the CLEC will use in direct competition with its ILEC supplier, who has hostile CLECs interests. Verizon only offers interconnection agreements with CLECs because it is compelled by law to do so, rather than on a purely voluntary basis. Moreover, it should not be assumed Verizon will feel constrained to assume duties that are not expressly spelled out in the Agreement. Rather, to the extent the obligations articulated in the Agreement are vague,

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[1] The following issues are addressed together: 2 and 9, 4 and 5, 13, 32 34 and 38, 30 and 31.

Verizon's position will virtually always be contrary to the CLEC's interests. Given this, it is vital that the Agreement expressly and properly set out the rights and duties of the parties.

Here, the PaPUC cannot presume that Verizon's obligations to enter into this agreement in good faith will inspire its good faith performance. It will not. As we will show throughout this brief and attached declaration , the history of Covad's commercial relations with Verizon over the past several years has been one of repeated unilateral decisions made by Verizon not to act in a manner that would have benefited Covad and increased competition. Verizon's actions or inactions, in many of these cases, have been based on unreasonable readings and interpretation of contract or, more commonly tariff language. Yet Verizon maintained tenuous positions in a blatant effort to impede and frustrate Covad's ability to compete in the marketplace.

To help minimize potential future disagreements under this Agreement that are caused by Verizon's conduct in this regard and any other associated abuse of its role as the reluctant monopoly provider, the Commission needs to establish just and reasonable terms and conditions that comply with Applicable Law and are clear, express, and comprehensive. In selecting the contract language, it is vital that the Commission consider, among other things, (a) whether the language is clear, (b) whether it is coherent, (c) whether it invites stability between the parties, and (d) whether it includes the necessary specificity regarding important procedures that must be followed by the parties.

In following these principles, Covad has proposed contract language regarding the disputed issues that is just, reasonable, and legally supported. Below is a summary of Covad's position with respect to the disputed issues referenced above that supports the contract language Covad proposes.

Issues 2 and 9. Covad requests that the Commission implement a one-year limitation on backbilling. Such a limitation is well supported under the Commission's regulations and FCC precedent, and would provide much-needed certainty for Covad and its customers. By not having a one-year time limitation for backbilling, Covad faces two significant problems with its customers and the Securities and Exchange Commission ("SEC"). First, Covad is not the ultimate party to be billed (Covad must bill its customers to recover the costs of services rendered and if Verizon submits a bill to Covad over a year after which services have been rendered, Covad has to absorb the charge because it practically impossible to recover retroactively such costs from its customers without losing its competitive foothold). Second, Covad's officers must attest to the accuracy of financial statements filed with the Securities and Exchange Commission ("SEC") on a yearly basis.

A one-year limitation for backbilling will provide some measure of certainty in the billing relationship between the Parties and will comport with the approach the New York Commission has taken in regard to backbilling for non-residential customers of utilities. Moreover, Verizon's recent call for a six-month limitation period for PAP challenges supports Covad's request. If, however, the Commission does apply a one-year limitation, Covad asks that the waiver provisions of the Agreement be modified to reflect this one-year limitation on backbilling.

Issue 3. Covad requests that when a good faith dispute arises between the parties, Verizon should reference Covad's originally assigned claim number, as well as Verizon's assigned number, if it chooses to assign one. Doing so will allow both parties to reference the dispute quickly and accurately in correspondence, when credits are assigned on a bill, and other communications during the resolution process. Verizon's current manner of processing

complaints without using Covad's claim number has created numerous problems for Covad. Verizon recognizes these problems and asserts that it is in the process of voluntarily implementing a system that will address them. To ensure that Verizon in fact does so, Covad asks that the language in the agreement requires that Verizon implement such a system.

Issues 4 and 5. Covad requests that when the billed party disputes a claim filed by the billing party, the billing party should provide its position and a supporting explanation regarding a disputed bill within thirty (30) days of receiving notice of the dispute. This request is consistent with Commission regulations and C2C billing metrics. In the past Verizon has often failed to respond to disputes filed by Covad or has responded at an unacceptably slow pace. Verizon's dilatory conduct in this regard denies Covad from having a meaningful opportunity to compete as the FCC recognizes.

In requesting this thirty-day requirement, Covad also asks that late charges not be imposed for any time that Verizon takes beyond thirty days to address the dispute. This will prevent Verizon from profiting from its own failure to comply with the requirement that it address the dispute in a timely manner. In addition, it will increase Verizon's incentive to provide a response within thirty days. Otherwise Verizon will have no incentive to do so. Similarly, Verizon should not be allowed to assess a late payment charge on unpaid previously billed late payment charges when the underlying charges are in dispute. Late payment charges should only apply to the initial outstanding balance and Verizon should not have the right to apply a late penalties upon late penalties when a dispute remains regarding the original charges.

Issue 8. Covad asks that Verizon not be permitted unilaterally to terminate this Agreement for any exchanges or territory that it sells to another party. Covad's request is consistent with general contract law principles and is supported by Commission precedent.

Verizon's proposal would expose Covad to unwarranted risk, and should not be permitted. In order to enter into and compete in the local exchange market throughout Pennsylvania, Covad must be assured that if Verizon sells or otherwise transfers operations in certain territories to a third-party such an event will not alter or cast doubt on Covad's rights under the interconnection agreement, or undermine Covad's ability to provide service to its residential and business customers. Covad's request is consistent with typical requirements set out in a wide range of business contracts. Indeed, it is certainly not commonplace for a supplier of goods or services to be able to avoid a contractual obligation simply by transferring its business to another. For example, few rational business tenants would sign a lease for real estate that provided that the lease terminated at the lessor's option upon sale, obliging the lessee to negotiate from scratch with the purchaser for the right to continue to occupy the premises, possibly upon much more onerous rates, terms, and conditions.

Issue 13, 32, 34, & 38. Re Issue 13 – Verizon should be required under the agreement to return firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically and within seventy-two (72) hours after receiving an LSR that is subject to manual pre-qualification; Verizon should also be required to return firm order commitments ("FOC") for UNE DS1 loops within forty-eight (48) hours. Re Issue 32 – When Verizon rejects a Covad mechanized loop qualification query, Covad should (1) be permitted to submit an "extended query" at no additional charge so that the need for, and costs, of a manual loop qualification could be avoided; and (2) should receive Verizon's response to manual loop qualification within one business day. Re Issue 34 – The requirement that Verizon provide reasonable and nondiscriminatory access to UNE loops requires that Verizon provision loops within the shortest interval of either (A) the interval Verizon provides to itself, or (B) any

Commission-adopted interval, or (C) ten (10) business days for loops needing conditioning, five (5) business days for stand-alone loops not needing conditioning, and two (2) business days for line-shared loops not needing conditioning. Re Issue 38 – Reasonable and nondiscriminatory access to Verizon's OSS for loops mechanically pre-qualified by Covad should obligate Verizon to return an LSR confirmation within two (2) business hours for all Covad LSRs. Verizon already meets many of these provisioning intervals and Covad simply seeks to have them reflected in the Agreement. With respect to the new intervals Covad proposes, these proposed intervals are reasonable and consistent with the public interest.

Issues 19, 24, and 25. Covad asks that Verizon provide UNEs and UNE combinations in instances in which Verizon would provide such UNE or UNE combinations to itself. Furthermore, Verizon should relieve capacity constraints in the loop network so that it can provide loops to the same extent and on the same rates, terms and conditions that it does for its own retail customers. Covad's request is supported by federal and Pennsylvania law that requires Verizon to provide UNEs, UNE combinations, and relieve capacity constraints in a nondiscriminatory manner. In addition, the Commission has authority under federal and Pennsylvania law to order Verizon to comply with this obligation. Tellingly, other states have found that ILECs have this obligation and the Commission should follow suit.

Issue 22. Covad requests that Verizon commit to an appointment window for installing loops and pay a penalty when it misses the window. Like any provider of a service that requires installation in the end-user's home or business, Verizon should be obligated to provide its customer (Covad) a commercially reasonable appointment window when it will deliver the product (the loop). And when it fails to meet this committed timeframe, Verizon should waive the nonrecurring dispatch charges. Similarly, when Verizon misses additional appointment

windows for that same end-user, Verizon should pay Covad a missed appointment fee equivalent to the Verizon non-recurring dispatch charge. Significantly, Commission precedent supports Covad's request.

Issue 23. The Commission should approve the use of ANSI standards for definitions of ISDN, ADSL and HDSL loops in the agreement, rather than Verizon's in-house definitions. The FCC recognizes that industry standards bodies are appropriate bodies to help foster the deployment of advanced services consistent with section 706 of the Act and has mandated that ILECs abide by them rather than imposing their own rules.

Issue 27. Covad requests that the Agreement make clear that Covad has the right, under Applicable Law, to deploy services that either (1) fall under any of the loop type categories enumerated in the agreement (albeit not the one ordered) or (2) do not fall under any of loop type categories. Covad is lawfully entitled to deploy over UNE loops any advanced services that comply with industry standards or have been approved by relevant authorities. Verizon's desire to impose limitations, restrictions, requirements, or otherwise control Covad's deployment of advanced service technologies over UNE loops through Verizon's prefabricated selection of loops (which serves to restrict the services that Covad may put over them) defies FCC rules that prohibit an ILEC from imposing such restrictions. Furthermore, Covad's language is consistent with Applicable Law, namely 47 C.F.R. § 51.230 *et seq.*, and Covad anticipates that spectrum management law is likely to change during the term of the Agreement as a result of proposed industry proposals presently before the FCC, and agreed to by both Covad and Verizon. Therefore, the Agreement should generically reference Applicable Law in order to capture automatically the current and future state of the law.

Issue 29. Consistent with the nondiscrimination provisions of the Act, Verizon should be obligated to maintain or repair loops using standards that are at least as stringent as the standards it uses in maintaining or repairing the same or comparable loops for itself or applicable industry standards for maintaining or repairing such loops. Covad seeks parity treatment to the extent that Verizon maintains and repairs comparable services. However, to the extent that Verizon does not provide a comparable service to its end users or industry standards are more stringent, Covad simply requests that the industry standards that apply when Verizon provisions a loop apply when Verizon maintains and repairs it. Covad makes this request because it predominantly provides advanced services over UNE loops and requires that Verizon maintain and repair its facilities in manner that is consistent with industry standards if Verizon does not offer a comparable advanced service or if industry standards are more stringent. The FCC recognizes that industry standards bodies are appropriate bodies to help foster the deployment of advanced services consistent with section 706 of the Act and has mandated that ILECs abide by them. Relatedly, *after a loop is repaired subsequent to it being provisioned, Verizon should not be* permitted to bill Covad for repairs made to it that may be needed to keep it functioning in accordance with the industry standards upon which it was originally provisioned.

Issue 30. Covad's seeks language in the Agreement that provides specific terms and conditions reflecting how the Parties currently conduct cooperative testing and should continue to do so under the Agreement. Cooperative acceptance testing, or joint acceptance testing, assists in timely and efficient provisioning of newly requested stand alone UNE loops that DSL and other advanced services will be provided over. Additionally, cooperative testing can assure complete maintenance processes on such loops. Covad's proposed language tracks the methods and procedures established in the New York DSL Collaborative and includes sensible

refinements that will serve to improve the efficiency and quality of the process. Furthermore, including specific language in the Agreement is consistent with Commission precedent and protects the rights of the parties. Apart from the terms and conditions for cooperative testing, Verizon should not be permitted to charge for cooperative testing when a stand alone DSL loop is provisioned or when the loop is repaired subsequent to it being provisioned. Covad's request comports with Commission precedent because the Commission expressly found that Verizon may not assess a cooperative testing charge for stand alone DSL loops.

Issue 31. Verizon should be obligated to cooperatively test loops it provides to Covad under the specific terms and conditions in Covad's proposed language; *i.e.*, the agreement should obligate Verizon to (1) inform Covad as to where it has provisioned a loop via sufficient information to allow Covad to locate the termination room, (2) "tag" the loop or (3) provide information so that the circuit being provisioned can be located. Covad's language is necessary so that it may locate UNE loops terminated at customer premises when necessary rather than having and facing tremendous problems finding the loops as provisioned by Verizon.

Issue 37. Covad requests that Verizon offer a hybrid form of Line Sharing and Line Splitting, called Line Partitioning, where end users receive voice services from a reseller of Verizon local service while Covad offers xDSL over the high frequency portion of the loop. This is similar to Line Splitting and Line Sharing; however, rather than using a UNE-Platform voice service or Verizon as the voice service provider, respectively (which the FCC currently requires with respect to line splitting and sharing) a CLEC other than Covad would be reselling Verizon's voice line. To be absolutely clear, Covad is not asking that Verizon make the high frequency/xDSL portion of the loop available for resale. Rather, Covad is asking that Verizon make the voice services it provides over the voice grade portion of the loop available on a resale

basis at the same time that it makes the high frequency/xDSL portion of the loop available to Covad as a network element via Line Sharing. Covad's has the legal right to resell Verizon's voice service and Verizon's refusal to provide basic voice services in these instances is patently unreasonable and discriminatory, which is in violation of the Act and the FCC rules.

Issue 39. The Commission should require Verizon to provision collocation augmentations where new splitters are installed within forty-five (45) days. In an attempt to establish uniformity across Verizon's footprint, Covad seeks a forty-five day (45) interval for collocation augmentations where new splitters are to be installed. Significantly, 45 days is the time frame Verizon agreed to in New York and gives Verizon far more time than the 30 day interval previously ordered by the Commission to provision augmentations.

Issue 42. The Commission should clarify that the definition of unbundled loop, subloop, and transport dark fiber includes fiber that is deployed in the network but not yet terminated. Further, Verizon should be required to terminate unterminated dark fiber for requesting CLECs. The Commission should adopt Covad's proposed language because Verizon's current dark fiber inventory practices are unreasonable and discriminatory and violate section 251(c)(3) of the Act and FCC rule 51.319.

Issue 43. The Commission should adopt Covad's proposed section 8.1.5 and find that Verizon cannot limit Covad's access to dark fiber based on Verizon's definition of Dark Fiber Loops, Dark Fiber Sub Loop, or Dark Fiber IOF because doing so would diminish Covad's right to access dark fiber pursuant to Applicable Law. Covad's proposed language, which permits it to have access to dark fiber in technically-feasible configurations consistent with Applicable Law, is simple, reasonable, and comports with the Act and FCC rules.

Issue 44. The Commission should affirm that ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for requesting CLECs on a time and materials basis in order to provide a continuous fiber strand. Covad's request is consistent with Commission precedent and fully reflects the best practices regarding the splicing of dark fiber developed by state commissions around the country.

Issue 45. The Commission should adopt Covad's proposed revision to section 8.1.1 and find that Covad should be able to access Dark Fiber Loops without regard to whether they terminate in Central Offices or other buildings *that effectively perform the functions of a Central Office for the Dark Fiber Loop.* Covad's proposed language is innocuous, unambiguous, comports with federal law, and protects Covad's legal rights to access Dark Fiber Loops.

Issue 46. The Commission should require Verizon to provide access to dark fiber transport UNEs on indirect routes and information regarding indirect dark fiber transport routes regardless of the number of intermediate offices that are traversed by alternative indirect routes. Covad's request is entirely reasonable and comports FCC precedent.

Issue 47. The Commission should adopt the best practices of other state commissions and should specify that its requires Verizon to afford CLECs nondiscriminatory, parity access to fiber transport maps, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other data regarding the location, availability and characteristics of dark fiber. The lack of a requirement for such access impedes a CLECs ability to locate and use dark fiber and allows the ILEC to "hide the ball," and force the CLEC to "guess" where dark fiber is located.

Issue 48. The Commission should adopt Covad's proposed section 8.2.8.1 and require Verizon to provide information about dark fiber that Covad seeks via a response to a field survey

request so that Covad has a meaningful opportunity to use dark fiber. Covad pays Verizon a nonrecurring charge to perform field surveys and should receive critical fiber specifications, including whether fiber is dual window construction; the numerical aperture of the fiber; and the maximum attenuation of the fiber. In short, Covad requests parity treatment, as the Act requires. Significantly, all Covad is requesting is that when Verizon performs the field survey for which Covad is paying, it gather specific information and provide it to Covad so that Covad may determine whether fiber is suitable for its intended purpose and whether it should be lit.

Issue 49. The Commission should reject Verizon's proposed contract language that prevents Covad from leasing more than twenty-five percent (25%) of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. Commission precedent on this very issue fully rejects Verizon's language. Therefore, the Commission should once again reject Verizon's proposed language. In addition, the Commission should strongly admonish Verizon for its failure to accede to such precedent, resulting in the waste of the Commission's and Covad's resources that are needed to re-arbitrate this issue.

Issue 53. Covad asks that Verizon provide meaningful notice of tariff revisions and rate changes to Covad. Covad's request in this regard is both reasonable and necessary. Verizon typically uses tariff filings as a vehicle for changing UNE rates under its interconnection agreements. Verizon files a large number of tariffs with the Commission and it is unreasonable to expect that Covad can devote substantial resources to obtain and review all of the various filings to prevent a tariff amendment from becoming effective as filed that serves to change or add UNE rates with no further regulatory review. Furthermore, to make sure the rates in Verizon's tariff filings and the rates set out in Appendix A to the Pricing Attachment ("Appendix A") mirror each other, Verizon should also update the Appendix on an informational basis when

the Commission orders new rates. Given that Verizon updates the Appendix for interconnection negotiation purposes, there is no reason why Verizon cannot send out a revised Appendix A.

Issue 56. The Agreement should state the minimum amount of power Covad may order per arrangement (2 amps) and the minimum additional increments of power Covad may order (1 amp). Covad is not asking for terms that are inconsistent with the tariff but rather is seeking express contract language that definitively establishes an obligation that Verizon claims is already part of Verizon's policy. At bottom, Covad is requesting nothing more than a simple tariff interpretation woven into the agreement.

For these reasons and as elaborated below, Covad respectfully requests that the Commission adopt the contract language Covad has proposed regarding these outstanding issues.

II ARGUMENT

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

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

Covad Request: Verizon should be "limited" to a one-year period for backbilling Covad for services, if Covad's position is accepted the waiver provisions of the agreement should be modified to take account of this backbilling limit.

Verizon's ability to assess previously unbilled charges for services rendered (*i.e.,* its ability to backbill) should be limited to services rendered within one year of the current billing date. Verizon, on the other hand, believes that its ability to backbill should be governed by a statute of limitations. Covad has experienced significant problems with Verizon in regard to backbilling. For instance, in New York during the September 4, 2001 billing cycle, Covad received a bill from Verizon amounting to approximately $1.1 million for various unidentified backbilled charges dating back to July 1, 2000.[2] Despite state regulations requiring that Verizon explain the reason for late billing,[3] Verizon did not even set apart the charge as a "new" charge under current charges. Rather, the charges showed up for the first time under "Balance Due Information." More appalling is the fact that these charges (i) were for line sharing loop charges, but appeared on a High Capacity Access/Transport Bill and (ii) were included a Verizon-New York bill, despite the fact that the charges covered services rendered in other jurisdictions including, Pennsylvania as well.[4]

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2 *See* Exhibit 1 at Issues 2 & 9; *see also,* Exhibit 2, September 2001 Bill.

3 N.Y. Comp. Codes R. & Regs. Tit. 16, § 609.10 (2002).

4 *See* Exhibit 1 at Issues 2 & 9.

Moreover, the extent of the detail regarding the $1.1 million was limited to "Adjustment of local switching charges loop/line sharing 7/1/00-6/30/01," and there was no identification of the circuits being billed. After expending significant resources to identify what the $1.1 million in charges were for, Covad determined, and Verizon agreed, that over $358,000 of the back-bill were invalid charges.[5] By Verizon's own admission, its back-bill was at least 30% inaccurate.[6]

To add insult to injury, during the period that Covad and Verizon were resolving the claim, Verizon erroneously billed the $1.1 million *again*. Covad filed another claim for the second application of the $1.1 million, while the original claim for the $1.1 million remained open. Despite repeated requests, Verizon was unable to produce adequate supporting documentation until the issue was escalated to a Verizon Vice President.[7]

It is clear why allowing Verizon to backbill without time limitations creates significant problems for Covad. One, Covad is not the ultimate party to be billed. As a wholesale provider, Covad may still have to pass these charges through to its retail customer. Backbilling a retail customer results in a loss of goodwill and creates other potential problems.[8] As the FCC has noted, "competitive LECs may lose revenue because they generally cannot, as a practical matter, backbill end users in response to an untimely wholesale bill from an incumbent LEC."[9] For instance, the allowable time for Covad to backbill its customer may have lapsed or the customer may no longer be a customer of Covad. Backbilling by Verizon also provides Covad a

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5 *See* Exhibit 1 at Issues 2 & 9.

6 *See* Exhibit 1 at Issues 2 & 9.

7 *See* Exhibit 1 at Issues 2 & 9.

8 *See* Exhibit 1 at Issues 2 & 9.

9 *In the Matter of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269, ¶ 23 (Sept. 19, 2001) ("*Pennsylvania 271 Order*").

misleading picture of its costs of doing business and will impede Covad's efforts to track these costs. As the FCC observed, this results in CLECs operating "with a diminished capacity to monitor, predict, and adjust expenses and prices in response to competition."[10] Thus, Verizon's backbilling will impede Covad's ability to manage its business effectively.

Additionally, Covad's officers must attest to the accuracy of financial statements filed with the Securities and Exchange Commission ("SEC"). If Verizon is able to back-bill Covad for material billing errors based on a contractual statute of limitations as Verizon proposes—then Covad may be faced with amending multiple years of SEC filings to adjust for errors created by Verizon's poor billing practices.[11] The Commission should implement a one- year limitation on backbilling. Such an approach will provide some measure of certainty in the billing relationship between the Parties. Such an approach would also be in line with the approach the New York Commission has taken in regard to backbilling for non-residential customers of utilities. While New York regulations provide a two-year period for backbilling for residential telephone customers,[12] the regulations do not specify a time period for non-residential telephone customers. New York regulations as to backbilling for customers of gas, electric and steam corporations therefore provide some valuable insight. For residential customers of gas, electric and steam companies, there is two-year limitation period for backbilling.[13] For non-residential customers of gas, electric and steam corporations, the regulations provide:

> When the failure to bill at an earlier time was due to utility deficiency, a utility shall not bill a customer for service rendered more than 12 months before the utility actually became aware of the circumstance, error or condition that caused the underbilling, unless the utility can demonstrate

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10 *Pennsylvania 271 Order,* ¶ 23.

11 *See* Exhibit 1 at Issues 2 & 9.

12 N.Y. Comp. Codes R. & Regs. Tit. 16, § 609.10. (2002).

13 N.Y. Comp. Codes R. & Regs. Tit. 16, § 11.14. (2002).

that the customer knew or reasonably should have known that the original billing was incorrect.[14]

A backbill is defined as a bill for "charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle."[15] The regulations define "utility deficiency," as meaning "any action or inaction by a utility or one of its authorized agents that does not substantially conform to the rules and regulations of this Title, the utility's tariff, or the utility's written business procedures."[16]

In Pennsylvania, under Commission regulations a "make-up" bill for unbilled services may be issued by a LEC for billing errors accrued within 4 years of the billing date. 52 Pa. Code § 64.19. However this regulation dates to the mid-1980's. Current Commission policy should reflect the growth in telecom services billing and shorten this period.

In setting a limitation on backbilling, the Commission should strive to set a balance between the telephone company's right to payment for services rendered and the telephone company's obligation to bill in an accurate and timely manner. The New York Commission noted, "[w]ith regard to billing, ratepayers are not required to pay for underbillings for more than one year where there is utility neglect and no culpable conduct by the customer, because while the utility, generally speaking, has control over billing, ratepayers should not be able to completely escape responsibility for paying for service that was indeed used."[17] A one-year limitation strikes an appropriate balance between a utility's right to receive payment and a

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14 N.Y. Comp. Codes R. & Regs. Tit. 16, § 13.9 (2002).

15 N.Y. Comp. Codes R. & Regs. Tit. 16, § 13.9(b)(17) (2002).

16 N.Y. Comp. Codes R. & Regs. Tit. 16, § 13.1(b)(19) (2002).

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

customer's need for certainty as to charges. In the context of gas meters, the New York Commission has found that a utility deficiency would encompass a meter that underregisters beyond the permissible range of accuracy.[18] Surely if Verizon's billing systems failed to render timely and accurate bills it would be akin to a gas meter that is underregistering and would qualify as a "utility deficiency." Clearly the term "utility deficiency" would encompass the failure of Verizon to bill properly pursuant to its tariff or interconnection agreements.

According to Verizon, backbilling occurs when a CLEC receives service, but has paid a charge that is less than the correct charge specified in the agreement with Verizon or Verizon's tariffs.[19] The mere fact that backbilling occurs at all is more evidence that Verizon is not billing CLECs properly and highlights the inaccuracies in Verizon's billing process and the difficulties that Covad, and other CLECs, will face when trying to verify, reconcile, and compare charges on the bill to the products and services it has ordered. It is completely under Verizon's control to bill Covad correctly or, in the alternative, to backbill Covad in a timely manner.

Thus, it would make sense for the Commission to apply a one-year limitation period for backbilling for non-residential customers of telephone service. This approach would mirror the approach taken for New York non-residential customers of gas, steam and electric utilities. A more stringent limitation on backbilling for non-residential wholesale customers such as Covad is also appropriate because otherwise there is little incentive for Verizon to limit billing errors. Since Covad is both a customer of Verizon and its competitor, Verizon may have a perverse incentive to backbill. Unlike its retail customers who may have competitive options, Verizon

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18 *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures – Appeal by Jospeh Piccininni of the Commission Determination Rendered Partially in Favor of Consolidated Edison Company of New York, Inc.*, Case No. 98-E-0801, Commission Determination at 10 (Feb. 16, 2000).

19 Response to Covad's Petition for Arbitration

knows that Covad has limited, or non-existent, options given Verizon's monopoly control over facilities. Thus, Verizon, without any restrictions, could backbill with impunity. In addition, unlike Verizon's retail customers, Covad is not the party ultimately billed for the charges. Covad has to pass through charges to its customers. Thus, if charges are backbilled more than a year, and it takes time for Covad to determine the legitimacy of the charges, it could take many months for the customer to be billed for those services. In the situation described above it took nine months for Verizon to resolve billing issues on the $1.1 million backbill. As a result, Covad's customer will be getting bills for services rendered two or more years ago. Given the two-year limitation on backbilling for residential telephone customers, Covad may be precluded from billing certain charges. Even if it is not precluded, Covad will have a hard time justifying, much less collecting, the delayed charges. Backbilling by Covad to its retail customers will certainly lead to Covad's loss of good will from those retail customers.[20]

Indeed, it is ironic, but not implausible, that Verizon could use backbilling as a competitive device: Verizon backbills Covad, forcing Covad to backbill its customers, resulting in the customers leaving Covad to take service from Verizon. The irony is that the customer would be leaving Covad for Verizon although it is Verizon's bad service (untimely billing) that is the cause of the customer's dissatisfaction with Covad. To make matters worse, the backbilled customer may well inform his or her friends, colleagues and family of Covad's poor performance, leading to additional lost opportunities for Covad.

The backbilling problem is exacerbated by Verizon's manual processing of bills. Thus, not only does Covad have to endure untimely bills, it has to deal with all the attendant frustrations and potential for error that accompany manual processing of billing. Verizon

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20 *See* Exhibit 1 at Issues 2 & 9.

manually places charges on Covad's bills and then provides a spreadsheet as support for the charges.[21] On a February 2002 New York bill, Verizon back-billed Covad for Line and Station Transfer charges amounting to $12,173.35 and $9,064.86. A spreadsheet was sent to Covad by its Verizon account manager asserting Verizon's erroneous Line Station Transfer charges for the $12,173.35 amount.[22] The spreadsheet extends over nine different states, including Pennsylvania, and Covad never agreed to Verizon's line and station transfer charge of $149.95 nor has the PaPUC approved such a rate in Pennsylvania.[23] Nevertheless, this charge was manually applied to a February 2002 invoice. Verizon never explained the charges associated with the $9,064.86 charge.[24]

This method is excessively troublesome for CLECs and prolongs an already lengthy and unreasonable claims and dispute process. Covad receives thousands of bills from Verizon and other ILECs and carriers monthly, which all have to be reconciled within the appropriate payment period. It is Covad's desire to have these bills processed in a mechanized fashion. When Verizon manually applies charges, Covad is required to invest significant resources to investigate the legitimacy of the charges. This negatively impacts Covad's ability to pay these charges in a timely fashion.[25] Verizon is not adequately updating its billing system to support new products. When Verizon provides a new product, it does not create billing codes for elements that will allow it to bill on a mechanized basis. As a result, Verizon is manually processing invoices and spreadsheets, increasing human error and greatly increasing the chance

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21 *See* Exhibit 1 at Issues 2 & 9.

22 *See* Exhibit 3, Erroneous Verizon Line Station Transfer Charges.

23 *See* Exhibit 1 at Issues 2 & 9.

24 *See* Exhibit 1 at Issues 2 & 9.

25 *See* Exhibit 1 at Issues 2 & 9.

for incorrect billing.[26] Thus, Covad will not only be getting bills for services rendered many months or years earlier, but these bills will in all likelihood be rife with errors. The passage of time renders much more difficult Covad's already difficult task for discerning errors. All of these things are under Verizon's control. Verizon should not be allowed the privilege to unconditionally backbill CLECs in light of its poor billing performance.

Further, once the billing is mechanized, this is not effectively communicated through the Verizon organization and the CLEC sometimes is doubled billed, on a manual and mechanized basis.[27] While Verizon recently stated in its OSS Reply Declaration in the Virginia 271 proceeding that, as of January 2002, it had ceased manually billing for rate elements that have not been mechanized, Verizon has no requirement to do so and may change its policy at anytime.[28]

The one-year limitation would also be in accord with FCC rulings on backbilling. While the FCC has not established a fixed time limit for permissible backbilling by telecommunications carriers, the FCC's Enforcement Bureau will determine if the backbilling period in question is unreasonable under section 201(b) of the Communications Act on a case-by-case basis. In the *American Network decision, ("AmNet")*, an interexchange carrier, requested a declaratory ruling that local exchange carriers' backbilling of access charges for more than 60 days be declared unreasonable. The local exchange carriers involved in the case asserted that Section 415 of the Communications Act allowed local exchange carriers to legally backbill for services rendered up

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26 *See* Exhibit 1 at Issues 2 & 9.

27 *See* Exhibit 1 at Issues 2 & 9.

28 *See In the Matter of the Inquiry* into *Verizon Virginia Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. Section 271(c),* OSS Reply Declaration on Behalf of Verizon Virginia Inc., Case No. PUC-2002-0046, pg. 69 (May 31, 2002).

to two years earlier.[29] In its decision, the FCC denied the applicability of Section 415 to backbilling. The FCC found that this section sets a two year statute of limitations on actions filed by a carrier to recover compensation for unpaid bills rendered in a timely fashion, but does not similarly establish a two-year limit for the initial submission of bills to customers.[30]

Regarding the appropriate time limit for a carrier to provide a bill to a customer, the FCC noted that a fixed limit for backbilling should only be established by a formal rulemaking proceeding.[31] However, the FCC did refer to a general standard to assess the reasonableness of a backbilling period, stating that "[a] delay of much less than 24 months between the rendering of service and the receipt of an initial bill for such service may be an unjust and unreasonable practice for the purposes of Section 201(b) of the Act."[32] The Commission did not address the specifics of the above case or decide whether 60 days is *per se* unreasonable because AmNet had failed to provide sufficient evidence to meaningfully resolve the matter.[33]

In the *People's Network* decision, the FCC found that AT&T had violated section 201(b) of the Act by backbilling TPN's customers for services rendered more than 120 days after

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

30 This undercuts Verizon's position that the appropriate time frame for backbilling is somehow linked to the statute of limitations for disputed charges. Verizon Response to Covad Petition for Arbitration, p. 2 ¶ 2.

31 The Commission has not initiated any such rulemaking proceeding.

32 *AmNet*, ¶ 19.

33 The Bureau later affirmed that the "statute of limitations in Section 415 governs the time between the accrual of a cause of action and the initiation of an action at law to collect charges or obtain a refund of overcharges. That section does not address what is an acceptable amount of time between a carrier's provision of service and the rendering of its bill." *See American*

charges had accrued.[34] TPN resold AT&T's Software Defined Network ("SDN") and Distributed Network services ("DNS") pursuant to an agreement signed in 1989. However, AT&T's billing system was not able to handle the unanticipated increase in demand for SDN services, and numerous calls were not matched to client identifiers at the time they were placed. Ultimately, matching the calls to the appropriate client identifiers was a time consuming and largely manual process. As a result, some of TPN's customers received bills as many as 15 months after provision of service and at least one customer received a bill for calls placed 20 months earlier. On average, TPN customers were billed for services rendered more than 10 months previously. AT&T conceded that billing was delayed but claimed that it had instituted steps to rectify the situation in a timely and reasonable manner.

TPN argued that billing customers for charges that accrued more than 60 days earlier was prohibited under Section 201(b) of the Act. Because the FCC found AT&T's position to be credible, it declined to adopt the *per se* 60-day limit advocated by TPN. However, the Commission did find that backbilling that had occurred in excess of 120 days was unreasonable under section 201(b). In reaching this conclusion, the Commission relied on several factors: (1) AT&T amended its tariff in 1993 to guarantee that calls would be billed within 120 days of being placed; (2) TPN was a resale carrier, and as such, was both a customer and competitor of AT&T; and (3) AT&T failed to describe its corrective policies and procedures with adequate specificity to determine the period reasonably necessary to render and prepare some or all of the late bills.

Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges, Order on Reconsideration, 4 FCC Rcd 8797 (1989).

[34] *The People's Network, Inc. v. AT&T Corp.*, Memorandum and Order, File No. E-92-99, 11 FCC Rcd 21081 (1997) (*"TPN"*).

In the *Brooten* decision, the FCC found that backbilling that occurred up to 160 days after the charges had accrued was reasonable.[35] In this case, Brooten, an end-user customer, argued that it was *per se* unreasonable to be billed for calls up to 160 days after they were made. AT&T conceded that it billed Brooten for calls placed up to 150 days earlier. As in the *TPN* decision, the late billing was attributed to a computer error whereby usage information was not attributed to the appropriate billing account. Once again, AT&T claimed to have rectified the problem as swiftly as possible, including promptly rendering bills to the correctly identified customers.

In spite of its similarity to the *TPN* decision, the FCC was inclined to find a longer backbilling period acceptable in *Brooten* because AT&T both apologized to the affected consumer and offered more than half of the backbilled charges as a credit to the customer's account. In addition, the FCC recognized AT&T's obligation to collect its lawful, tariffed charges. However, the Commission was careful to note that delays significantly longer or shorter than 160 days could be held unjust and unreasonable under different circumstances. A one year period, which is more than double 160 days and, thus, "significantly longer," is more than ample a time frame for Verizon to correct its bills. Anything longer would surely be unjust and unreasonable.

The one-year time frame is also supported by the position Verizon has taken in a New York proceeding, Case No. 99-C-0949. In that proceeding, Verizon notes that under the current provisions of the Performance Assurance Plan, "no set time limit exists for CLECs to challenge

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[35] *Brooten v. AT&T*, Memorandum Opinion and Order, File No. E-96-32, 11 FCC Rcd 13343, (1997) (*"Brooten"*).

the monthly reported PAP data and bill credit allocations."[36] Verizon states that since "the intent of the PAP, in general, and the bill credit provisions, in particular, is to assure that CLECs receive good service in a timely fashion," a six-month limitation period should be implemented.[37] Verizon states that such an action is necessary "to assure that the fundamental intent of the PAP is fulfilled."[38]

While Covad takes no position in this proceeding on the propriety of Verizon's recommendation in regard to New York PAP challenges, it notes that Verizon's reasoning supports a one year time period for backbilling. In order to assure that Covad is able to bill at parity with Verizon, Verizon must provide timely and accurate bills. If there is no set time limit for backbilling, Verizon has no incentive to provide timely and accurate bills, and Covad will have no certainty as to their charges, nor will the customers of Covad. A one year limitation period is clearly reasonable, not only given the rulings of the New York State Commission and the FCC, but also given the fact that Verizon feels six months is sufficient for CLECs to challenge monthly reported PAP data and bill allocations.

Moreover, Verizon's call for a six month limitation period for PAP challenges is clearly inconsistent with its position that no specific limitations period should be imposed for backbilling and its position that the limitations period for backbilling should be in accord with the general limitations period for disputing charges. Verizon should not be allowed to backbill without limitation in one proceeding, and then impose a six-month limitation for PAP challenges in another proceeding.

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36 *Performance Assurance Plan,* Case No. 99-C-0949, Letter from William D. Smith, Senior Regulatory Counsel, Verizon, to Robert T. Mulig, New York Public Service Commission at 1 (Oct. 15, 2002).

37 *Id.* at 2-3.

Covad cannot be sure that representations made by Verizon in this proceeding will track representations it makes in other proceedings. Verizon may challenge Covad's right to rely upon the limitation that may be set in the other proceeding. This arbitration addresses issues that will impact and frame Covad's business relationship with Verizon for the next three years. Given Verizon's ability to change its stripes, it is vital that issues central to the parties' business relationship be addressed within the four corners of this Agreement. The issue of backbilling has been a particularly vexing one for Covad, and Covad has every right to have the issue addressed in this proceeding. Moreover, precluding the right of a carrier to have an issue addressed in an arbitration because it is also being considered in another proceeding would significantly tax the resources of carriers as they will have to participate in every generic proceeding.

A one-year limitation on backbilling is well-supported under the Commission's regulations, FCC precedent, and would provide much-needed certainty for Covad and its customers. If the Commission does apply a one-year limitation, the waiver provisions of the Agreement should be modified to reflect this limitation.

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38 *Id.*

Issue 3: When a good faith dispute arises between the Parties, how should the claim be tracked and referenced?

Covad Request: Verizon should be required to reference Covad's original assigned claim number, as well as any Verizon assigned claim number, in correspondence related to the claim, and on the bill, to allow quick and accurate resolution of the dispute.

Verizon should reference Covad's originally assigned claim number, as well as Verizon's assigned number, if it chooses to assign its own number, in any correspondence related to that claim for the purpose of allowing both parties to reference the dispute quickly and accurately in correspondence and other communications. Verizon's current manner of processing complaints without using Covad's claim number has created numerous problems for Covad.

When Covad submits a billing dispute, Covad assigns a claim tracking number. In fact, Verizon requires that CLECs assign their own tracking number to the dispute, [39] but as shall be demonstrated below, Verizon fails to use the CLEC tracking number in many instances. Currently Verizon will use Covad's tracking number in certain instances, but only in a very arbitrary and haphazard manner. When Verizon puts a claim number on letters related to a dispute, sometimes the claim number is Covad's claim number and sometimes it is Verizon's claim number. If it is Verizon's claim number, this number is useless to Covad as Covad does not have a way to relate the number back to the claim tracking number Covad originally assigned.[40] Verizon's failure to include the claim number assigned to claims by Covad on all documents related to a claim makes verifying the charges and resolving claims extremely difficult.[41]

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39 *See* Exhibit 1 at Issue 3.

40 *See* Exhibit 1 at Issue 3.

41 *See* Exhibit 1 at Issue 3.

For instance, when issuing credits on bills, Verizon does not always reference Covad's claim number.[42] In fact, at times Verizon fails to reference any claim number, neither Covad's nor its own, when issuing credits on a bill. Across the spectrum of possible adjustments to bills, such as claims, credits and debits, Verizon is inconsistent on whether it references Covad's claim number with the adjustment on the bill.[43] Usually when Verizon makes an adjustment for late fees or tax claims on the bill, it will provide Covad's claim number, but this is not always the case. If the adjustment relates to incorrect quantities or incorrect rates, Covad's claim number is not given with the credit.[44]

Verizon's inconsistent use of Covad's claim tracking number makes verifying credits difficult. For example, if Verizon charges Covad incorrectly for power, such as charging for two feeds instead of one, Verizon will issue a credit for two feeds and a charge for one feed, instead of simply issuing just one credit. Typically, the charge and credit cover move than a one-month period. Therefore, Covad receives a credit that has been combined and cannot, without Covad's original claim number, be searched for by the amount of the claim submitted.[45]

As noted below in regard to Issues 4 and 5, Verizon has been repeatedly misapplying Covad payments to the wrong accounts, resulting in underpayments in the accounts for which payment was intended, unnecessary and unwarranted late fees for Covad, and raising the prospect of unwarranted service disconnection by Verizon. Indeed, Covad has received multiple disconnect notices for several billing account numbers for which Covad's records indicate it has paid all amounts due in full. Verizon agreed that Covad's accounts were correct and is adjusting

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42 *See* Exhibit 1 at Issue 3.

43 *See* Exhibit 1 at Issue 3.

44 *See* Exhibit 1 at Issue 3.

45 *See* Exhibit 1 at Issue 3.

their accounts accordingly.[46] Verizon's failure to include Covad's tracking number impedes Covad's ability to determine if the correct accounts are being credited and that its outstanding claims have been resolved.

In Pennsylvania, a person filing an informal complaint against a telephone company must indicate the history of the disagreement by indicating if there was a prior LEC investigation and written summary under the dispute procedure, and thus track the origin of the complaint.[47] NYPSC regulations require that every telephone company establish procedures that, among other things, "shall allow the acceptance and processing of complaints in a simple manner and form."[48] The use of both Verizon's and Covad's tracking numbers simplifies the complaint resolution process for all concerned. Applying Covad's tracking number to the dispute will help Covad track the dispute. If Verizon references Covad's tracking number when Verizon submits its response, Covad will be able to ascertain quickly the dispute to which the response pertains. It makes eminent sense to have a tracking number assigned to the dispute as soon as it is submitted by Covad instead of waiting for Verizon's acknowledgement and response (which as demonstrated below may take some time).[49] This approach will in no way preclude Verizon's use of its own tracking number, as both numbers can be utilized. This would also not preclude Verizon from utilizing a uniform claim number system for all CLECs in Pennsylvania. This system would not require Verizon to establish unique systems for each CLEC, as a dual tracking number system could be utilized by all CLECs.

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46 *See* Exhibit 1 at Issues 4 & 5.

47 52 Pa. Code § 64.141, 64.152

48 N.Y. Comp. Codes R. & Regs. Tit. 16, § 600.8 (2002).

49 The fact that Verizon requires Covad to assign a claim number when filing a dispute is further recognition of the propriety of using a CLEC-assigned claim number.

Verizon seems to concede the value of such a system because Verizon claims it is implementing such a system.[50] Edward Morton, Verizon's Vice President of Billing, has told Covad on numerous occasions that Verizon's new Wholesale Claim and Inquiry Tracking ("WCIT") system will address problems Covad has raised.[51] Initially, Covad was informed that WCIT would be implemented by the end of the first quarter 2003. More recently, Verizon has pushed back this date to the second quarter of 2003. If this is the case, then the language of the Agreement should reflect this fact. Even if Verizon does implement WCIT in that time frame, it will take some time to ensure the system is functioning properly. Until that time, Covad needs an interim solution and its proposal for use of its own tracking number is both reasonable and warranted.

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50 Case 02-C-1175, Verizon's Response to Covad's Petition for Arbitration, Attachment B, Issues and Party Positions at 1 (October 7, 2002).

51 *See* Exhibit 1 at Issue 3; *see also* Exhibit 4, E-mail from Edward Morton re WCIT.

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

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

Covad Request: Verizon should be required to state its position, with supporting explanation, regarding disputed bills within thirty (30) days of receiving notice of the dispute; late payment charges should not be assessed on unpaid previously billed charges when the underlying charges are in dispute.

Verizon should provide its position and a supporting explanation regarding a disputed bill within thirty (30) days of receiving notice of the dispute. Very often, the resolution of disputes extends well beyond the target 30-day window and requires numerous phone calls and e-mails in order to resolve basic claims. In the past, Verizon has often failed to respond to disputes filed by Covad or has responded at an unacceptably slow pace. With respect to UNE loops, there have been numerous instances where Verizon has taken months to respond to Covad after Covad filed a dispute.[52] Covad has experienced delays in other areas as well. For example, Covad submitted claims and, as agreed to by the parties, sent monthly spreadsheets for collocation claims. Verizon was supposed to return the spreadsheet with the status of the claims within 30 days. However, it took Verizon over six to eight months to get information to Covad.[53]

In the year 2002, Covad has filed over 1,300 billing claims with Verizon East. In Covad's experience, it takes an average of 221 days to resolve a high capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to resolve a collocation claim in the

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52 *See* Exhibit 1 at Issues 4 & 5.

53 *See* Exhibit 1 at Issues 4 & 5.

Verizon East region. Covad still has 3 disputed billing claims with Verizon that have been open since the year 2001. One of these claims is for Pennsylvania and this disputed charge totals $83,000, yet Verizon has continued to drag its feet in resolving them. Covad even escalated these billing disputes to Verizon's Vice-President of billing, and Covad received assurances that these disputes would be resolved by August 15, 2002. Nonetheless, Verizon allowed the August 15 date to pass by without taking any action on Covad's disputed charges.[54] An additional problem caused by Verizon's dilatory claim resolution is that Verizon has repeatedly misapplied Covad payments to the wrong accounts, resulting in underpayments in the accounts for which payment was intended, unnecessary and unwarranted late fees for Covad, and raising the prospect of unwarranted service disconnection by Verizon.[55] Indeed, Covad has received multiple disconnect notices for several billing account numbers for which Covad's records indicate it has paid all amounts due in full. Verizon agreed that Covad's accounts were correct and is adjusting their accounts accordingly.[56] Verizon's inability to apply Covad's payments correctly results in wasteful efforts by both Verizon's and Covad's organizations to identify and resolve unnecessary billing disputes. Covad needs prompt resolution of these issues to ensure that service to its customers is not jeopardized. Once again, if Verizon was required to respond within 30 days many of these potentially service disrupting issues could be quickly resolved. Furthermore, as Covad's experience illustrates, these disputes are not isolated occurrences. Rather, Covad's experience illustrates that Verizon's inability to bill competitors correctly is a

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54 *See* Exhibit 1 at Issues 4 & 5.

55 *See* Exhibit 1 at Issues 4 & 5.

56 *See* Exhibit 1 at Issues 4 and 5.

problem that is growing in scope and prevalence, reflecting a pattern of behavior that is anticompetitive and discriminatory, whether by design or otherwise.[57]

The FCC has recognized that billing errors can be disabling to CLECs by denying them a meaningful opportunity to compete. For example, in its Pennsylvania 271 Order, the FCC noted that if CLECs receive bills that are not readable, auditable, and accurate, CLECs must spend additional monetary and personnel resources reconciling each bill and pursuing bill corrections.[58] Covad's experiences with Verizon corroborates the FCC's observation that billing errors can deny a CLEC a meaningful opportunity to compete.

When asked to improve its responsiveness to claims in the Verizon West region, Verizon started closing out claims within 24 hours by denying claims without any investigation. Such a response is clearly unacceptable.[59] The Interconnection Agreement between Verizon and Covad must provide for specific deadlines for the procedures used to resolve claims. When claim resolution procedures are not clearly set-out, Verizon has shown a willingness to play games with the procedures.

New York Commission's regulations provide that:

> Every telephone corporation shall establish procedures whereby any complaint filed with such corporation by any customer thereof in regard to any bill for service rendered, or any deposit required, will be promptly investigated in an appropriate and fair manner, with the result of such investigation being promptly reported to the complaining customer.[60]

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57 *See* Exhibit 1 at Issues 4 and 5.

58 *In the Matter of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269, ¶¶ 22-24 (Sept. 19, 2001).

59 *See* Exhibit 1 at Issues 4 and 5.

60 N.Y. Comp. Codes R. & Regs. Tit. 16, § 600.8 (2002).

The goals of prompt investigation and prompt resolution of billing disputes evidenced in this regulation are best served by Verizon being required to state its position and supporting explanation within thirty days of receiving notice of the dispute. This will prevent Verizon from dragging its feet in providing a response and should thereby ensure faster resolution of billing disputes.

The requirement of providing a response within thirty days is also in accord with applicable billing performance metrics to which Verizon is currently subject. Metric BI-3-04 requires that 95% of CLEC billing claims be acknowledged within two (2) business days.[61] Metric BI-3-05 requires 95% of CLEC billing claims to be resolved within 28 calendar days.[62] Thus, requiring Verizon to state its position and provide a supporting explanation within thirty days is by no means unreasonable. It should be noted, Verizon has indicated that these metrics only apply to UNE loop claims and not high capacity access/transport and collocation claims.[63] Implementation of Covad's position would not interfere with the operation of these metrics. Instead it supplements these metrics and provides assurance to Covad that its claims will be resolved in a timely manner. Given Covad's past experiences with Verizon in regard to billing, such an assurance is much needed. The payment by Verizon of any fines for failing to meet these metrics will still not provide Covad resolution of the dispute. Covad needs to ascertain Verizon's position on the dispute promptly so that resolution may be facilitated. In addition, as noted in regard to Issues 2 and 9, Verizon is seeking to impose a set time limit of six months for

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

62 *Id.* These metrics are the same in Pennsylvania.

63 *See* Exhibit 1 at Issues 4 and 5.

CLECs to challenge the monthly reported PAP data and bill credit allocations.[64] Covad may not even know Verizon's position on the disputes it has submitted within six months. This is all the more reason to implement a 30-day response period.

Verizon claims that Covad's requirement is unreasonable because there is no requirement that Covad's notice of dispute contain sufficient information for Verizon to investigate the matter, nor is there any requirement that the billing dispute be sufficiently current so that Verizon has relatively easy access to the data it needs to investigate. There is nothing, however, that limits Verizon's ability to ask for more information, and because Verizon is required to investigate the matter promptly, Verizon should ascertain quickly that it needs more information. This will facilitate the resolution process for all concerned. In regard to the dispute being sufficiently current, if Verizon provides bills in an accurate and timely manner, Covad will be able to more easily determine any areas of dispute. If, however, Verizon backbills for time periods long since passed, and fails to provide sufficient detail, then, of course, disputes will be less timely. Once again, Verizon, as the party in control of the billing process, has the ability to rectify these problems. Verizon's timing controls the timing of the other events in the billing process. The billing resolution process proposed by Covad, by prodding Verizon not only to bill in a timely manner, but also to investigate and respond to any disputes promptly, will become much less arduous for all concerned.

If the Commission does apply the thirty-day requirement, it should also hold that late charges will not be imposed for any time that Verizon takes beyond thirty days to address the dispute. This will prevent Verizon from profiting from its own failure to comply with the

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64 *Performance Assurance Plan,* Case No. 99-C-0949, Letter from William D. Smith, Senior Regulatory Counsel, Verizon, to Robert T. Mulig, New York Public Service Commission at 1 (Oct. 15, 2002).

requirement that it address the dispute in a timely manner. In addition, it will increase Verizon's incentive to provide a response within thirty days. Verizon's position, which will place no time limit on a response and allow late charges to accrue indefinitely, would provide Verizon incentive to drag out a dispute. Verizon suggests that Covad's position would give Covad an "incentive to submit frivolous claims to earn interest on the 'disputed' amounts."[65] Covad would still be subject to late payment charges for the initial 30 days which is quite a disincentive to filing any dispute, much less a frivolous one. Moreover, Verizon possesses the ability to counteract any such exposure to any such behavior by investigating and resolving the dispute in a prompt manner.

Also, Verizon should not be allowed to assess a late payment charge to unpaid previously billed late payment charges when the underlying charges are in dispute.[66] Late payment charges should only apply to the initial outstanding balance. Verizon is attempting to apply late penalties upon late penalties. As discussed above, Verizon is not resolving billing disputes in a timely manner. Applying late payment charges in a cumulative manner will only heighten the deleterious effects of Verizon's lengthy resolution process.

Once a claim has been acknowledged by Verizon, the late payment charges associated with that claim should be suppressed until the claim is resolved. Verizon's current practice results in numerous unnecessary claims. Currently, Verizon is assessing Covad late payment

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65 Verizon Response to Covad Petition for Arbitration, p. 3, ¶ 4.

66 While New York has allowed application of late payment charges to arrearages including unpaid late payment charges, it has limited such application to unpaid, undisputed amounts. *Proceeding on Motion of the Commission as to the Proposed Changes in Rates, Charges, Rules and Regulations of the New York Telephone Company*, Case 28961, Opinion and Order Determining Revenue Requirement and Rate Design, Opinion No. 85-17, 25 NY PSC 3699, 1985 WL 258236, *58 (1985); *see also, MCI WorldCom v. New York Telephone Company*, Case No. 99-C-0975, Declaratory Ruling Regarding Interconnection Agreement, 2000 WL 749232, *9 (2001).

charges on amounts that are in the process of being disputed. Covad then files a dispute for those late payment charges. The following month, Verizon will assess late payment charges on the original disputed amount *as well as* the disputed late fee charges from the prior month.[67]

It can take months for a dispute to be resolved and Covad must file a dispute each time a late payment charge is assessed in addition to the original dispute.[68] So, instead of having to file only one claim for a dispute, Covad ends up having to file multiple claims to address the late payment charges, depending on how long it take to resolve the claim and issue a credit. Typically, Covad gets charged a late fee for the disputed amount on the same invoice that has the credit on it and therefore, Covad must, yet again, file one more claim for late payment charges once the credit has been applied.[69] All of this unnecessary bureaucracy can be avoided easily by suspending late payment charges until the underlying dispute is resolved.

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

Covad Request: Verizon should be allowed to assign this agreement to purchasers; it should not be permitted to terminate the agreement for exchanges or territory it sells to another party.

Verizon's proposed language, which would allow Verizon to terminate the Agreement unilaterally in connection with the sale or transfer of a Verizon-served territory, would expose Covad to unwarranted risk and uncertainty, and should not be permitted.[70] In order to enter into

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67 *See* Exhibit 1 at Issues 4 and 5.

68 *See* Exhibit 1 at Issues 4 and 5.

69 *See* Exhibit 1 at Issues 4 and 5.

70 Verizon's proposed section 43.2 of the contract language would provide:

> Notwithstanding, any other provision of this Agreement, Verizon may terminate this Agreement with respect to a specific operating territory or portion thereof if

and compete in the local exchange market throughout Pennsylvania , Covad must be assured that if Verizon sells or otherwise transfers operations in certain territories to a third-party, then such an event will not alter or cast doubt on Covad's rights under the Interconnection Agreement, or undermine Covad's ability to provide service to its residential and business customers.[71] If Verizon's contract language is adopted, Covad – and its customers - will be unable to rely on continuous wholesale service pursuant to the terms of a fully negotiated and arbitrated, and fully known, interconnection agreement.[72]

With no guarantees in this regard, Covad is left precariously vulnerable to an unanticipated sale of Verizon facilities to another telephone provider seeking to use entirely and dramatically different electronic interfaces or modes of interconnection, seeking a rural exemption from ILEC obligations pursuant to Section 251(f), or taking an unreasonable and intransigent position with respect to any of the thousands of issues involved in any interconnection agreement.

Furthermore, given the Agreement, as proposed by Verizon, specifies that Covad will be given no less than 90 calendar days prior written notice that the Agreement will terminate when it sells or transfers its operations in a territory, it is unreasonable to expect that Covad will be able to negotiate a new agreement with a prospective buyer. *See* Agreement § 43.2. Significantly, under the Act, a CLEC must have good faith negotiations with an ILEC for a

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> Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide Covad with 150 calendar days prior written notice, if possible, but not less than 90 calendar days prior written notice, of such termination, which shall be effective upon the date specified in the notice.

Agreement § 43.2.

71 *See* Exhibit 1 at Issue 8.

72 *See* Exhibit 1 at Issue 8.

period of 135 days before a CLEC can petition to arbitrate an open issue. If the buyer in this instance were intransigent regarding any issues in the Agreement and refused to honor them or negotiate in good faith, the buyer could conceivably terminate Covad's service on the date Verizon officially sells or transfers its territories to the buyer. As a result, Covad would be forced to choose between capitulating to the buyer's unreasonable positions or abandoning service. Either option is draconian and entirely improper.

Such an unforeseen and dramatic shift would be a devastating blow to Covad, potentially negating and rendering obsolete Covad's capital investment in equipment, software, and systems used in or for various exchanges.[73] Covad could potentially lose many customers and the associated revenue streams.[74] Moreover, Covad's extensive investments made in marketing efforts and the development of customer good will would essentially be stranded.[75] Neither Covad nor any other business should be expected to bear such a risk. Accordingly, the Agreement should guarantee continuation of obligations under the Agreement in the event Verizon sells its exchanges and should not permit those obligations to be terminated prematurely.

In its position statement, Verizon argues that it cannot be required to condition any sale of its operations on the purchaser agreeing to an assignment of this Agreement and that the purchaser cannot be forced to accept Verizon's obligations under this Agreement.[76] Yet, this is a typical requirement in a wide range of business contracts. It is certainly not commonplace for a supplier of goods or services to be able to avoid a contractual obligation simply by transferring

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73 *See* Exhibit 1at Issue 8.

74 *See* Exhibit 1at Issue 8.

75 *See* Exhibit 1at Issue 8.

76 Verizon's Response to Covad Petition for Arbitration, p. 5, ¶ 8.

its business to another. For example, few rational business tenants would sign a lease for real estate that provided that the lease terminated at the lessor's option upon sale, obliging the lessee to negotiate from scratch with the purchaser for the right to continue to occupy the premises.

Verizon contends that allowing it to extinguish Covad's rights upon sale would likely enhance the price that Verizon could receive for a sale. The same may well be true of a lessor of real property, who may find that selling the property subject to a lease reduces the value of the property; yet property is leased every day without the kind of termination upon sale clause that Verizon proposes here. If the lease is favorable to the tenant, it may reduce the sales price; if, on the other hand, the lease is favorable to the lessor, it may increase the sales price. The same is true with respect to a wide variety of term contracts and the same is true here. It may turn out that Verizon's Interconnection Agreement with Covad is relatively favorable to Verizon, and enhances the value of Verizon's assets. The risks that Covad asks Verizon to take are no different in degree or kind than the risks Verizon, Covad, and other businesses willingly take on in the conduct of their day-to-day affairs.

On the other hand, giving Verizon the option to terminate the Agreement upon sale or transfer creates an unusual and non-mitigatable business risk that could cost Covad millions of dollars.[77] Verizon's belief that Covad should bear this risk (so as to enable Verizon to sell or transfer its properties at the maximum possible price) is inequitable for the reasons set forth above.

Verizon also argues that under the agreed-upon provision regarding contract assignment, each party can assign the Agreement with prior written consent of the other party, "which consent shall not be unreasonably withheld, conditioned or delayed." Agreement, § 5. Verizon

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77 *See* Exhibit 1at Issue 8.

contends that "nothing in the agreed-upon language *requires* Verizon and a purchaser to agree to an assignment." While this is true, Verizon is also contractually obligated to provide services under the Agreement for the Initial Term. Agreement, § 2. Nothing in the agreed-upon assignment language negates that obligation. As a matter of hornbook assignment law, assignment of rights to a buyer do not extinguish the obligor's obligation to the obligee, in this instance, Verizon's obligations to Covad.[78] The agreed-upon assignment language does not provide for termination of Verizon's obligations under the Agreement and Verizon could not walk away from its contractual commitments through the assignment process unless another party assumed to undertake such obligations.

Finally, Verizon may cite the *AT&T NY Arbitration Award* for the proposition that Covad's "interests are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets."[79] Again Verizon's assertions are incorrect. There is nothing in the *AT&T NY Arbitration Award* that supports Verizon's position on this issue. If anything, the *AT&T NY Arbitration Award*, which resulted in an agreement lacking Verizon's proposed "option to terminate upon sale language," fully supports adoption of the contract language Covad proposes.

In particular, unlike the protection from unilateral early termination that Covad seeks here, AT&T sought to have language included in its interconnection agreement with Verizon that addressed the possible transfer of telephone operations to a third party.[80] Specifically, in the

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78 *See, e.g.*, Corbin on Contracts §§ 866 & 868 (1979).

79 Case No. 02-C-1175, Verizon's Response to Covad's Petition for Arbitration, Attachment B, Issues and Party Positions at 5 (October 7, 2002).

80 *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case No. 01-

event of a transfer, AT&T requested language that would require the transferee, among other things, to ensure that the transfer would not have an adverse impact on the operations or services provided to AT&T.[81] Moreover, AT&T sought the right to examine the transfer agreement to the extent it pertains to the interconnection agreement and to make a determination as to whether it was "reasonably satisfactory."[82] Moreover, AT&T demanded that Verizon guarantee the transferee's performance.[83] AT&T's sale of assets provisions were essentially designed to establish contractual certainty regarding the "type of" continuous performance under the agreement if a transfer took place.

The New York Commission held, however, that because the language AT&T desired related directly to the dynamics of a would be transfer, "AT&T's interests are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets that would occur pursuant to PSL §99(2)."[84] The Commission further stated that "Were any such transfer to be proposed, we would expect Verizon to discuss the matter with AT&T and other CLECs" and explained that "it is *reasonable* to expect that Verizon would negotiate terms to ensure continued performance under existing interconnection agreements."[85]

In the AT&T arbitration, Verizon was not seeking the ability to terminate its agreement with AT&T upon a would be transfer. Here, Verizon seeks to go much farther than it did in the AT&T case, and Covad is requesting language that prevents Verizon from unilaterally doing so.

C-0095, Order Resolving Arbitration Issues, at 23-25 (N.Y. P.S.C. July 30, 2001) ("*AT&T NY Arbitration Award*").

81 *AT&T NY Arbitration Award* at 23-25.

82 *AT&T NY Arbitration Award* at 24.

83 *AT&T NY Arbitration Award* at 23-25.

84 *AT&T NY Arbitration Award* at 25.

85 *AT&T NY Arbitration Award* at 25 (emphasis added).

In the AT&T Arbitration, the Commission recognized fully that such an obligation is "reasonable." Hence, Covad has every right to have such reasonable language in its Agreement; otherwise, Verizon could walk away freely from the Agreement and its obligations upon sale of transfer of its territories.

Given this, the contract language Covad requests is entirely appropriate. Moreover, the substitution of the word "terminate" for "assign" does not conflict with the agreed-upon provision regarding contract assignment that allows each party to assign the Agreement with prior written consent of the other party, "which consent shall not be unreasonably withheld, conditioned or delayed." Agreement, General Terms and Conditions, § 5. For these reasons, the Commission should adopt Covad's proposed language.

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

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

Issue 34: In what interval should Verizon provision loops?

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

Covad Requests: Re Issue 13 – Verizon should be required under the agreement to return firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically and within seventy-two (72) hours after receiving an LSR that is subject to manual pre-qualification; Verizon should also be required to return firm order commitments ("FOC") for UNE DS1 loops within forty-eight (48) hours. Re Issue 32 – When Verizon rejects a Covad mechanized loop qualification query, Covad should (1) be permitted to submit an "extended query" at no additional charge so that the need for, and costs, of a manual

loop qualification could be avoided; and (2) should receive Verizon's response to manual loop qualification within one business day. Re Issue 34 – The requirement that Verizon provide reasonable and nondiscriminatory access to UNE loops requires that Verizon provision loops within the shortest interval of either (A) the interval Verizon provides to itself, or (B) any Commission-adopted interval, or (C) ten (10) business days for loops needing conditioning, five (5) business days for stand-alone loops not needing conditioning, and two (2) business days for line-shared loops not needing conditioning. Re Issue 38 – Reasonable and nondiscriminatory access to Verizon's OSS for loops mechanically pre-qualified by Covad should obligate Verizon to return an LSR confirmation within two (2) business hours for all Covad LSRs.

A. Issue 13 and 38: LSRs and FOCs

Verizon should be required to return firm order commitments electronically within two (2) hours after receiving an LSR that has been pre-qualified mechanically and within seventy-two (72) hours after receiving an LSR that is subject to manual pre-qualification. Verizon should also be required to return firm order commitments for UNE DS1 loops within forty-eight (48) hours. The intervals proposed by Covad are identical to those set forth in this Commission's current guidelines. Current PSC guidelines provide that 95% of service order confirmations should be sent on flow-through pre-qualified orders for stand-alone loops or line shared loops submitted electronically within two (2) hours.[86] For orders subject to manual pre-qualification, 95% of service order confirmations should be submitted within 72 hours.[87] For UNE DS1 loops,

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[86] *Performance Measures Remedies*, M-00011468, Verizon-PA's Compliance Filing, C2C Metric OR-1-02 (filed Jan. 13, 2003).

[87] *Performance Measures Remedies*, M-00011468, Verizon-PA's Compliance Filing, C2C Metric OR-1-04 (filed Jan. 13, 2003).

95% of service order confirmations should be returned within 48 hours.[88] If orders are submitted by fax or mail, 24 hours is added to the applicable interval.[89]

Firm Order Commitments ("FOCs") are critical to Covad's ability to provide its customers with reasonable assurances regarding the provisioning of their orders. A FOC from Verizon confirms that Verizon will deliver what Covad requested and allows Covad to inform a customer that the service they requested will be delivered.[90] A FOC date is also critical for the provisioning process of stand-alone loops. It identifies the date Verizon will schedule its technician to perform installation work at the end user's address. The end user is required to provide access to their premises, and potentially to negotiate access to shared facilities, where Verizon's terminal is located, at their premises. Providing a FOC within a single day facilitates Covad's ability to contact the end user, and assure they will be available.[91] This capability assists in resolving one of the remaining inefficiencies that remain in the provisioning process: "No Access" to the end user's premises for the Verizon technician. If the end user is not able to provide access on the originally scheduled FOC date, Covad can communicate with the end user and get back to Verizon to reschedule the FOC. The efficiency gained by such an improvement will provide significant savings to Verizon and Covad -- as well as significantly improving the customer experience.[92]

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88 *Performance Measures Remedies*, M-00011468, Verizon-PA's Compliance Filing, C2C Metric OR-1-04 (filed Jan. 13, 2003).).

89 *Performance Measures Remedies*, M-00011468, Verizon-PA's Compliance Filing, C2C Metric OR-1 (filed Jan. 13, 2003).

90 *See* Exhibit 1 at Issues 13 and 38.

91 *See* Exhibit 1 at Issues 13 and 38.

92 *See* Exhibit 1 at Issues 13 and 38.

Verizon states that it opposes putting intervals for FOCs in interconnection agreements.[93] Verizon contends that such intervals are currently established in the Pennsylvania Carrier-to-Carrier Guidelines. As shown above, however, Covad is not seeking to change any of the intervals. Instead Covad merely seeks to have certain intervals incorporated into its Interconnection Agreement. Covad should not have to defer this issue to a Carrier Working Group such as recently established by the Commission in PMO II, Docket No. M-00011468, Order entered December 10, 2002, p. 87. A stated FOC interval is vital to Covad's operations, and the time frames Covad seeks are particularly important. Covad is not seeking to rewrite the industry-wide performance standards, but certain intervals are of particular importance to Covad, and Covad insists that these timeframes be included in its Interconnection Agreement.

The New York Public Service Commission ("NYPSC"), as well as the FCC and Verizon itself, has recognized that Carrier-to-Carrier performance standards were never intended to displace use of performance standards in interconnection agreements. Carrier-to-Carrier Guidelines and the Performance Assurance Plans were designed to work in conjunction with interconnection agreements. For instance, in Verizon-NY itself represented that the PAP was only one part of a larger regulatory system designed to create incentives for adequate performance. Verizon-NY noted:

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

This NYPSC agreed with Verizon's assessment, noting:

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[93] Case No. 02-C-1175, Verizon's Response to Covad's Petition for Arbitration, Attachment B, Issues and Party Positions at 8 (October 7, 2002).

> Verizon-NY noted that it is at risk in interconnection agreements with each CLEC for damages as well [as under the PAP] . . . . The Performance Assurance Plan and Change Control Plans represent a substantial counterweight to any incentive to thwart competitive entry. These incentives are in addition to those already contained in interconnection agreements.[94]

The NYPSC subsequently noted:

> Although the performance provisions of [existing interconnection agreements] will be in effect during the term of the agreements, [Verizon-NY] will engage in good faith negotiations on new performance provisions when the current interconnection agreements expire. When an existing interconnection agreement with a CLEC in New York State incorporates performance standards and remedies, such standards and remedies will not be unilaterally withdrawn by [Verizon-NY]. Such standards and remedies will continue to be offered by [Verizon-NY] in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions.[95]

The NYPSC thus clearly anticipated that performance standards will continue to be included in the next generation of interconnection agreements. The FCC has also noted that:

> The performance plans adopted by the New York Commission do not represent the only means of ensuring that Bell Atlantic continues to provide nondiscriminatory service to competing carriers. In addition to the $269 million at stake under this Plan, as noted above, Bell Atlantic faces other consequences if it fails to sustain a high level of service to competing carriers, including . . . liquidated damages under 32 interconnection agreements.[96]

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

95 *Petition of New York Telephone Company for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Cases 99-C-0949 and 97-C-0271, Amended Performance Assurance Plan at 1 and n. 2 (Dec. 22, 2000).

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

Thus, standards set in interconnection agreements, and corresponding penalties,[97] are vital cogs in assuring adequate performance. These standards in interconnection agreements are all the more valuable because they allow performance to be tailored to the interests of the particular carrier. In this case, the standards pertain to provisioning intervals of great importance to Covad. As the NYPSC noted, "performance incentives contained in individual interconnection agreements add their own set of remedies, which reflect the business strategies of individual CLECs."[98]

The NYPSC recently reaffirmed these principles in the AT&T arbitration when it denied Verizon's attempt to exclude metrics and remedies from the interconnection agreement and allowed AT&T to include performance metrics in the agreement.[99] The Commission allowed this even though, as is the case here, some of the metrics duplicated current Carrier-to-Carrier service guidelines. AT&T's proposal also sought the inclusion of some metrics in its interconnection agreement that deviated from current New York Carrier-to-Carrier performance standards. The NYPSC explained that these metrics provided AT&T additional geographic protections and allowed for product disaggregation.[100] The NYPSC noted that while it may be administratively simpler to update the old metrics to reflect the current ones, since the parties did

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97 Covad has not proposed the inclusion of liquidated damages provisions in the Agreement, but would not oppose the inclusion of such a provision, provided that the liquidated damages provided bore a reasonable relationship to the damages suffered by Covad in the event of breach.

98 CC Docket No. 99-295, Evaluation of the New York Public Service Commission, Appendix at 164 (1999).

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

100 *AT&T NY Arbitration Award* at 16.

not agree to this in negotiations it would not require such an action.[101] The NYPSC determined that it would not be an undue burden for Verizon to report data based on a separate set of metrics from the Carrier-to-Carrier metrics, and noted that Verizon was already doing this in regard to AT&T.[102] In Covad's case, Verizon, for the most part, will be reporting data based on the same set of metrics that govern its relationships with other CLECs, and thus bears much less of a burden than imposed by the Commission's resolution in favor of AT&T. In addition, Verizon already provides data as to its particular performance vis-à-vis Covad, so there would be no additional reporting burden.

The NYPSC has explicitly noted that:

> The PAP contemplated three financial prongs for CLEC relief when receiving poor performance from Verizon. The first two, Mode of Entry and Critical Measures, are included in the PAP. The third is in the interconnection agreement.[103]

Covad is simply seeking to exercise its right to include performance metrics on issues of great import to its operations in the Interconnection Agreement. The intervals it proposes are reasonable and should be implemented.

As noted above, in the *AT&T NY Arbitration*, the NYPSC not only allowed the language of the interconnection agreement to duplicate existing Carrier-to-Carrier metrics and standards, but also allowed for some different standards when AT&T sought additional protections or product disaggregation.[104]

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101 *AT&T NY Arbitration Award* at 16-17.

102 *AT&T NY Arbitration Award* at 17.

103 *AT&T NY Arbitration Award* at 16, n. 19.

B. Issue 32: Manual Loop Qualification

When Verizon rejects a Covad mechanized loop qualification query, Covad should be permitted to submit an "extended query" at no additional charge so that the need for, and costs, of a manual loop qualification could be avoided. In addition, Covad should receive Verizon's response to manual loop qualification within one business day.

Loop qualification is the process of identifying the characteristics of loops, such as loop length and the presence of obstacles to the provision of DSL service, such as load coils, bridged taps or repeaters, and determining the technical acceptability of a loop for the purpose of providing DSL services. Initially, CLECs such as Covad submit mechanized loop qualification query's to determine if a loop is acceptable for a customer's service. However, there are instances where Verizon rejects a Covad mechanized loop qualification query because the mechanized database or the listing is defective. In these instances, Covad should be permitted to submit an "extended query" to Verizon at no additional charge because it is no fault of Covad's that Verizon's database has these deficiencies. Significantly, the Commission rejected all loop qualification charges that Verizon proposed in the Pennsylvania UNE cost proceeding for that very reason.[105] Specifically, the Commission held that,

> Because a forward-looking network would not contain inherent obstacles to the provision of DSL services, there would be no need for loop qualification. Accordingly, we adopt the recommendation of the ALJ to disallow the charge.[106]

In addition, Verizon should complete Covad's manual loop qualification requests within one business day because there is no reason why Verizon cannot do this. Moreover, the fact that

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104 *AT&T NY Arbitration Award* at 16.

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

Verizon consistently meets its performance standard in this regard strongly indicates that Verizon has far too much time to complete manual loop qualification requests. The public interest demands, however, that services be provided as timely and expeditiously as possible. Therefore, the interval should be revisited and at a minimum be shortened as Covad proposes.

Significantly, performance measurements adopted by the PaPUC for Verizon that suggest a two-business day standard for responding to a manual loop qualification request submitted as a pre-order query are irrelevant to the issue of whether such an interval is reasonable. The Performance measurements are an evolving set of standards that do not dictate what is an appropriate interval for an interconnection agreement. *See Re Performance Measures Remedies*, Docket No. M-00011468 (PMO II), Order entered December 10, 2002 (Pa Verizon/Staff/CLEC working group established to address ongoing guideline, metric and remedies issues) p. 87.

For these reasons, Covad's request that Verizon respond to manual loop qualifications within 24 hours is absolutely appropriate and reasonable. In addition, Covad's request that Verizon not assess charges for loop qualification information is consistent with Commission precedent.

C. Issue 34: Loop Provisioning Intervals

Covad requests that Verizon be required to provision loops within the shortest interval of either (A) the interval Verizon provides to itself, or (B) any Commission-adopted interval, or (C) ten (10) business days for loops needing conditioning, five (5) business days for stand-alone loops not needing conditioning, and two (2) business days for line-shared loops not needing conditioning.

These requested intervals are reasonable because Verizon is already required to provision 1-10 loops within six (6) days and 11-20 within 10 days. Furthermore, Verizon is required to

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106 Id.

provision 1-20 line shared loops within 3 business days.[107] To the extent that Verizon claims that Covad is requesting that the intervals be reduced, Verizon has not provided any evidence that it cannot install loops within these intervals. As stated above, the fact that Verizon consistently meets its performance standard in this regard strongly indicates that Verizon has far too much time to provision loops. The public interest demands, however, that services be provided as timely and expeditiously as possible. Therefore, the interval should be revisited and at a minimum be reduced as Covad proposes.

Verizon's argument that Covad is seeking an interval that is shorter than the interval it provides to itself or than the PaPUC establishes in a CLEC performance measure where Verizon does not provide the product at retail and that such requests have no basis in law, is incorrect. Verizon cannot credibly dispute that provisioning intervals are not specifically dictated by federal telecommunications law or orders of the FCC. Establishment of proper provisioning intervals is a matter squarely before the state commissions and is implemented through their authority under the Telecommunications Act of 1996 and state law. 66 Pa. C.S. §§ 3001-3008.

Verizon contends that Covad, via its suggested change to § 3.13.10 of the agreement, is proposing the deletion of language stating applicable interval for provisioning a loop does not include time needed by Verizon for engineering and conditioning. Verizon claims that engineering and conditioning work it performs to enable a loop to handle the service Covad orders is not a normal part of "provisioning" and that additional time should be allowed, outside the interval, for that work.[108]

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107 UNE Product Interval Guide, *available at* http://www22.verizon.com/wholesale/lsp/bridge/1,2631,4-lib,FF.html#handbooks..

108 Verizon PA's Response to Covad Petition for Arbitration, Attachment C & D, at 18, ¶ 34.

The standard for Covad's proposed intervals is whether they are reasonable. Covad's proposed intervals meet that test.

While Covad generally seeks language in the Interconnection Agreement that replicates certain important Carrier-to-Carrier metrics and standards, on the issue of line sharing provisioning intervals, Covad feels a shorter interval is warranted. With respect to line sharing, Verizon's current business target of provisioning loops within three days is outdated and should be significantly shortened.[109] If Verizon is claiming that it provides good performance on loop provisioning intervals, then it should be the goal of the Commission to continually seek to raise the bar and have the intervals shortened in order to bring advanced services to Pennsylvania consumers more quickly.

This concept was explored by the DSL Collaborative and in Technical Conferences related to Case 00-C-0127 in July and August 2000 in New York State. The participants discussed starting the Line Sharing interval at three days and revisiting the interval to progressively reduce it; first to two days and possibly to a single day. This was based upon the significantly reduced amount of work required to deliver a line shared service, as compared with a stand-alone service.[110]

For line sharing, the loop already exists and working since the voice line is in service. The Hot-Cut process calls for all the pre-wiring to be complete within two days. Since the cross-wiring and assignment requirements for line sharing are less than those required for Hot Cuts, and there is no coordination requirement, Verizon should recognize these facts and reduce the

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109 *See* Exhibit 1 at Issue 34.

110 *See* Exhibit 1 at Issue 34.

line sharing interval to two days.[111] Notably, BellSouth, where the splitter is ILEC owned and requires an additional assignment step, has reduced the line sharing provisioning interval to two days.[112]

The experience that Verizon has gained in several years for provisioning loops to CLECs and to its advanced services affiliate should allow it provide services within these provisioning intervals. A three-day interval has been in place since the beginning, but it is time for this interval to be revisited. Since this interval is crucial to Covad's operations, the Commission should address the issue in this arbitration. Verizon should be required to implement such an interval in the Interconnection Agreement.

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

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

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

Covad Request: Issue 19 – Verizon should be obligated to provide Covad with UNE and UNE combinations where Verizon would provide such UNEs or combinations to itself. Issue 24 – The Agreement should require Verizon to relieve capacity constraints in the loop network to provide loops to the same extent, and on the same rates, terms and conditions that it does so for its own customers. Issue 25 – Verizon should be obligated to provision Covad DS-1 loops, with associated electronics for the loops to work, at no additional charge, in instances when such electronics are not already in place, if it does so for its own customers.

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111 *See* Exhibit 1 at Issue 34.

112 *See* Exhibit 1 at Issue 34.

Verizon should provide Covad UNEs and UNE combinations in instances in which Verizon would provide such UNE or UNE combinations to itself. Pursuant to Section 251(c)(3) of the Act, and applicable FCC rules, Verizon is obligated to provide Covad access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory terms. As the FCC concluded, Section 251(c)(3)'s requirement that incumbents provide CLECs "nondiscriminatory access" to UNEs requires that incumbents provide CLECs access to UNEs that is "equal-in-quality" to that which the incumbent provides itself. *Local Competition Order*, ¶ 312; 47 C.F.R. § 51.311(b). Indeed, the United States Supreme Court has confirmed that Section 251(c)(3) obligates incumbents to provide requesting carriers combinations that it provides to itself. *Verizon Communications v. FCC*, 122 S.Ct. 1646, 1169 (2002) ("otherwise, an entrant would not enjoy true 'nondiscriminatory access'" pursuant to section 251(c)(3)).

In addition, the same legal obligations require that incumbents provide requesting carriers UNEs in situations in which the incumbent would provide the UNE to a requesting retail customer as part of a retail service offering. Verizon's proposed language would unduly restrict Covad's access to network elements and combinations that Verizon ordinarily provides to itself when offering retail services. Verizon should provide Covad UNEs and UNE combinations in accordance with Applicable Law and cannot limit Covad to those UNEs combinations that are already set forth in Verizon tariffs. Furthermore, consistent with the nondiscrimination provisions of the Act, the Agreement should obligate Verizon to relieve capacity constraints in the loop network to provide loops to the same extent and on the same rates, terms and conditions that it does for its own retail customers.

In its position statement, Verizon claims that the dispute is not over whether Verizon must provide Covad with nondiscriminatory access to UNEs and UNE combinations to the

extent required by federal law. Instead, Verizon asserts that this issue pertains to Covad's attempt to expand Verizon's unbundling obligations under federal law, by requiring Verizon to build facilities in order to provision Covad's UNE orders. Notably, Verizon admits, as set forth in its July 24, 2001 DS1 and DS3 Unbundled Networks Policy[113] and as stated during various 271 proceedings,[114] that it will expand facilities for its retail customers but not for its UNE customers.

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[113] *See* Exhibit 5, Verizon's July 24, 2001 DS1 and DS3 Unbundled Networks Policy. Verizon will reject a UNE DS1 or DS3 order due to no facilities for any one of six reasons: (1) there is no repeater shelf in the Central Office or customer location or remote terminal; (2) there is no apparatus or doubler case; (3) there is need to place fiber and/or a multiplexer to fill the order; (4) there is a need to turn up a shelf or multiplexer; (5) there is no riser cable or buried cable drop wire if a trench or conduit is not provided; and (6) the copper cable is defective, and there are no spares available; Verizon would need to place cable (fiber or copper) for spares. *See* letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147 (filed Sep. 19, 2002); *see also* letter from Mary C. Albert, Vice President Regulatory and Interconnection, Allegiance Telecom, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 1, 2002). Subsequent to Verizon's implementation of this policy, Covad and other CLECs have seen tremendous increase in the number of their UNE DS1 orders rejected by Verizon due to no facilities. For the most part, the rejections are not the result of a lack of lack of copper or fiber, but rather result from conditions that can easily be remedied such as the lack of a repeater shelf, apparatus and/or doubler case, or multiplexing capacity, which Verizon admittedly that it "generally will undertake to construct the facilities required to provide services at tariffed rates." *See* Exhibit 5, July 24, 2001 DS1 and DS3 Unbundled Networks Policy.

[114] *See* Exhibit 5, July 24, 2001 DS1 and DS3 Unbundled Networks Policy. Significantly Verizon has admitted that it does not reject DS1 orders it receives from it retail end users for any of the six reasons it cites to reject CLEC UNE DS1 orders. In the Maryland 271 proceeding, Verizon responded to a discovery request on its retail practices with the statement, "Generally speaking, Verizon MD does not reject DS1 requests for end users due to no facilities." *See* Exhibit 6, Verizon Maryland Inc.'s Response to Allegiance Telecom of Maryland, Inc. Data Request No. 1, Case No. 8921, dated June 19, 2002. This is true for both special access and non-special access DS1 retail orders. *See* Exhibit 7, Verizon Maryland Inc.'s Response to Allegiance Telecom of Maryland, Inc. Data Request No. 2, Case No. 8921, dated August 23, 2002. In the Virginia 271 hearing, Verizon testified that it treats its retail customers more favorably than it treats its wholesale customers: "[B]ecause retail customers are not ordering UNEs, they're ordering either special access or they're ordering retail DS1s, and we build special access and we build for the retail side. We're not required to build UNEs." *See* Exhibit 8, *In the Matter of*

Verizon bases its position on the following arguments.[115] It argues that *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (holding that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network – not to a yet unbuilt superior one") and the *Virginia Arbitration Award*[116] ¶ 468 (holding that "the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for AT&T or other carriers") do not require it to expand facilities. As explained below, Verizon's arguments are flatly wrong.

Verizon is obligated pursuant to federal and state law to provide UNEs, UNE combinations, and relieve capacity constraints in a nondiscriminatory manner. The Commission has authority under federal and Pennsylvania state law to order Verizon to comply with this obligation. *See e.g. Global* Order, Docket Nos. P-00991648, P-00991649, pp. 66-68. Furthermore, other states have found that ILECs have this obligation. Moreover, as indicated in the attached affidavit, Covad is losing customers as Verizon's unlawful "no facilities" policy results in order cancellations and order rejections.[117] Verizon's policy has caused and continues to cause Verizon to reject Covad's UNE DS-1 loop orders unlawfully. For these reasons and as

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Verizon Virginia Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. Section 271(c), Case No. PUC-2002-0046, June 19, 2002 Transcript, at 681:10-15.

[115] Verizon's Response to Covad Petition for Arbitration, Docket Nos. A-310696F7000, 7001, p. 11, ¶19.

[116] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 & 00-249, Memorandum Opinion and Order, DA 02-1731, 2002 WL 1576912 (Chief, Wireline Competition Bureau rel. July 17, 2002) ("*Virginia Arbitration Award*").

[117] *See* Exhibit 1 at Issues 19, 24 & 25.

elaborated below, the Commission should render a decision that requires Verizon to perform network augments that Covad requests and should adopt Covad's related contract language.

A. Verizon's Obligation To Provide CLECs Nondiscriminatory Access To UNEs, As Mandated By The Act, FCC Decisions And Implementing Regulations, And Federal Court Decisions, Requires That Verizon Provide The Same Basic Network Modifications And Expansions For CLECs That Verizon Routinely Performs For Its Retail Customers.

As stated above, Section 251(c)(3) of the Act imposes a duty upon ILECs to provide CLECs "nondiscriminatory access to network elements on an unbundled basis...on rates, terms and conditions that are just, reasonable, and nondiscriminatory." Sections 51.307, 51.311 and 51.313 of the FCC's rules similarly require ILECs to offer all requesting carriers nondiscriminatory access to UNEs. These nondiscrimination rules specifically apply to all inherent features of the network element, the quality of the element, and the terms for access to the element, respectively. Under these broad and unqualified nondiscrimination requirements, the Commission should require Verizon to make routine network modifications or enhancements for CLECs whenever it does so for its retail customers.

In addition, Section 51.311(b) of the FCC's rules requires that "the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself."[118] Furthermore,

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[118] 47 C.F.R. § 51.311(b); *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket. No. 96-98, CC Docket No. 95-185, 11 FCC Record 15499, ¶¶ 312-13 (1996) ("*Local Competition Order*") (subsequent history omitted); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98,

Section 51.313(b) of the FCC's rules requires that "the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself."[119]

The parity requirement of these rules include the tasks involved performing routine network expansions and modifications to electronics and other facilities that ILECs normally perform for their retail customers.[120] Thus, if an ILEC "upgrades its own network (or would do so upon receiving a request from a [retail] customer), it may be required to make comparable improvements to the facilities that it provides to its competitors to ensure that they continue to receive at least the same quality of service that the [ILEC] provides to its own customers."[121] The parity requirements of Section 51.311(b) and 51.313(c) already mandate that network modifications be made so that CLECs can access underlying network elements or interconnect at the same level of quality or pursuant to the same terms and conditions, respectively, that an ILEC provides to itself.

Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Record 3696, ¶¶ 490-491 (1999) ("*UNE Remand Order*") (subsequent history omitted).

119 47 C.F.R. § 51.313(b); *see also Local Competition Order* ¶¶ 315-16.

120 *See, e.g., US West Communications, Inc. v. AT&T Communications of the Pacific Northwest*, Inc, 31 F.Supp.2d 839, 856 (D. Or. 1998) *rev'd and vacated in part on other grounds sub nom. US West Communications, Inc. v Hamilton,* 224 F.3d 1049 (9th Cir. 2000); *U.S. West Communications, Inc. v. Jennings*, 46 F.Supp.2d 1004, 1025 (D. Ariz. 1999).

121 31 F.Supp.2d at 856; *see also* 46 F.Supp.2d at 1025.

Consistent with the 8th Circuit decisions in *Iowa I*[122] and *Iowa II*,[123] this obligation does not, however, require that ILECs construct a superior network. In fact, courts recognize that ILECs are required to modify or expand their networks at existing quality levels and that the construction of new facilities does not necessarily mean providing a superior network.[124] Indeed, "new facilities could be necessary just to create equivalent interconnection and access."[125]

To elaborate, although *Iowa I* and *Iowa II* vacated the FCC's superior quality rules, these decisions did not absolve ILECs from their obligation to treat CLECs in a nondiscriminatory manner and at parity, as the Act[126] and FCC rules require,[127] with respect to routine network modifications and expansions that are needed so that CLECs can interconnect and access UNEs on an equivalent basis. Although *Iowa I* stated that the Act only requires unbundled access to an ILEC's existing network, "not to yet unbuilt superior one," [128] this statement does not stand for the proposition that an ILEC may refuse to perform routine network modifications and

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122 *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Cir. July 18, 1997) ("*Iowa I*").

123 *See Iowa Utilities Board v. FCC*, 219 F.3d 744, 758 (8th Cir. July 18, 2000) ("*Iowa II*").

124 *See Iowa I* at 813 n.33; *see also US West Communications, Inc. v, Minnesota Public Utilities Commission,* 55 F.Supp.2d 968, 983 (D.Minn. Mar. 30, 1999); 46 F.Supp.2d at 1025; 31 F.Supp.2d at 856; *US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc.*, 1998 WL 1806670 *4 (W.D. Wash. 1998); *MCI Telecommunications Corp. v. US West Communications, Inc.*, 1998 WL 34004509 *4 (W.D.Wash 1998).

125 55 F.Supp.2d at 983.

126 47 U.S.C. § 251(c)(3).

127 47 C.F.R. §§ 51.311(a)&(b) and 51.313(a)&(b); *see also Local Competition Order* ¶¶ 312 (stating that Act's requirement that ILECs "'provide nondiscriminatory access to network elements on an unbundled basis' refers to the physical or logical connection to the element and the element itself.") & 313 (finding that ILECs must provide access and UNEs that are at least equal-in-quality to what the ILECs provide themselves unless it is technically infeasible to do so which the ILEC must demonstrate); see also UNE Remand Order ¶¶ 490-491.

128 *Iowa I*, 120 F.3d at 812-13.

expansions in order to make an existing network element available as it does for itself and its retail customers.[129]

In fact, the decision does not suggest this at all. *Iowa I* holds that ILECs cannot be required to *substantially* alter their networks in order to provide superior quality interconnection or superior quality access to network elements.[130] Furthermore, the *Iowa I* court limited this holding and explained that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include *modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.*"[131] When the court revisited this decision in *Iowa II*, it simply reaffirmed its opinion. In doing so, the *Iowa II* court noted that its ruling was limited in its applicability because "*the Act prevents an ILEC from discriminating between itself and a requesting competitor with respect to the quality of interconnection provided.*"[132]

Hence, the crucial limitation established in the *Iowa I* and *Iowa II* decisions requires that an ILEC (in treating CLECs at parity and in a nondiscriminatory manner[133]) make those modifications to its facilities that are necessary to accommodate interconnection or access to network elements, but do not require the ILEC "to provide superior interconnection or access by

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129 *See, e.g.*, 31 F.Supp.2d at 856; 46 F.Supp.2d at 1025.

130 *See US WEST Communications, Inc. v. THOMS*, 1999 WL 33456553 *8 (S.D. Iowa Jan. 25, 1999) ("*US West*") (citing *Iowa I*, 120 F.3d at 813 n.33).

131 *See Iowa I*, 120 F.3d at 813 n.33 (emphasis added) (citing *Local Competition Order*, ¶ 198); *see also US West*, at *8 (noting that the Eight Circuit endorsed the FCC's statement that the obligations imposed by section 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities "to the extent necessary to accommodate interconnection or access to network elements"); 55 F.Supp.2d at 983 (same); 31 F.Supp.2d at 856 (same); 1998 WL 1806670 *4 (same); 1998 WL 34004509 *4 (same).

132 *See Iowa II*, 219 F.3d at 758 (emphasis added).

133 *See* 47 C.F.R. § 51.311(a)&(b) and 51.313(a)&(b); *see also, e.g.*, 46 F.Supp.2d at 1025; 31 F.Supp.2d at 856.

substantially altering its network."[134] As the Court in *US West* found, the proper interpretation of this limitation requires that the term "necessary" be given a meaning consistent with FCC precedent.[135] Significantly, the FCC deems equipment is "necessary" for interconnection or access to unbundled network elements within the meaning of 251(c)(6) "if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements."[136] Thus, applying this FCC definition of the word necessary within the context of the *Iowa I* and *Iowa II* limitation means that modifications or expansions to equipment is *necessary* because a CLEC cannot obtain interconnection or access to UNEs without them.

This is the precise situation that Covad faces with respect to Issues 19 and 24, and the limitation on *Iowa I* and *Iowa II* directly applies because Covad cannot access the associated DS1 and DS3 UNEs if Verizon does not make the same basic network modifications and expansions for CLECs that Verizon performs for its retail customers.[137] Because these

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134 *See US West* at *8.

135 *See also US WEST* at *8 (citing *Local Competition Order* at ¶ 59) (concluding that the state commission's interpretation of the word "necessary" as it applied to the *Iowa I* limitation was appropriate because it tracked the FCC's definition of necessary in the context of 251(c)(6)). Subsequent to this court's decision, the FCC modified its definition of the term necessary in the *Fourth Report and Order* as discussed herein. *See Fourth Report and Order* ¶ 21.

136 *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capacity*, CC Docket No. 98-147, Fourth Report and Order, FCC 01-204, 16 FCC Rcd 15435, ¶ 21 (rel. Aug. 8, 2001) ("*Fourth Report and Order*").

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

modifications are basic and routinely offered to Verizon's retail customers, such modifications do not involve substantial alteration to Verizon's network and may not be rejected on the grounds that the request involves providing superior interconnection or access. Indeed, Covad is not requesting that Verizon provision network facilities that are superior in quality to that which Verizon provides to itself or build a new, superior network; Verizon is already and routinely offering the same services to its retail customers. In short, these facilities are necessary to create *equivalent*, not "superior," quality of interconnection or access to network elements.

Verizon's contention that the FCC held that "the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for AT&T or other carriers" does not support Verizon's no facilities policy.[138] Any reference to this decision is inapposite to the issues being addressed here. In particular, when the FCC rendered that decision, it never considered whether Verizon would perform basic network modifications for its retail customers to provision dark fiber. Nor could it because dark fiber is not provided to retail customers. That is the critical and basic distinction between the issues being addressed here and the FCC's decision in the *Virginia Arbitration Award.* In this case, Covad seeks basic parity treatment to what Verizon provides to its own retail customers.

Relatedly, the FCC recognized in the *Virginia Arbitration Award* that "Verizon cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment, because the requesting

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responds to a CLEC request for high capacity UNEs that no facilities exist, Verizon instructs CLECs to purchase the identical facility out of a retail tariff.

[138] *See* Case No. 02-C-1175, Verizon's Response to Covad's Petition for Arbitration, Attachment B, Issues and Party Positions at 11-12 (October 7, 2002).

carrier is entitled to a fully functioning loop."[139] This decision quite clearly instructs that at least two of the six reasons Verizon consistently offers to avoid provisioning UNE DS1s – the need to place a multiplexer or adjust a multiplexer to increase capacity -- are *not* legitimate reasons for refusing to provision a loop.[140] Hence, to the extent that Verizon undertakes minor upgrades such as these to make DS1s available to its own retail end users, rather than reject their orders, Verizon's refusal to accord its CLEC wholesale customers comparable treatment is discriminatory and deprives CLECs of the ability to offer their own customers a competitive service.

The FCC's determination that Verizon must provide multiplexing because a carrier is entitled to a fully functioning loop clearly means that Verizon must ensure that the loop is fully functioning in other respects. For instance, when there is no repeater shelf in the Central Office or customer location or remote terminal or there is no apparatus or doubler case, Verizon must install them. Given that these are two additional reasons Verizon currently objects to provisioning a UNE order, the FCC has overruled Verizon's objections and has made clear that Verizon must install them; otherwise the loop will not be fully functioning.

The requirement that ILECs provide CLECs nondiscriminatory access to UNEs means that the ILEC must make UNEs available to CLECs for the CLECs to use in providing a finished

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139 *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 & 00-249, Memorandum Opinion and Order, DA 02-1731, ¶ 499, n.1658 (Chief, Wireline Competition Bureau rel. July 17, 2002) ("*Virginia Arbitration Award*").

140 Nonetheless, Verizon has indicated its intention to continue rejecting UNE loop orders due to no facilities where there is a need to place a multiplexer or to turn up a shelf or multiplexer to fill the order. In its September 19, ex parte to the FCC, Verizon again confirmed that it will not turn up, or reconfigure a shelf on an existing multiplexer or place a new multiplexer to provision UNE orders. See letter from Ann D. Berkowitz, Project Manager-

telecommunications service, on similar terms, at the same level of quality and within a similar time frame as the ILEC affords itself access to those same elements in order to provide the ILEC's customers with finished services. Under this analysis, federal law has consistently required ILECs to modify their network elements in order to allow CLECs access to the "features, functions, and capabilities" of those loops. As an example, the FCC determined that ILECs must remove load coils, bridged taps and other devices from copper loops in order to make the full functionality of the loop available to competitors.[141] As discussed above, the FCC has further stated that under its current rules, ILECs may not deny access to a loop UNE if there is no multiplexing equipment attached to the loop facility. Instead, the FCC found that the ILEC "cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, [the ILEC] must provide [and attach] the multiplexing equipment, because the requesting carrier is entitled to a fully-functioning loop."[142]

ILEC duties to upgrade and enhance facilities are not a new revelation under the Act. The FCC fully recognizes that the expansion or modification of facilities may be necessary to create equivalent access. For instance, with respect to access to rights-of-way, ILECs must provide CLECs with nondiscriminatory access to poles, ducts, conduits or rights-of-way.[143] The FCC has found that "because [ILECs] can expand [their] capacity to suit their needs, '[t]he principle of nondiscrimination established by section 224(f)(1) requires that it do likewise for

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Federal Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147 (filed Sep. 19, 2002).

141 *See* 47 C.F.R. § 51.319(a)(3).

142 *Virginia Arbitration Award* at ¶ 499, n.1658.

143 *See* 47 U.S.C. §§ 251(b)(4) & 224(f)(1).

telecommunications carriers....'"[144] Although the FCC declined to craft a rule categorically prescribing when a utility must expand an existing facility as requested versus when it may choose to decline on the basis of infeasibility,[145] it interpreted the Act "to require utilities to take all reasonable steps to accommodate requests for access in these situations. Before denying access based on a lack of capacity, a utility must explore potential accommodations in good faith with the party seeking access."[146]

Accordingly, Verizon has a duty under the Act, FCC rules and implementing orders, and applicable judicial determinations to make such network modifications or expansions because such changes are necessary to accommodate CLEC interconnection or access to network elements. Further, Verizon's failure to do so is patent discrimination because such network modifications do not involve providing superior access to network elements in that such modifications are routinely made to accommodate requests for services made by Verizon's retail customers.

B. The Commission Has The Authority Pursuant To Federal And State Law To Order Verizon To Upgrade Its Network In A Nondiscriminatory Manner.

Section 251(d)(3) of the Act prohibits the FCC from precluding the enforcement of state commission orders and regulations that establish access and interconnection obligations of ILECs so long as they are consistent with the Act. In pertinent part, Section 251(d)(3) states that:

> In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

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144 1998 WL 1806670 *4 (quoting *Local Competition Order* ¶ 1162); 1998 WL 34004509 *4 (same).

145 *Local Competition Order* ¶ 1163; *see also* 1998 WL 1806670 *4; 1998 WL 34004509 *4.

146 *Local Competition Order* ¶ 1163; *see also* 1998 WL 1806670 *4; 1998 WL 34004509 *4.

(A) establishes access and interconnection obligations of local exchange carriers;
(B) is consistent with the requirements of this section; and
(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.[147]

The FCC has explained and the Supreme Court has agreed[148] that Section 251(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs, as long as they meet the requirements of section 251 and the FCC's national policy framework. Therefore, the Commission is not prohibited from requiring Verizon to provide access to UNEs, UNE combinations, and relieve capacity constraints in a nondiscriminatory manner as requested by Covad.

C. Other Commissions Have Concluded That Customary ILEC Network Modifications Must Be Made To In A Nondiscriminatory Manner and To Accommodate Interconnection and Access To UNEs.

Several other state commissions have recognized that ILECs must make modifications to their networks to accommodate interconnection and access to network element. Furthermore, pursuant to the nondiscrimination requirements of the Act, states have required ILECs to make such upgrades to their network when the type of construction work involved constitutes, routine, normal work on the ILEC's existing network that the ILEC regularly performs for its customers. The Commission should accordingly follow suit in this regard.

Significantly, state commissions have rejected arguments that ILECs need not provide access to UNEs where there are no spare facilities or where equipment must be installed.[149] In

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147 47 U.S.C. § 251(d)(3).

148 *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 379 n.6 (1999) (stating "there is no doubt ... that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel").

149 *See, e.g., WorldCom Tech., Inc. v. Ameritech Michigan*, Case No. U-12072, Opinion and Order, 2000 WL 363350 at *3 (Mich. P.S.C. Mar. 3, 2000) (ordering Ameritech to install SONET electronics to provision a request for unbundled transport) ("*Michigan Order*"), *affd'd.*

such cases, state commissions have required ILECs to add capacity, either in the form of additional loop facilities, or the equipment needed for high capacity loops or transport. State commissions have even found ILEC statements that no facilities are available lack credibility because the evidence submitted in state proceedings suggests that lack of spare loops should be "an extremely rare occurrence" and that lack of spare facilities suggests inefficient plant management.[150] State commissions have also rejected arguments that the Act does not require ILECs to install equipment where existing bays or slots are exhausted.

Specifically, in *Michigan Bell Telephone v. WorldCom Technologies*, Ameritech contended that when an office bay is used to capacity, it may reject an order for unbundled transport because if it must add electronics, the facilities do not exist as required by the FCC's orders.[151] The Michigan Public Service Commission rejected this argument and held that,

> MCI Worldcom is not seeking access to a superior, unbuilt network, but access to the existing network with a technology that Ameritech Michigan itself uses. MCI WorldCom is not asking Ameritech Michigan to deploy facilities it does not use in providing service or to install facilities along new routes. It is not asking Ameritech Michigan to "build" facilities as that term is used in the industry. The Commission concludes that the [Act] requires Ameritech Michigan to provide transport facilities of the type that are currently in use, even if that requires the installation of additional electronics

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Michigan Bell Telephone v. WorldCom Tech., Inc., 2002 WL 99739 (Mich App. 2002); *U.S. West Comm. Inc.*, Docket Nos. UT-003022 & UT-003040, Commission Order, 2001 WL 1672340 *12 (Wash. U.T.C. July 24, 2001) (holding that the ILEC is still required to provide access to UNEs within its existing network even if it must construct additional capacity within its network to make the UNEs available to competitors) ("*Washington Order*").

150 *Illinois Commerce Commission On Its Own Motion v. Illinois Bell Telephone Company*, Docket No. 99-053, Order at 18, 21 (Aug. 15, 2000) ("*Illinois Order*").

151 *WorldCom Technologies Inc. v. Ameritech Michigan*, Case No. U-12072, Opinion and Order, 2000 WL 363350 at *3 (Mich. P.S.C. Mar. 3, 2000) ("*Michigan Order*").

at either end of the fiber.[152] The Washington Utilities and Transportation Commission ("WUTC") rendered a similar decision. In particular, it concluded that Qwest must construct new facilities to any location currently served by Qwest when similar facilities to those locations have exhausted.[153] The WUTC found where capacity is limited or at exhaust (similar to Covad's position regarding Issue 23), Qwest is required to either light additional fiber or change electronics to provide additional capacity in the same manner it would provide additional capacity for its own use. Finally, it held that Qwest is required to build facilities and provide electronics at competing carrier's wire centers so long as the carrier is located in Qwest's service area.

In addition, the Illinois Commerce Commission ("ICC") rejected the view that ILECs are not required to provide a network element as a UNE where the ILEC must engage in construction activities to do so. Ameritech had contended that loops are not available as UNEs unless all of the required components already exist in a fully connected fashion.[154] The ICC rejected Ameritech's cramped view of its unbundling obligations finding that Ameritech was required to provide the loop as a UNE even if this required some construction activity. The ICC stated:

> Ameritech's current definition [of "available"] does not provide (1) adequate parameters for determining in advance whether a UNE will be available and (2) a sufficient safeguard against discriminatory implementation. Under Ameritech's definition, a CLEC will not know if a UNE is available until it is told so by Ameritech. With regard to Ameritech's contention that its definition is consistent with the Eighth Circuit's determination that it is only obligated to provide unbundled access to its existing network, the Commission agrees with [CLECs] that the evidence presented indicates that CLECs have not sought access to a new

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152 *Michigan Order*, 2000 WL 363350 at *6 (citations omitted).

153 *US West Communications, Inc.*, Docket Nos. UT-003022 & 003040, 2001 WL 1672340 *12 (Wash. U.T.C. July 24, 2001) ("*Washington Order*").

154 *Illinois Order*, at 13-21.

> or superior network, but only access to the network that Ameritech presently owns and manages on a nondiscriminatory basis.[155]

Similarly, to prevent discrimination between Ameritech's retail and wholesale customers, the ICC ordered Ameritech to modify its tariff to include the following definition of when facilities are available:

> a facility is available if it "is located in an area presently served by" Ameritech. This definition, applicable to CLECs, retail customers, and Ameritech's affiliates, will discourage inefficient network management and enable those requesting facilities to more accurately predict whether such facilities will be available.[156]

In doing so, the Commission appropriately recognized that

> The definition of "available" is crucial to the determination of when Ameritech is obligated to provide a CLEC access to particular UNE facilities. If particular facilities are determined not to be "available," ILECs have no duty to provide CLECs access to such facilities. As a general proposition, it may be said that the narrower the definition, the fewer opportunities CLECs will have to compete. Accordingly, Ameritech has an incentive to narrowly define "available" so as to impair CLECs' ability to compete.[157]

Given the above decisions and problems occurring in Pennsylvania due to Verizon's "no facilities" policy, the Commission should follow this persuasive authority and order Verizon to upgrade its network for CLECs as it normally does for its retail customers.

D. In its 271 Orders, the FCC Has Not Determined Verizon's Discriminatory Provisioning Policy to Be Lawful.

Verizon contends that its no facilities policy is consistent with the Communications Act because the FCC has granted several of its Section 271 applications over CLEC objections to its no facilities policy. This is clearly a gross overstatement. In fact, in the FCC's most recent Verizon Section 271 Order, the FCC declined even to address the issue. Specifically, the FCC

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155 *Illinois Order* at 20.

156 *Illinois Order* at 21.

157 *Illinois Order* at 18.

stated: "Because of a lack of evidence, we do not address here whether an incumbent's refusal to provide high capacity loops where certain facilities have not been installed is, or is not, a clear violation of the Act of our rules."[158] In the 271 Orders Verizon cites, the FCC never specifically ruled that Verizon's conduct is permissible or consistent with the Act, the FCC only found that is not a *per se* violation of the Act. In rendering this decision, the FCC qualified that whether or not Verizon is violating the Act cannot be addressed in a 271 proceeding. The FCC emphasized emphatically that "new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve a *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding."[159]

E. Verizon's Claim That Its Tariff Provides the Necessary Relief Misses The Point.

In seeking to avoid the inclusion of the contract language in dispute with respect to Issue 19 and 24, Verizon contends that Covad is not entitled to such language because Verizon claims

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158 *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (D/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, Memorandum Opinion and Order, FCC 02-262, ¶ 114 & n.392 (rel. Sept. 25, 2002).

159 *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, FCC 01-269, ¶ 92 (rel. Sept. 19, 2001) (citing other section 271 orders).

Covad is attempting to expand its unbundling obligations under federal law by requiring Verizon to build facilities in order to provision Covad's UNE orders.[160]

What Verizon fails to acknowledge is that state commissions recognize that CLECs are not "prohibited from negotiating terms, conditions and rates that different from Verizon's tariff where circumstances may require a divergence (i.e., where the tariff does not address the unique needs of a given CLEC)."[161] In this instance, Covad requires nondiscriminatory access to UNEs as described above that requires Verizon to provide the same basic network modifications that it routinely performs for its retail customers. Verizon's tariff does not provide for this. In addition, Covad should not have to wait until Verizon decides to file a tariff revisions for Covad to receive what it is entitled to pursuant to Applicable Law. The contract language that Covad requests is simple and clearly establishes this obligation. For instance, in section 1.2 of the UNE attachment, where Verizon states that "Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination," Covad requests that it state that Verizon shall have no obligation to construct or deploy new facilities to offer any UNE or Combination "except to the extent that such UNE or Combination would be constructed or deployed, upon the request of a Verizon end user."[162] With respect to section 3.6 of the UNE attachment, Verizon's language provides that "Verizon will not build new copper facilities." Covad requests that this be changed so that it reads "Verizon will not build new copper facilities, except to the extent it does so for its own customers. Verizon will relieve capacity constraints in the loop network to provide IDSL loops to the same extent and on the same rates, terms, and

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160 Verizon Response to Covad Petition for Arbitration, Docket No. A-310696F7000, 7001, pp. 11-12, ¶ 19.

161 *AT&T NY Arbitration Award* at n.6.

conditions that it does so for its own customers."[163] With respect to section 16, Verizon's language states that "To the extent Verizon is required by Applicable Law to provide a Combination to Covad, Verizon shall provide such Combination in accordance with the terms, conditions, and prices for such Combination as provided in Verizon PUC Tariff No. 16, as amended from time to time." Covad requests additional language following this statement that provides, "To the extent that Verizon PUC Tariff No. 16 Tariff does not reflect the current state of Applicable Law, Verizon will provide combinations in whatever manner is necessary to comply with Applicable Law."[164]

For the reasons set forth above, the Commission should order Verizon to provide Covad with nondiscriminatory access to UNEs and UNE combinations consistent with Applicable Law. In rendering this decision, the Commission should make clear that Verizon is required to provide the same network modifications and expansions for Covad as Verizon performs for its retail customers.

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

Covad Request: Verizon should be required to provide appointment windows, waive its nonrecurring dispatch charge for the first missed appointment and pay additional missed appointment fees for any subsequent missed appointments for the same end user.

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162 *See* Verizon's Response to Covad Petition for Arbitration, Attachment A Proposed Language Matrix at 8.

163 *See* Verizon's Response to Covad Petition for Arbitration, Attachment A Proposed Language Matrix at 10-11.

164 *See* Verizon's Response to Covad Petition for Arbitration, Attachment A Proposed Language Matrix at 26.

Like any provider of a service that requires installation in the end-user's home or business, Verizon should be obligated to provide its customer (Covad) a commercially reasonable appointment window when it will deliver the product (the loop). Verizon should waive the nonrecurring dispatch charges when it fails to meet this committed timeframe. If Verizon misses additional appointment windows for that same end-user, Verizon should pay Covad a missed appointment fee equivalent to the Verizon non-recurring dispatch charge.

The ability to schedule appointments is a powerful tool that Verizon possesses vis-à-vis CLECs. The day when a carrier could tell a customer they will deliver a product sometime during a certain day is long gone. Customers today demand precise appointment windows and have little tolerance for carriers that fail to meet such windows. The penalty for either failure to provide an appointment window or failure to meet the appointment window will be the potential loss of the customer. Since Covad and other CLECs are dependent on Verizon for installation of loops, Verizon's failure to provide appointment windows to CLECs for delivery of the product or a failure to meet the appointment would be very detrimental to the CLEC's interests.

Verizon should be obligated to provide its customer (Covad) a commercially reasonable appointment window when it will deliver the product (the loop). Verizon should be required to provide Covad with either a morning ("AM") or afternoon ("PM") appointment window. Verizon provides morning or afternoon appointments for its retail operations.[165] By clarifying the time that the customer needs to be available, AM or PM appointment windows would make a contribution toward limiting the number of Verizon dispatches that result in "no access" situations, *i.e.*, those situations where Verizon cannot gain access to the end user's premises to complete the installation. No access is a problem because it causes a significant delay in service

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165 *See* Exhibit 1 at Issue 22.

installation.[166] Covad's end users have to stay home more than one time for Verizon to complete its installation, which makes Covad's end users and customers frustrated and unhappy. Subsequent appointments are often at least a week later than the original date, thus, adding more delay.[167] In some instances, end users report that they were indeed home when Verizon reported the no access.[168] This puts us in a "he-said, she-said" situation with our customers. Also, Covad incurs a financial penalty from the ILEC for each no access situation and for the processing to generate the new date.[169] Covad has every incentive, therefore, to reduce the no access problem. While Covad has been successful in reducing no access, limiting the appointment time can further reduce no access situations.

In addition, imposing a penalty on Verizon for missed appointments would provide an incentive for Verizon to meet the appointment that is similar to the incentive Covad already has to make sure its customers are present when Verizon arrives. For instance, the New Hampshire Public Service Commission determined that symmetry was needed in the levying of charges for unnecessary trouble shooting by CLECs and Verizon.[170] Verizon would impose a charge on CLECs if the CLEC filed a trouble report and Verizon determined the problem is not in its network. The New Hampshire PSC found that a similar service charge should be assessed on Verizon when it erroneously reports that the trouble was not on Verizon's network.[171] This Commission should likewise penalize Verizon if it fails to meet an appointment window in the

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166 *See* Exhibit 1 at Issue 22.

167 *See* Exhibit 1 at Issue 22.

168 *See* Exhibit 1 at Issue 22.

169 *See* Exhibit 1 at Issue 22.

170 *Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996*, New Hampshire Public Service Commission Docket DT 97-171, Order Addressing Motions for Reconsideration, Order No. 23,847 at 57-59 (Nov. 21, 2001).

same manner that Covad is currently penalized for "no access" situations. This will provide both parties equal incentive to ensure the customer receives a timely installation.

Covad and Verizon have used the AM and PM appointment window structure in the past to help resolve technician meet problems.[172] In the past, Verizon and Covad had difficulties successfully scheduling technician meets to resolve ongoing trouble reports. Verizon and Covad decided to schedule these as the first job in the morning or the first job after the lunch break. As a result of the AM/PM scheduling, the number of meetings where the appointments were met significantly increased such that this is no longer considered a problem.[173] When the same issue arose in Verizon West, this solution, developed in Verizon East, was employed. Technician meet scheduling is no longer an issue for Operations in Verizon or in Covad.[174]

The problem of missed appointments is of such competitive significance that both the FCC and this Commission have placed tremendous importance on the issue. The FCC has proposed to track advance jeopardy notices as one of twelve key performance measurements and standards for evaluating an incumbent LEC's performance in provisioning wholesale facilities and services to competitors.[175] An advance jeopardy notice is a notice from the ILEC that it will miss the assigned due date for the order. This notice enables the CLEC to inform its customer that the appointment will not be met. By making this one of 12 measures to track, the FCC clearly recognizes the impact of missed appointments on a CLEC's ability to compete.

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171 *Id.* at 59.

172 *See* Exhibit 1 at Issue 22.

173 *See* Exhibit 1 at Issue 22.

174 *See* Exhibit 1 at Issue 22.

175 *FCC Seeks to Establish National Performance Standards for Telecom Carriers' Wholesale Operations*, FCC Press Release, Attachment at 1 (Nov. 8, 2001).

The New York Commission has also placed great emphasis on utilities meeting appointments. For instance, the Commission has previously established incentive programs designed, among other things, to improve a utility's record in honoring service appointments with its customers. Central Hudson Gas & Electric operated under one such program in which, upon its failure to meet a customer within its designated appointment window, the company would credit $20 to the customer's account. This applied to both residential and commercial customers. The company was also required to send a letter apologizing for the missed appointment.[176] The Commission also required telephone companies to provide rebates under certain conditions when an installation appointment was missed.[177] Covad requests the same treatment.

Verizon has been required to use appointment windows for certain types of CLEC orders. For instance, the New York Commission directed that Carrier Guidelines be modified to reflect:

> An agreement that the parties have tentatively reached on a four-hour window for hot-cuts involving lines served by integrated digital loop carrier (IDLC). A hot-cut line served by IDLC requires a field dispatch to convert the line to alternate facilities, and a second dispatch at the time of the appointment to perform the hot-cut. The agreement allows Bell Atlantic-New York to set an AM or PM appointment for these hot cuts, consistent with its retail appointment windows where a field dispatch is required. This, in effect, gives Bell Atlantic-New York a four-hour window to complete an order of one to nine lines. The four- hour window applies only on orders for which it has notified the CLEC by 2:30 pm, two days prior to the due date (DD-2), of the presence of IDLC, so that the CLEC can notify its customer of the extended appointment window. If Bell Atlantic-New York fails to notify the CLEC by 2:30 pm eastern time on DD-2, the standard interval applies for metric scoring purposes.[178]

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176 *Re Central Hudson Gas & Electric Corporation*, Case No. 95-G-1034, Order Approving Settlement, 1997 WL 257604, *2 (1997).

177 *Service Quality Standards for Telephone Companies*, Case 97-C-0139, Order, 2000 WL 1793146 (2000).

178 *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139, Order Establishing Additional Inter-Carrier Service

The New York Commission has required Verizon to provide rebates on installation charges and other charges when it missed appointments for either its wholesale or retail customers in regard to special services. That Commission found that Verizon remained the dominant provider of facilities for special services, that Verizon's provisioning performance for special services was below Commission targets, and that the record suggested that in providing special services Verizon treated other carriers less favorably than its own end users.[179] The Commission directed Verizon to file a warranty tariff that would provide rebates to customers whose appointments are missed by Verizon. The intent of the warranty tariff is to provide recompense to those who receive poor service. On December 4, 2000, Verizon filed a tariff introducing a High Capacity Service Provisioning Warranty Plan. The purpose of this tariff was to waive installation charges and the first month's recurring charges for selected Special Services should Verizon fail to meet the "confirmed due date" of the installation.[180]

To ensure nondiscriminatory service, the NYPSC Commission determined that competitors ordering Special Services should qualify for the same waiver of charges as Verizon's end user customers. Therefore, Verizon was directed to amend the tariff language such that rebates applied to carriers who place orders with Verizon for their own customers, or themselves. In addition, Verizon was directed to modify the tariff to state that a rebate should be

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Quality Guidelines and Granting in Part Petition for Reconsideration, Clarification and Stay, 1999 WL 1276830 (1999).

179 *Re Verizon New York Inc.*, Cases No. 00-C-2051 and 92-C-0665, Order, 2001 WL 1131900 (June 15, 2001)

180 *Id.*

made whenever Verizon not only misses a confirmed date, but also proposes to change a confirmed due date.[181]

Thus, there is strong state commission precedent for requiring Verizon to not only provide appointment windows, but also to require to waive its nonrecurring dispatch charge for the first missed appointment, and pay additional missed appointment fees for any subsequent missed appointments for the same end user.

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

Covad Request: Covad requests that the ALJ approve the use of ANSI standards for definitions of ISDN, ADSL and HDSL loops in the agreement, rather than Verizon's in-house definitions.

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

Significantly, the FCC recognizes that industry standards bodies are appropriate bodies to help foster the deployment of advanced services consistent with section 706 of the Act and has mandated that ILECs abide by them rather than imposing their own rules.[182]. The FCC rendered this decision because it did not want ILECs to unilaterally dictate what standards applied. Instead, it wanted "competitively neutral spectrum compatibility standards and spectrum

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181 *Id.*

182 *Line Sharing Order* ¶ 179-180.

management rules and practices."[183] In deriving the rules, the FCC stated by establishing, minimal ground rules now, we enable the industry, through its standards-setting bodies, to develop spectrum compatibility standards and spectrum management practices on a continuously ongoing basis, with our assumption of the standards-setting function only in extreme cases where industry standards bodies continue to fail in upholding the general policies that underlie spectrum compatibility standards and spectrum management rules and practices.[184] The FCC reiterated its "belief that industry standards bodies can, and should, create acceptable standards for deployment of xDSL-based and other advanced services."[185] The FCC concluded that the "ATIS [Alliance for Telecommunications Industry Solutions] standards setting processes, which may culminate ultimately in the ANSI [American National Standards Institute] standards approval process, are facially neutral, open to all interested parties, and contain safeguards against domination by any one particular interest."[186] The FCC therefore presumes, in accordance with this decision and FCC rule 51.230(a) that was promulgated as a result of it, advanced service loops are acceptable so long as industry standards are met.

In effectuating this decision in an arbitration context, the FCC, in the *Virginia Arbitration Award*, required Verizon to "comply with all applicable national and international industry standards (e.g., ANSI and ITU) for the provision of advanced services."[187] The FCC also found that "referencing applicable standards is preferable to actually articulating the standards in the

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183 *Line Sharing Order* ¶ 180.

184 *Line Sharing Order* ¶ 179.

185 *Line Sharing Order* ¶ 183.

186 *Line Sharing Order* ¶ 183.

187 *Virginia Arbitration Award* ¶ 480.

contract, because the standards may change over time."[188] Moreover, the FCC explained that parties shall "work cooperatively, using industry standards, to minimize interference and cross talk."[189] Some of the contract language that the FCC adopted includes the following,

> 4.2.9 Compliance with Industry Standards. Verizon shall adopt and comply with all applicable national and international industry standards, including those adopted and amended from time to time by ANSI and ITU respectively, for the provision of advanced services.[190]

In the Virginia arbitration, the FCC never "split the baby" and allowed Verizon to impose its discretionary standards along with Industry Standards in provisioning advanced service loops. The FCC's specific and unequivocal mandate was that Verizon comply solely with Industry Standards for the provision of advanced services. Hence, Verizon's proposal that its own in-house provisioning terms, as specified in (Verizon Technical Reference 72575), apply should be rejected because it is inconsistent with federal law.

In addition, Verizon's proposal merely creates potential for confusion and mis-interpretation of each parties' respective rights under the agreement. Furthermore, Verizon's use of in-house definitions, which it may unilaterally revise and change, creates the potential for conflicts between Verizon's interpretations of general, widely used terms such as ISDN, ADSL and HDSL loops, and generally accepted industry-wide definitions. For these reasons, ALJ should reject Verizon's request to include its in-house standards in the definitions of ISDN, ADSL and HDSL loops in the agreement.

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188 *Virginia Arbitration Award* ¶ 480.

189 *Virginia Arbitration Award* ¶ 480.

190 *Virginia Arbitration Award* ¶ 480 (adopting language in WorldCom's November Proposed Agreement to Verizon, Part C Attach III, § 4.2.9); see FCC Docket No. 00-218, WorldCom's Nov. 13, 2001 filing.

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

Covad Request: The Agreement should reflect applicable law regarding deployment of services that either (1) fall under any of the loop type categories enumerated in the Agreement or (2) do not fall under any of the loop type categories.

The Commission should adopt Covad's contract language because Covad has the right pursuant to Applicable Law to deploy over UNE loops any advanced services that comply with industry standards or have been approved by relevant authorities. Covad's language is consistent with Applicable Law, namely 47 C.F.R. § 51.230, and Covad anticipates that spectrum management law is likely to change during the term of the Agreement as a result of proposed industry proposals presently before the FCC, and agreed to by both Covad and Verizon.[191] Therefore, the Agreement should generically reference Applicable Law in order to capture automatically the current and future state of the law.

Specifically, FCC rule 51.230(a) provides that,

> (a) An advanced services loop technology is presumed acceptable for deployment under any one of the following circumstances, where the technology:
> (1) Complies with existing industry standards; or
> (2) Is approved by an industry standards body, the Commission, or any state commission; or

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[191] *See* Exhibit 9, NRIC V FG3 Recommendation #7: Exchange of spectrum management information between loop owners, service providers and equipment vendors (dated Nov. 27, 2001); *see* Exhibit 1 at Issue 24.

(3) Has been successfully deployed by any carrier without significantly degrading the performance of other services.[192]

When it established these and other spectrum management rules, the FCC declared that ILECs "may not unilaterally determine what technologies may be deployed [over UNE loops]."[193] The FCC concluded the better approach is to "establish competitively neutral spectrum compatibility standards and spectrum management rules and practices so that all carriers know, without being subject to unilateral incumbent LEC determinations, which technologies can be deployed and can design their networks and business strategies accordingly."[194] Because the FCC does not give ILECs unilateral control in this regard, the FCC's spectrum management rules are fully harmonious with FCC Rule 51.309(a) that prohibits an incumbent LEC from imposing "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements, that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends."[195]

Covad's proposed contract language effectuates its rights under 51.230(a)(1) & (2),[196] seeking contract language that simply allows it to deploy technology, which is consistent with

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192 47 C.F.R. § 51.230(a).

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

194 *Line Sharing Order* ¶ 180 (citing *Advanced Services First Report and Order and FNPRM*).

195 47 C.F.R. § 51.309(a).

196 Covad does not seek contract language pursuant to 51.230(a)(3) that permits it to deploy advanced services loop technology if it has successfully deployed it elsewhere

existing or future industry standards and/or Applicable Law, over UNE loops. This is consistent with the *Virginia Arbitration Award*, in which the FCC required Verizon to "comply with all applicable national and international industry standards (e.g., ANSI and ITU) for the provision of advanced services."[197] The FCC also found that "referencing applicable standards is preferable to actually articulating the standards in the contract, because the standards may change over time." Covad's proposed contract language does just that. Furthermore, Covad's request that the contract refer to "Applicable Law" is consistent with the FCC's finding in the *Virginia Arbitration Award* that contractual language that refers to "applicable law" is sufficient to protect rights and obligations of the parties.[198] Given this, Verizon's position and refusal to adopt Covad's proposed contract language is at odds with FCC rules and decisions.

Moreover, Verizon has failed to meet its burden to show that Covad may not provision over UNE loops advanced service technologies that are consistent with national standards and/or Applicable Law. Specifically, FCC rule 230(b) provides that,

> An incumbent LEC may not deny a carrier's request to deploy a technology that is presumed acceptable for deployment unless the incumbent LEC demonstrates to the relevant state commission that deployment of the particular technology will significantly degrade the performance of other advanced services or traditional voiceband services.[199]

Verizon has not provided nor could it provide evidence that Covad's deployment of technologies that meet industry standards and/or Applicable Law and are provisioned over Verizon's UNE loops, will significantly degrade the performance of other advanced or traditional voice services in a Verizon binder group. Because of Verizon's failure in this regard, Verizon's contract language is entirely inappropriate.

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197 *Virginia Arbitration Award* ¶ 480.

198 *Virginia Arbitration Award* ¶ 477.

Verizon's arguments in support of its contract language are unavailing.[200] In its position statement, Verizon argues (with respect to Covad's request to have the right, under Applicable Law, to deploy services that fall under the any of the loop type categories enumerated in the Agreement) that Covad's proposed changes to the Agreement would substantially impair Verizon's ability to ensure that the various services provided over loops in a binder group, or in adjacent binder groups, do not interfere with each other.

Despite these contentions, Verizon is in defiance of the FCC rules and implementing orders if Verizon attempts to impose limitations, restrictions, requirements, or otherwise control CLEC deployment of advanced service technologies over UNE loops in a binder group. As explained above, FCC rule 51.309 strictly prohibits Verizon from doing so. In addition, FCC Rule 51.232(a) provides that "With the exception of loops on which a known disturber is deployed, the incumbent LEC *shall be prohibited from designating, segregating, or reserving particular loops or binder groups for use solely by any particular advanced services loop technology*."[201] Tellingly, the only known disturber is analog T-1.[202] Hence, Verizon's position is contrary to law because Verizon seeks the power to designate, segregate, or reserve particular loops or binder groups for advanced services technology that Covad deploys over Verizon UNE loops.

Notably, when it established rule 51.232, the FCC recognized that "if we vest in incumbent LECs the right to manage binder groups unfettered, we will provide ample opportunity for incumbent LECs to discriminate against the introduction of new technologies

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199 47 C.F.R. § 51.230(b).

200 Case No. 02-C-1175, Verizon's Response to Covad's Petition for Arbitration, Attachment B, Issues and Party Positions at 14 (October 7, 2002).

201 47 C.F.R. § 51.232(a) (emphasis added).

and/or institute binder configurations which significantly favor their own deployed technologies.[203] The FCC further stated that it "must limit segregation practices to known disturbers [i.e., analog T-1], because only the interference risks of mixing known disturbers with other technologies outweigh the risks of anticompetitive segregation practices."[204] The FCC further urged "carriers to discontinue deployment of known disturbers, and [it] emphasized that carriers should, to the greatest extent possible, replace known disturbers, including analog T1, with new and less interfering technologies."[205]

Significantly, the FCC flatly rejected Verizon's (formerly Bell Atlantic's) request for reconsideration of this very issue on the basis that such a determination was inconsistent with "first-in-time" precedent. In the *Line Sharing Reconsideration Order*, the FCC stated that:

> We also reject Bell Atlantic's argument that the Commission's decision to permit newly deployed technologies to prevail against "known disturbers" in interference disputes is inconsistent with its "first-in-time" precedent. We find that the *Line Sharing Order* provides a limited exception to our "first-in-time" interference precedent that is reasonable based on the intent of section 706 of the Act and our policy goal, supported by the record, that deployment of innovative technologies that will result in less interference should not be disadvantaged by favoring known disturbers like AMI T1. As we stated in the *Line Sharing Order,* any approach to resolving interference disputes that favors incumbent LEC services in a manner that automatically trumps, without further consideration, innovative services offered by new entrants is neither consistent with section 706 nor with the Commission's goals as set out in the *Advanced Services First Report and Order.* With respect to known disturbers, we sought to ensure that "noisier" technologies that are at or near the end of their useful life cycles do not perpetually preclude deployment of newer, more efficient and spectrally compatible technologies.[206]

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202 *Line Sharing Order* ¶ 214.

203 *Line Sharing Order* ¶ 215.

204 *Line Sharing Order* ¶ 216.

205 *Line Sharing Order* ¶ 220.

206 *Line Sharing Reconsideration Order* ¶ 54 (footnotes omitted).

Consistent with the FCC rules and the supporting policy reasons, Verizon's desire to dictate the services provided over its loops as its contract language currently provides must be rejected.

Verizon further submits that it needs to know which types of technology that Covad is putting on a given loop because it may need such information in order to address interference problems or for trouble shooting and repairs, for which Verizon is held to performance standards. This argument is, however, irrelevant as to whether Verizon can lawfully control the advanced services Covad provides over a loop. The law is clear on this latter point — Verizon cannot. Covad is not arguing that it will not provide the requisite information when Verizon is legally entitled to it and Covad is willing to give Verizon such information pursuant to Applicable Law, i.e., FCC Rule 51.231(b); however, Verizon has no authority, as discussed above, to deny, limit, or otherwise restrict a UNE request based on this information. Furthermore, Verizon cannot require that Covad order and deploy services based on Verizon's prefabricated selection. Significantly, Covad's future legal obligation to provide Verizon any information pursuant to FCC Rule 51.231(b) will be short lived because industry has recommended that this rule be rescinded.[207] Notably, NRIC V FG3 recommends "the exchange of spectrum management and spectral compatibility related information...is not required at the time the loop is provisioned."[208]

Given that this FCC rule will inevitably change, Covad's reference to Applicable Law is appropriate and ensures that that the Agreement comports with any changes in law that may occur in the future.[209] Moreover, to the extent that Verizon believes that significant degradation of other services are being caused by advanced services that Covad provides over Verizon's

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207 *See* Exhibit 9, NRIC V FG3 Recommendation #7: Exchange of spectrum management information between loop owners, service providers and equipment vendors, at 2.

208 *See* Exhibit 9, NRIC V FG3 Recommendation #7: Exchange of spectrum management information between loop owners, service providers and equipment vendors, at 2.

UNE loops, the FCC has established a process and has enacted specific rules that govern what should take place if this occurs.[210]

In its position statement, Verizon further argues (with respect to whether Covad has the right, under Applicable Law, to deploy services that do not fall under of the loop type categories listed in the Agreement) that Covad should submit a bona fide request if it wants to deploy a brand new loop type or technology. Verizon submits that this process is entirely consistent with 47 C.F.R. § 51.230, which does not presume that as-yet undeveloped loop types and technologies are acceptable for deployment. Again, Verizon's arguments are incorrect and its position runs afoul of the FCC rules 51.230 and 51.309 and the policies behind them. Specifically, Covad is not requesting to deploy technologies over Verizon's facilities *that do not comply with industry standards and/or Applicable Law.* As explained above, Verizon has no legal basis to control the type of services Covad provides over a UNE loop so long as Covad's services comply with industry standards and/or Applicable Law. However, based on Verizon's position, it is evident that Verizon wishes to do so in violation of FCC rule 51.309 and regardless of whether the advanced services Covad deploys over UNE loops comply with FCC rule 51.230.

Moreover, Verizon's contention that Covad must use the BFR process is entirely unreasonable and burdensome.[211] Notably, the FCC and the Connecticut Department of Public Utility Control (Connecticut DPUC) have come to the same conclusion. In particular, in the *Virginia Arbitration Award*, the FCC found that the BFR process places an unreasonable burden

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209 *See* Exhibit 1 at Issue 24.

210 *See* 47 C.F.R. § 51.233.

211 *See* Exhibit 1 at Issue 24.

on CLECs.[212] Surely Covad's request to obtain what it is entitled to pursuant to Applicable Law should not be contingent upon going through such a burdensome and time-consuming process. In addition, the Connecticut DPUC held that SNET could not require a CLEC to submit a BFR when advanced services are ordered and that requiring a CLEC to submit to the BFR process delays the CLECs entry into the marketplace.[213] Given these decisions and the basis behind them, it is evident that relegating Covad to the BFR process when it orders advanced services is contrary to law because it would severely impede Covad's ability to compete and would unduly burden Covad's right to access loops.

For the foregoing reasons, the FCC rules and the related decisions referenced herein fully support Covad's position and its proposed contract language. The Commission should therefore adopt Covad's contract language.

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

Covad Request: Verizon should be obligated to maintain or repair loops using standards that are at least as stringent as the standards it uses in maintaining or repairing the same or comparable loops for itself, or in the alternative, applicable industry standards for maintaining or repairing such loops.

Consistent with the nondiscrimination provisions of the Act, Verizon should be obligated to maintain or repair loops using standards that are at least as stringent as the standards it uses in

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212 *Virginia Arbitration Award* ¶ 435 (concluding that the BFR process would place an unreasonable burden on WorldCom's right of access to subloops at the FDI."); ¶ 423 and n.1394 (finding "[t]he time it would take Verizon to decide whether or not to grant AT&T's BFR, plus the additional time needed to develop a price, would constitute an unreasonable burden on AT&T's access to inside wire subloop.").

maintaining or repairing the same or comparable loops for itself or applicable industry standards for maintaining or repairing such loops. Covad seeks parity treatment to the extent that Verizon maintains and repairs comparable services. However, to the extent that Verizon does not provide a comparable service to its end users or industry standards are more stringent, Covad simply requests that the industry standards that apply when Verizon provisions a loop apply when Verizon maintains and repairs it.

Notably, Verizon agrees in the Interconnection Agreement to provision DSL loops in accordance with certain industry standards. For instance, in the Unbundled Network Element Attachment, Sections 3.3.1 and 3.3.2 the Agreement provide that,

> 3.6 "2-Wire IDSL-Compatible Metallic Loop" consists of a single 2-wire non-loaded, twisted copper pair that meets revised resistance design criteria. This UNE loop is intended to be used with very-low band symmetric DSL systems that meet the Class 1 signal power limits and other criteria in the draft ***T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3)*** and are not compatible with 2B1Q 160 kbps ISDN transport systems.
>
> 3.7 "2-Wire SDSL-Compatible Loop" is intended to be used with low band symmetric DSL systems that meet the Class 2 signal power limits and other criteria in the draft ***T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3)***. This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets Class 2 length limit in T1E1.4/2000-002R3 or alternately, connecting equipment should conform to the limits for SMC2 in T1-417-2001.[214]

Moreover, Verizon defines Asymmetrical Digital Subscriber Line ("ADSL") as "[a] transmission technology on twisted pair copper Loop plant, which transmits an asymmetrical digital signal of up to 8 Mbps to the Customer and up to 1mbps from the Customer, as specified in ***ANSI standards T1.413-1998 and Bell Atlantic Technical Reference TR-72575***."[215] Given this, Covad's request that the Interconnection Agreement specify that Verizon will maintain and

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214 *See* Interconnection Agreement, Unbundled Network Element Attachment, §§ 3.6 and 3.7 (emphasis added).

215 *See* Interconnection Agreement, Glossary, §§ 2.3 (emphasis added).

repair the loops in accordance with such standards is absolutely appropriate. Also, as discussed earlier (Issue 24A), standard T1E1.4/2000-002R3 was a draft standard. This draft standard should be replaced in the contract and reference the current Spectrum Management Standard T1.417-2001, which provides a more up-to-date yardstick for determining how new DSL technologies can be deployed.

Verizon's refusal to incorporate such language in the Interconnection Agreement is unreasonable. Without such language, Verizon has the ability to undermine Covad's relationships with its customers by *not* maintaining and repairing the loops in the manner Verizon *originally* provisioned them. Customers expect and are entitled to receive the industry standard quality of service that was originally provisioned despite later repairs or maintenance performed over the line. Notably, Verizon's recognition that it must provision industry standard loops pursuant to the Interconnection Agreement, as shown above, and FCC rules,[216] as explained below, means absolutely nothing because the terms and conditions of the Interconnection Agreement do not prohibit Verizon from degrading the quality of the loop below industry standards when Verizon maintains or repairs it.[217] For instance, after provisioning a loop in accordance with industry standards, Verizon could maintain and repair a Covad loop at parity with a non-comparable Verizon service which is entirely improper because different maintenance and repair standards, i.e., industry standards, apply. [218] Performing maintenance and repair at parity in these instances is entirely inappropriate because it would cause a material

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216 *See* Interconnection Agreement, § 31.1 ("Verizon shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including but not limited to, Section 251(c) of the Act") .

217 *See* Exhibit 1 at Issue 26.

218 *See* Exhibit 1 at Issue 26.

degradation of service over the loop.[219] Indeed, under the Agreement, Verizon has the ability to unilaterally depart from industry standards immediately after provisioning a loop and Covad will have no recourse.

Covad has experienced incidents in which Verizon evidently changed the underlying facility make-up of UNE Loops that had been provisioned by Covad, and delivered to an end user providing a particular quality of service.[220] Following Verizon maintenance activity, on that loop or an adjacent loop in the terminal, the quality of service delivered to the end user materially declined.[221] Verizon is proposing to be permitted to unilaterally change the characteristics of a service, even to the point where the service no longer functions in accordance with industry standards, immediately after provisioning a loop.

Neither end users nor CLECs should be subject to Verizon's bait and switch tactics. Moreover, Covad and other CLECs should not be vulnerable to losing of customer goodwill from such tactics.[222] Furthermore, by failing to maintain loops at industry standards, Verizon is limiting the services that competitors can provide to only the services Verizon provides to itself and is hampering its competitors ability to commit to service level agreements with customers.[223] Such behavior limits one of the effects of competition, i.e., improvement of service quality. As a result, consumers will be deprived of meaningful competition.[224] Thus, for the same reasons Verizon is required to provision industry standard loops, it should also be required to maintain and repair loops in accordance with industry standards.

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219 *See* Exhibit 1 at Issue 26.

220 *See* Exhibit 1 at Issue 26.

221 *See* Exhibit 1 at Issue 26.

222 *See* Exhibit 1 at Issue 26.

223 *See* Exhibit 1 at Issue 26.

Covad's request is consistent with interconnection agreements between Verizon and AT&T that include parity maintenance and repair standards for comparable or equivalent services and absolute standards where Verizon does not provide such services.[225] Moreover, the Pennsylvania Carrier-to-Carrier Guidelines are based on parity standards where Verizon has an analogous retail service and absolute standards where no retail analog exists.[226] In this case, rather than request absolute standards, Covad requests industry standards because they "may change over time" as the FCC has recognized.[227]

Covad makes this request because it predominantly provides advanced services over UNE loops and requires that Verizon maintain and repair its facilities in manner that is consistent with industry standards if Verizon does not offer a comparable advanced service or if industry standards are more stringent. The FCC recognizes that industry standards bodies are appropriate bodies to help foster the deployment of advanced services consistent with section 706 of the Act and has mandated that ILECs abide by them.[228] The FCC rendered this decision because it did not want ILECs to unilaterally dictate what standards applied. Instead, it wanted "competitively

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224 *See* Exhibit 1 at Issue 26.

225 *See Petition of AT&T Communications of New York, Inc. for Arbitration of an Interconnection Agreement with New York Telephone Company*, Case No. 96-C-0723, Order Concerning Performance Standards and Associated Remedies at 2 (N.Y. P.S.C. Feb. 3, 1998) (explaining that "[a]bsolute standards are provided where New York Telephone does not provide a comparable service to its end users, and "parity" standards are provided for comparable or equivalent services"); *see also AT&T NY Arbitration Award* at 17 (ordering that the performance metrics "shall continue in effect").

226 *See Proceeding on Motion of the Commission to Review Service Quality Standards or Telephone Companies*, Case No. 97-C-0139, Order Adopting Inter-Carrier Service Quality Guidelines, at 2 (N.Y. P.S.C. Feb. 16, 1999).

227 *Virginia Arbitration Award* ¶ 480.

228 *Line Sharing Order* ¶ 179-180.

neutral spectrum compatibility standards and spectrum management rules and practices."[229] In deriving the rules, the FCC stated by establishing, minimal ground rules now, we enable the industry, through its standards-setting bodies, to develop spectrum compatibility standards and spectrum management practices on a continuously ongoing basis, with our assumption of the standards-setting function only in extreme cases where industry standards bodies continue to fail in upholding the general policies that underlie spectrum compatibility standards and spectrum management rules and practices.[230] The FCC reiterated its "belief that industry standards bodies can, and should, create acceptable standards for deployment of xDSL-based and other advanced services."[231] The FCC concluded that the "ATIS [Alliance for Telecommunications Industry Solutions] standards setting processes, which may culminate ultimately in the ANSI [American National Standards Institute] standards approval process, are facially neutral, open to all interested parties, and contain safeguards against domination by any one particular interest."[232]

In effectuating this decision in an arbitration context, the FCC, in the *Virginia Arbitration Award*, required Verizon to "comply with all applicable national and international industry standards (e.g., ANSI and ITU) for the provision of advanced services."[233] The FCC also found that "referencing applicable standards is preferable to actually articulating the standards in the contract, because the standards may change over time."[234] Moreover, the FCC explained that parties shall "work cooperatively, using industry standards, to minimize interference and cross

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229 *Line Sharing Order* ¶ 180.

230 *Line Sharing Order* ¶ 179.

231 *Line Sharing Order* ¶ 183.

232 *Line Sharing Order* ¶ 183.

233 *Virginia Arbitration Award* ¶ 480.

234 *Virginia Arbitration Award* ¶ 480.

talk." [235] Some of the contract language that the FCC adopted includes the following, 4.2.9 Compliance with Industry Standards. Verizon shall adopt and comply with all applicable national and international industry standards, including those adopted and amended from time to time by ANSI and ITU respectively, for the provision of advanced services.[236]

Unlike the vast majority of competitive telecommunications providers in New York that focus primarily on providing competitive voice solutions, Covad exclusively offers advanced DSL services that are generally provisioned over UNE loops. In doing so, Covad requires that Verizon maintain and repair such loops using standards that are at least as stringent as either (1) the standards it uses in maintaining or repairing the same or comparable service for itself; or (2) applicable industry standards for maintaining or repairing such loops. Covad makes this request because Verizon does not provide many of the advanced services or comparable services that Covad offers and therefore it is critical that Verizon comply with industry standards as a result. Indeed, if Verizon provides a lesser quality service to its end user, Verizon's related parity maintenance/repair may be inadequate. Therefore, it is important that Verizon comply with industry standards in these instances.

For the foregoing reasons, Covad's proposed contract language is justified by law, fully reasonable, and entirely warranted. The Commission should therefore adopt this language.

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

Covad Request: Verizon should be required to conduct cooperative testing at no additional charge until it can consistently deliver working loops to Covad; agreement language

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235 *Virginia Arbitration Award* ¶ 480.

should be adopted that provides specific terms and conditions, as proposed, concerning how the parties currently conduct cooperative testing, and should continue to do so under the agreement.

Cooperative acceptance testing, or joint acceptance testing, assists in timely and efficient provisioning of newly requested stand alone UNE loops that DSL and other advanced services will be provided over. Additionally, cooperative testing can assure complete maintenance processes on such loops. Covad's proposed language provides specific terms and conditions reflecting how the Parties currently conduct cooperative testing and should continue to do so under the Agreement in a manner that addresses the following:

(i) when Verizon should conduct cooperative testing (i.e., Where Verizon determines a dispatch is required to provision or maintain a loop);

(ii) what such testing should entail;

(iii) how the Parties should coordinate such testing. (Verizon will call Covad with the technician on the line to perform the test and Covad will within 5 minutes begin testing with the technician, while testing will take no longer than 15 minutes.);

(iv) what happens if the Verizon technician performing testing is unable to contact a Covad employee. (the Verizon technician will test the loop to ensure it meets the requirements of the Agreement, provide the reason he/she was unable to contact Covad, and later Verizon will engage a joint "one way" test with Covad whereby a Verizon employee will call Covad and stay on the line while Covad tests the loop remotely using its equipment to which the loop is connected.);

(v) escalation procedures; and

(vi) procedures if the loop test fails

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236 *Virginia Arbitration Award* ¶ 480 (adopting language in WorldCom's November Proposed Agreement to Verizon, Part C Attach III, § 4.2.9); see FCC Docket No. 00-218, WorldCom's Nov. 13, 2001 filing.

(vii) Verizon should not bill Covad for loop repairs when the repair results from a Verizon problem.

Significantly, the cooperative testing methods and procedures as provided in Covad's proposed contract language were established, for the most part, in the New York DSL Collaborative, were further refined during the Massachusetts 271 proceeding between Covad, Verizon and the Massachusetts DTE and they address the above-referenced issues.[237] Furthermore, they have been employed by Verizon, not only with Covad, but also with other CLECs, as part of Verizon's provisioning and maintenance processes for stand-alone UNE loops.[238]

The only refinement in the process Covad seeks is that Verizon's technician use Covad's Interactive Voice Response Unit (IVR) while the Verizon technician is performing intermediate tests to either isolate trouble or assure loop continuity.[239] The IVR is an automated way for Verizon to ensure it is delivering a working loop.[240] Verizon technicians can access Covad's IVR through a toll free number.[241] The IVR provides the Verizon technician access to Covad's test head in the collocation arrangement.[242] This is similar to the testing Verizon performs on its retail lines.[243] If Verizon takes advantage of using the IVR, when Verizon's technician contacts Covad for joint acceptance testing, the testing should not be delayed due to defects on the loop.[244] It is during the joint acceptance call to Covad's toll free number, that Covad will test to assure

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237 *See* Exhibit 1 at Issue 27.

238 *See* Exhibit 1 at Issue 27.

239 *See* Exhibit 1 at Issue 27.

240 *See* Exhibit 1 at Issue 27.

241 *See* Exhibit 1 at Issue 27.

242 *See* Exhibit 1 at Issue 27.

243 *See* Exhibit 1 at Issue 27.

244 *See* Exhibit 1 at Issue 27.

that the loop can properly function, accept it, and receive demarcation information from Verizon.[245] Covad makes this request because it is more efficient for both companies and their respective technicians to communicate while the testing is being performed and cooperatively work together to ensure that newly ordered stand alone loops provisioned by Verizon are properly provisioned, and to provide information so Covad understands where to pick up the loop to connect Covad's service.[246] Furthermore, this call will not be time consuming because Covad's proposed language limits the duration of the call to 15 minutes.[247] The industry determined it is prudent to spend 15 minutes, to prevent potentially spending even more time later if it is found that the loop was not correctly provisioned.[248]

Utilization of the IVR along with cooperative testing has proven to increase the amount of loops successfully provisioned or repaired by Verizon.[249] Covad's proposed refinement to the cooperative testing process is intended to improve efficiency and increase quality.[250] Before implementing and using the IVR process, Verizon's technicians would attempt to cooperatively test loops with Covad only to determine that the loop was not meeting specifications.[251] As a result of utilizing the IVR process, Verizon's technicians have been able to accurately detect and repair loops prior to calling Covad to cooperatively test a loop.[252] This has significantly reduced the number of incidents where a Verizon technician must perform necessary troubleshooting

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245 *See* Exhibit 1 at Issue 27.

246 *See* Exhibit 1 at Issue 27.

247 *See* Exhibit 1 at Issue 27.

248 *See* Exhibit 1 at Issue 27.

249 *See* Exhibit 1 at Issue 27.

250 *See* Exhibit 1 at Issue 27.

251 *See* Exhibit 1 at Issue 27.

252 *See* Exhibit 1 at Issue 27.

after an initial cooperative testing call.[253] This directly improves the process by only requiring one cooperative testing call, rather than multiple tests.[254] As indicated in the attached declaration, such testing is needed (a) when Verizon newly provisions a loop because many of the loops that Verizon provides to Covad are at an unacceptable level of quality and (b) after Verizon maintains or repairs a loop because without such testing, trouble tickets are closed prematurely and, as a result, the trouble remains on the loop and another ticket needs to be opened.[255]

In addition to the above, it is imperative that Verizon be on the phone with a Covad employee to provide the test from the correct location.[256] In order for a cooperative test to be valid, the Verizon field technician must be at the customer's network interface device ("NID"), the terminating point of the loop at the customer's premises. [257] Only from the NID can the technician test the loop all the way back to the central office.[258] If the technician, for example, tests the loop from a cross box rather than the NID, the technician is testing only the portion of that loop between the cross box and the central office and is not testing the portion of the loop between the cross box and the NID.[259] This is an incomplete test because if there was a problem in the portion of the loop not tested, it would not be revealed during cooperative testing and could show up after that portion is connected, which in some instances, has occurred after the loop was cooperatively tested.[260] Without cooperative testing, this fact would be unknown.[261]

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253 *See* Exhibit 1 at Issue 27.

254 *See* Exhibit 1 at Issue 27.

255 *See* Exhibit 1 at Issue 27.

256 *See* Exhibit 1 at Issue 27.

257 *See* Exhibit 1 at Issue 27.

258 *See* Exhibit 1 at Issue 27.

259 *See* Exhibit 1 at Issue 27.

260 *See* Exhibit 1 at Issue 27.

Relatedly, since Covad dispatches its own technician to complete xDSL installation after the loop is cooperatively tested, Verizon should also be required to label, or "tag", all circuits at the demarcation point.[262] The need for this process is that the Covad technician (i) knows that Verizon has terminated the loop at the customer's premises and (ii) knows where the loop is located.[263] For instance, a loop may be terminated on a pole or in a basement of a multi-dwelling unit instead of to the customer's premises.[264] Verizon has a policy of not building out to the end-user on UNE loops if no facility from the building terminal to the end user premise is available.[265] If Verizon does not complete this activity, a CLEC will not be able to provide voice or data service.[266] The CLEC will not be able to locate the UNE pair in the multi-pair terminal, or similarly in a common space with multiple terminations.[267] Tagging a loop is a practice that has been followed for several generations in telephone operations.[268] To not commit to do something that is recognized as prudently effective is to display an unwillingness to be responsible. Verizon tags loops for itself, particularly when circuits are provisioned to vendors.

Given the above, Covad's proposed contract language is absolutely reasonable and necessary because allows for cost effective use of resources that are needed to isolate, identify, and repair any problems on new stand alone loops and on loops referred for maintenance.

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261 *See* Exhibit 1 at Issue 27.

262 *See* Exhibit 1 at Issue 27.

263 *See* Exhibit 1 at Issue 27.

264 *See* Exhibit 1 at Issue 27.

265 *See* Exhibit 1 at Issue 27.

266 *See* Exhibit 1 at Issue 27.

267 *See* Exhibit 1 at Issue 27.

268 *See* Exhibit 1 at Issue 27.

Significantly, Verizon agrees that cooperative testing can identify service-affecting issues with loops before they are provisioned.[269] Verizon also acknowledges that Covad may request (and Verizon will perform) cooperative testing and that its contract language contains a general description of the procedures to be followed.[270] Verizon argues, however, that detailed procedures for cooperative testing need not be articulated in the Agreement.[271] Rather, Verizon contends that any procedures for testing, beyond the existing procedures, should be worked out collaboratively with all CLECs, so that a uniform process may be maintained.[272]

Because the procedures set forth in Covad's proposed contract language track existing procedures that Verizon currently follows for cooperative testing and because there are no tariffed procedures in place, there is no reason why these procedures cannot be expressly articulated in the Agreement. Moreover, Covad's request regarding how the procedures should be followed, *i.e.*, that the Verizon technician use Covad's IVR while testing is being performed, should not prevent such language from being included in the Agreement. This is a very sensible and simple refinement to the process and reasonable approach in effectively and efficiently utilizing available resources when tests are performed.

Moreover, the Commission has recognized that specific language regarding cooperative testing that reflects the understanding of the parties should be included in the Agreement. In the *AT&T NY Arbitration Award*, the Commission ordered AT&T and Verizon "to achieve a

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269 Verizon Response to Covad Petition for Arbitration, Docket Nos. A-310696F7000, F001, p. 16, ¶ 30.

270 *Id.*

271 *Id.*

272 *Id.*

mutually acceptable provision for the new agreement given their agreement in principle to the utility of such testing."[273] Covad is attempting to meet the Commission's directive.

Tellingly, there is no public record from the DSL collaborative that defines Cooperative testing or Joint Acceptance testing. Although these processes were discussed in detail, and consensus reached by the parties involved, no public record of the consensus exists because the consensus items are restricted from being released due to a confidentiality agreement. Therefore referencing the agreements made in the New York DSL Collaborative is like referencing a wave upon the ocean. The interpretation can change, and as people who participated in these conferences move on to other assignments, change careers, or their companies die, even less history is available to interpret. It is important to memorialize these processes in the Interconnection Agreement so that something exists to support the reference. A review of the New York Public Service Commission web site that details case 00-C-0127 (the DSL Collaborative) reveals no such documentation of cooperative testing.

In stark contrast to the inherently ambiguous nature of Verizon's proposed contract language, Covad's proposed language is abundantly clear. Moreover, Covad's proposed procedures are alterable in that they can be refined to be more efficient and effective. In fact, Covad's proposed contract language specifically provides that,

> [b]oth Parties declare they will work together, in good faith to implement Acceptance Testing procedures that are efficient and effective. If the parties mutually agree to additional testing, procedures and/or standards not covered by this Appendix or any state Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards, and document same.

The language that Covad has proposed, unlike the language proposed by Verizon, does not leave fundamental procedures to the imagination of each of the Parties. The language is readily

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273 *AT&T NY Arbitration Award* at 79.

discernable and establishes the requisite framework for the process that must be followed. Moreover, it also has flexibility for future improvement. For these reasons, the Commission should adopt Covad's proposed language.

Apart from the issues regarding terms and conditions, discussed above, the Parties also disagree about the circumstances in which Verizon can impose charges upon Covad. One area of disagreement is over charges for cooperative testing. Verizon argues that Covad should pay for cooperative testing because it requires Verizon to perform additional work. Verizon fails to recognize, however, that Covad only requests cooperative testing for *new stand alone loops* and that the Commission expressly rejected such charges for new loops.[274] Verizon's continued pursuit in this arbitration of the right to impose a cooperative testing charge for new stand alone loops is thus in utter disregard of the New York Commission's explicit directive earlier this year. The rationale for the Commission's decision has been fully litigated and Verizon accepted those terms with prejudice.[275] Despite this and the unlawfulness of Verizon's position, Verizon contends as it did in the prior proceeding that it should be able to charge Covad for cooperative testing because it is performing such tests at Covad's request. The test is not, however, necessitated by Covad; it is required to ensure that Verizon has in fact provided a fully

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274 *Proceeding on Motion by the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case No. 98-C 1357, Order on Unbundled Network Elements, at 138-39 (N.Y. P.S.C. Jan. 28, 2002). The Commission did find that a cooperative testing charge may be imposed when ordered with line sharing, however, that charge "should be waived if the CLEC can show the flaw to have been Verizon's fault." *Id.* at 139

275 See *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to investigate the Future Regulatory Framework; Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case Nos. 00-C-1945 & 98-C-1357, Order Instituting Verizon Incentive Plan, at Appendix A Sec. VIII.C. (Feb. 27, 2002) ("*Joint Proposal*"), *available at* http://www.dps.state.ny.us/fileroom/doc11226.pdf.

functioning loop at the time of provisioning and after the loop is maintained or repaired. Notably, Verizon performs this test for its retail customers.[276]

For similar reasons, PaPUC recognized that Verizon-PA's cooperative testing charge was inappropriate and disallowed it because it "is intended to recover the labor costs associated with coordinating with a CLEC and performing continuity testing on a DSL-compatible loop on the due date for the loop's installation."[277] The PaPUC emphasized that this charge is, essentially, intended to determine whether Verizon is providing the facility (UNE) that has been ordered – a loop that is continuous from one end to the other.[278] The Commission upheld the Administrative Law Judge's rationale that an analogous retail situation would require a new retail customer of Verizon to pay Verizon to test his or her line from the network interface device to the central office to ensure that it was working. In another commercial context, "a car buyer would be asked by the car dealer to pay for a test of the new car by the dealer to make sure it is functioning when it was delivered....such a charge would be considered ridiculous."[279] The PA PUC emphasized that the objective of the test "still pertains to confirmation that Verizon's facility is capable of meeting its commercial purpose and not deficient."[280]

Likewise, no charges for cooperative testing should be assessed after a loop is repaired *subsequent* to it being provisioned. Regardless of whether cooperative testing is performed at the time the loop is provisioned or after a loop is repaired, Covad is paying for a fully

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276 Case No. 02-C-1175, Verizon's Response to Covad's Petition for Arbitration, Attachment B, Issues and Party Positions at 16 (October 7, 2002).

277 *Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates*, Docket No. TR-00016683, Tentative Order, at 193 (Pa. P.U.C. Oct. 24, 2002) ("*PA 10/24/02 UNE Cost Decision*").

278 *PA 10/24/02 UNE Cost Decision* at 193.

279 *PA 10/24/02 UNE Cost Decision* at 193.

functioning stand alone DSL loop and if cooperative testing is needed *after* Verizon makes repairs to the loop, Covad should not be assessed a charge for cooperative testing that is needed to ensure that the loop is properly and fully functioning as Verizon originally provisioned it and that the repair was actually performed.

For the reasons set forth above, Covad's proposed contract language - unlike Verizon's - is reasonable, necessary and consistent with Applicable Law. Therefore, the Commission should adopt the contract terms proposed by Covad.

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

Covad Request: Verizon should be obligated to cooperatively test loops it provides to Covad under the specific terms and conditions in Covad's proposed language; i.e. the agreement should obligate Verizon (1) to inform Covad as to where it has provisioned a loop via sufficient information to allow Covad to locate the termination room, (2) "tag" the loop or (3) provide information so that the circuit being provisioned can be located.

Verizon should not be permitted to impose "treasure hunts" on Covad in order for it to determine where Verizon has provisioned a loop. This is an issue particularly for loops in large office buildings. In large buildings, Verizon usually terminates loops in a "termination room" where all loops for the building are terminated. Verizon should provide Covad with information in its possession that allows the termination room to be located by a Covad technician within a building. Verizon has a policy of not building out to the end-user on UNE loops if no facility from the building terminal to the end user premise is available.[281] If Verizon does not complete

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280 *PA 10/24/02 UNE Cost Decision* at 193.

281 *See* Exhibit 1 at Issue 30.

this activity, a CLEC will not be able to provide voice or data service.[282] The CLEC will not be able to locate the UNE pair in the multi-pair terminal, or similarly in a common space with multiple terminations.[283]

Tagging a loop is a practice that has been followed for several generations in telephone operations.[284] To not commit to do something that is recognized as prudently effective is to display an unwillingness to be responsible. Verizon tags loops for itself, particularly when circuits are provisioned to vendors. Therefore, in those circumstances where Verizon must send a technician to provision the loop, Verizon should be obligated to "tag" the provisioned loop so that it may be located by Covad without the need to sort through what is virtually a bird's nest of uses. However, in some situations, Covad recognizes that Verizon can provision loops without the need to send a technician to the building site. In those circumstances, since tagging is not feasible, Verizon should be required to provide information that would allow the Covad technician to locate the circuit being provisioned without unnecessary time and effort being expended, as you would expect from any wholesale supplier of services to their customers.

Given the above, Covad's proposed contract language is absolutely reasonable and necessary because allows for cost effective use of resources that are needed to isolate, identify, and repair any problems on new stand alone loops and on loops referred for maintenance.

Verizon agrees to tagging but objects to specific contract language that obligates it to do so on the basis that these types of procedural requirements should be the result of CLEC/Verizon collaboratives, rather than the subject of interconnection agreements.[285] Verizon's proposal to

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282 *See* Exhibit 1 at Issue 30.

283 *See* Exhibit 1 at Issue 30.

284 *See* Exhibit 1 at Issue 30.

285 Verizon Response to Covad Petition for Arbitration, at 17, ¶ 31.

defer resolution of these practical issues, that currently foist unnecessary time and effort on their competitors to a vague future "collaborative", is not a surprising position for Verizon to take. However the promise of a possible resolution of these issues through a collaborative of indeterminate duration and expense should not deter the ALJ from directing resolution of these issues in this proceeding. The opportunity for other CLECs to adopt these provisions in their own interconnection agreements will create the uniform, collaborative result Verizon claims to be seeking.

Issue 37: Should Verizon be obligated to provide "Line Partitioning" (i.e., Line Sharing where the customer receives voice services from a reseller of Verizon's services)?

Covad Request: Verizon should be required to offer a form of line sharing called Line Partitioning, where end users receive voice services from a reseller of Verizon's services.

There are several ways for an end user to obtain voice service, which include (i) from Verizon, (ii) from a CLEC (e.g., UNE-P), and (iii) on a resold basis where Verizon remains the underlying provider. Customers are now able to provision data and voice services over the same loop. For customers that have Verizon as the voice provider and DSL is placed on the same loop, it is referred to as Line Sharing. Where a CLEC provides the voice service and DSL is placed on the line, it is referred to as Line Splitting. Line Partitioning is physically identical to Line Sharing. The only difference is who the customer interfaces with for their voice service, Verizon or a reseller. Verizon is discriminating against voice resellers by not allowing CLECs to place DSL on resold loops.

Verizon's refusal to provide resold voice while allowing Covad to provide DSL on the high frequency portion of the loop is patently unreasonable and discriminatory, which is in violation of the Act and the FCC rules. To be abundantly clear, Covad is not asking that Verizon

make the high frequency/xDSL portion of the loop available for resale. Rather, Covad is asking that Verizon make the *voice services* it provides over the voice grade portion of the loop available on a resale basis at the same time that it makes the high frequency/xDSL portion of the loop available to Covad as a network element similar to Line Sharing.[286]

Pursuant to Section 251(c)(4) of the Telecommunications Act, Verizon is required to make available for resale any retail telecommunications service. Section 251(c)(4) mandates that ILECs have "the duty –

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers;
>
> (B) not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service...[287]

The FCC enacted similar rules, 47 C.F.R. §§ 51.603 & 51.613 and has also made it clear that ILECs such as Verizon are prohibited from imposing discriminatory conditions on the resale of retail services, finding that "resale restrictions are presumptively unreasonable."[288]

The voice services offered by Verizon under its retail tariff are, without question, "telecommunications services" within the meaning of the Telecommunications Act, and thus

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286 Unlike AT&T's request in the AT&T Arbitration, Covad is not asking Verizon to resell the high frequency portion of the loop. Although the *AT&T NY Arbitration Award* states that AT&T requested that line sharing be available in instances where it resells Verizon's voice service, the Order does not reflect the nature of AT&T's request and the issue in dispute. *See AT&T NY Arbitration Award* at 68. In particular, AT&T requested that Verizon resell the high frequency portion of the loop. See Case No. 01-C-0095, AT&T June 6, 2001 Reply Brief at 133 and n.87 (explaining that "AT&T is not using the term 'line sharing' to refer to a situation where AT&T is providing the voice service to a customer by reselling Verizon's retail voice service.")

287 47 U.S.C. § 251(c)(4)(A)&(B).

288 *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket. No. 96-98, CC Docket No. 95-185, 11 FCC Record 15499, ¶ 939 (1996) ("*Local Competition Order*") (subsequent history omitted).

properly subject to general resale obligations imposed by the Act. This is confirmed by the well know fact that Verizon provides voice grade services pursuant to tariffs for telecommunications services. Verizon thus bears the burden under the Act and the FCC's implementing regulations of demonstrating that the restriction it seeks to impose on the resale of voice services when another carrier provisions xDSL over the high frequency portion of the loop is both reasonable and nondiscriminatory, which is not the case for a number of reasons.

First, Verizon discriminates against resale competitors that provide voice services by refusing to provision voice services on a resale basis when another carrier is providing DSL on the high frequency portion of the loop via line sharing. When Covad submits orders for UNE line shared loops for customers served by resellers of Verizon's voice service, Verizon refuses to provision the loop, returning a rejection notice indicating "third party voice." Verizon rejects Covad's request notwithstanding the fact that Verizon continues to function as the voice service provider for the customer, and notwithstanding the FCC's rule that clearly requires Verizon to unbundle the high frequency portion of the loop where Verizon is providing the customer's voice service. Verizon could easily offer voice service on a resale basis when Covad is accessing the high frequency portion of the loop, but refuses to do so. Second, Covad has lost tremendous volumes of orders because of Verizon's unreasonable, discriminatory, and anti-competitive policy.[289] The impact of these lost sales on Covad have been hard felt. Verizon's policy has been to the detriment of New Yorkers seeking competitive alternatives and is blatantly anti-competitive because it has done its job of significantly impeding competition, both in the voice and in the DSL markets.[290] Verizon's discriminatory treatment of resellers is currently affecting as many as 25% (?) of the requests for service that Covad is receiving in Pennsylvania and could

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289 *See* Exhibit 1 at Issue 31.

potentially increase as consumers move to competitive alternatives.[291]

Third, by allowing UNE-P providers, but not pure resellers, to obtain voice services with Line Splitting, Verizon is discriminating against voice resellers and preferentially treating UNE-P providers. It makes no sense that Verizon's policy is effectively forcing CLECs that are content in serving their customers through resold voice to convert their resold lines to UNE-P so that they can engage in line splitting with a data CLEC. Alternatively, customers must get voice services from Verizon. Either position is discriminatory. Given this, Verizon's refusal to offer resale voice services in these instances defies logic and demonstrates that its behavior is purely meant to be anti-competitive. The hard facts reveal that if Verizon is permitted to continue such conduct, competition will continue to be eliminated. In addition, customers who obtain voice service from resellers that wish to get xDSL services over the high frequency portion of their loops will continue to remain without any competitive alternatives to Verizon's retail voice and xDSL offering. Such a known outcome is a slap in the face to the public interest.

Fourth, the New York Commission has ordered Verizon to offer certain services for resale when Verizon's refusal to do so was deemed improper. In Pennsylvania, relative to competitive service offerings, Verizon is obligated to unbundle basic service functions and make them available to wholesale customers. 66 Pa. C.S. § 3005(e)(1). For instance, in the *AT&T Arbitration*, the Commission held that it sees "no reason why ... any other vertical feature of a CLEC's choosing, should not be available for resale, at the wholesale discount, along with Verizon's voice UNE-Platform offering."[292] Notably, Verizon was offering the vertical services on a resale basis so long as they were purchased with resold voice service. However, Verizon

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290 *See* Exhibit 1 at Issue 31.

291 *See* Exhibit 1 at Issue 31.

refused to offer its vertical services on a resale basis with UNE-Platform lines. In resolving the dispute, the NYPSC concluded that 251(c)(4) requires Verizon to offer discrete vertical services at resale along with Verizon's UNE-P offering. In this proceeding, Covad is asking, however, for far less - given that it is requesting basic voice services rather than discrete vertical services.

The reasons outlined above demonstrate the seriousness of this issue and the tremendous revenues Covad is losing as a result of Verizon's egregious and anti-competitive policy. Thus, resolution of this issue cannot be delayed. The public interest demands and deserves immediate Commission resolution of this issue. This dispute cannot be dusted under the rug and turned over to another proceeding for resolution, such as the DSL Collaborative - which, in any event, would not be the proper forum to address this issue. This is not a DSL provisioning issue. This is a voice provisioning issue. As explained, Covad is only requesting that Verizon make voice service available for resale when Covad provides its DSL over the high frequency portion of the loop. Furthermore, technical feasibility is not a concern because Line Partitioning is physically identical to Line Sharing and Verizon is already provisioning voice services with its Line Sharing and Line Splitting offerings.[293]

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

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292 *AT&T NY Arbitration Award*, at 21.

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

Covad Request: Verizon should provision collocation augmentations where new splitters are installed within forty-five (45) days.

In an attempt to establish uniformity across Verizon's footprint, Covad seeks a forty-five day (45) interval for collocation augmentations where new splitters are to be installed. Significantly, 45 days is the time frame Verizon agreed to in New York and gives Verizon far more time than the 30 day interval previously ordered by the Commission to provision augmentations.[294]

A collocation augmentation, as the name implies, refers to a collocation request that expands upon an existing collocation, and therefore requires less time and effort for Verizon to complete. As Verizon North notes in their responses to Covad's Petition, Verizon North already performs augmentation of physical and cageless collocation within forty-five (45) days of receiving a completed collocation application.[295] Verizon PA does not disagree with a forty-five (45) day interval for physical and cageless collocation augments, provided the terms and conditions are specified by tariff, rather than by interconnection agreement terms.[296] This stance is consistent with Verizon's position on numerous issues in this proceeding wherein it does not quarrel with the merits of Covad's position, but raises the issue of its preference for addressing these issues in a tariff approval proceeding.

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293 *See* Exhibit 1 at Issue 31.

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

295 Verizon North Response to Covad Petition for Arbitration, at 22, ¶ 39.

Covad notes that in New York State the NYPSC ordered Verizon and Covad to jointly resolve this issue. In a collaborative session, Covad and Verizon determined that certain types of augments can be accomplished in forty-five (45) business days rather than seventy-six (76) business days (which is Verizon PA's "official" position). Subsequently, the Massachusetts DTE ordered this same resolution of the issue.

Verizon and a number of CLECs have been negotiating resolution of collocation intervals, augments and initial collocation access the entire Verizon footprint. Finalization of an understanding has been delayed due to issues raised by one CLEC participating in the process.

Covad and Verizon have agreed on a basis for resolving these issues. A document capturing the terms of this agreement has been amended as a result of the footprint-wide negotiation, so that CLECs have additional flexibility. In this Petition, Covad is seeking the terms Verizon has offered in the broader negotiation.

As noted before, Verizon's preference for a tariff filing that could produce lengthy litigation, while CLECs must accept the status quo, is in derogation of the need for CLECs to implement their individual business strategies via interconnection agreements. Verizon's "agreement" with a forty-five (45) day collocation augmentation interval for new splitter installation should be formalized as a term of its agreement with Covad.

Issue 42: Should Verizon Provide Covad access to unterminated dark fiber as a UNE Should the dark fiber UNE include unlit fiber optic cable that has not yet been terminated on a fiber patch panel at a pre-existing Verizon Accessible Terminal?

Covad Request: Covad requests that the Commission adopt its proposed contract language for sections 8.1.2, 8.2.2 and 8.2.9. Specifically, Covad requests that the Commission clarify that the definition of unbundled loop, subloop, and transport dark fiber includes fiber that

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296 Verizon PA Response to Covad Petition for Arbitration, at 21, ¶ 38.

is deployed in the network but not yet terminated. Further, Verizon should be required to terminate unterminated dark fiber for requesting CLECs.

Verizon's current dark fiber inventory practices are unreasonable and discriminatory and violate section 251(c)(3) of the Act and FCC rule 51.319. For example, Verizon has argued that dark fiber that is not terminated at both ends does not meet the FCC's definition of unbundled dark fiber and need not be made available to CLECs as a UNE. Verizon considers fiber that is not terminated at both ends and completely spliced to be under construction and not part of the dark fiber inventory available to CLECs.[297] In fact, Verizon has admitted in sworn testimony that it would respond to a CLEC inquiry that dark fiber was unavailable along the requested route, even if, under Verizon's existing construction plan the requested fiber span was a mere two weeks away from completion, resulting in significant new capacity along the requested fiber span.[298] Verizon's refusal to consider these unterminated fibers as part of its inventory results in Verizon grossly understating the amount of dark fiber that should be characterized by Verizon as "available" to requesting CLECs as UNEs.[299] Such fiber may readily be made usable by Verizon,[300] and should be considered usable by CLECs. Unless Verizon is required to terminate dark fiber for CLECs, it can deliberately leave dark fiber that has been pulled or lies just outside

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297 Verzions's Response, at 23.

298 *Inquiry Regarding the Entry of Verizon Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000 - 849, Jan. 29, 2002 Tr. at 267:4-15 ("Maine Section 271 Transcript").

299 *Inquiry Regarding Entry of Verizon – Maine Into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000 – 849, CTC Declaration, at ¶ 23 (Dec. 17, 2001) ("CTC Declaration"); Maine Section 271 Transcript, Feb. 7, 2002 Tr. at 6:20-7:4, 19:1-10.

300 Maine Section 271 Transcript, Jan. 29, 2002 at 257:19-22, 263:9-24, 265:7-16 ((Commissioner Diamond) "But to the extent you have cable sitting there that is all the way connected other than - - run all the way, other than connected at the ends, that conceivably would be available to Verizon but not to a CLEC? (Mr. Albert) Theoretically."), 269:1-14 ((Mr. Albert) "our salespeople can always call our engineers and check on the status of what's going on in the network.").

a central office or building unterminated in order to reduce the dark fiber inventory that is available to CLECs.

The District of Columbia Public Service Commission ("DC PSC") recently rejected Verizon's policies regarding unterminated and unspliced dark fiber and concluded that unlit fiber that is not attached at both ends is within the scope of the dark fiber UNE and should be included in Verizon's dark fiber UNE inventory that is made available to CLECs.[301] More specifically, the DC PSC rejected Verizon's argument that such unattached dark fiber is under construction and therefore should not be part of Verizon's dark fiber UNE inventory.[302] The DC PSC concluded that "it is clear that unattached dark fiber is *already installed in the network before it is attached* to termination equipment, and easily called into service by the attachment of termination equipment."[303] The DC PSC expressly rejected Verizon's argument that requiring it to attach termination equipment to unattached dark fiber for CLECs would result in the creation of a superior network. The DC PSC concluded that:

> The *UNE Remand Order* includes unattached dark fiber in its definition of dark fiber, since it is deployed in Verizon's network and is easily called into service. It is also analogous to 'dead count' or 'vacant' copper, which the FCC required to be unbundled. The Commission chooses to follow the Indiana Commission's decision in permitting [CLECs] to have access to unattached dark fiber. Approval of [the CLEC's] position *does not require Verizon to create a superior*

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301 *TAC 12 – Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington, DC, Inc.*, Order No. 12396, Order on Reconsideration, at ¶¶ 45, 48, 50, 53 (DC PSC May 6, 2002) ("unattached dark fiber is installed in Verizon DC's network and is easily called into service").

302 *TAC 12 – Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington, DC, Inc.*, Order No. 12286, Order on Reconsideration, at ¶¶ 26, 33 (DC PSC Jan. 4, 2002) ("*D.C. Dark Fiber Order*").

303 *D.C. Dark Fiber Order*, at ¶ 26 (emphasis added).

> *quality network, since it merely permits [the CLEC] to have the same access to dark fiber that Verizon provides to itself.*[304]

Like Verizon, SBC has argued that requiring it to provide unbundled access to unterminated dark fiber is tantamount to requiring it to construct new facilities for CLECs which SBC claims it is not required to do. SBC, for example, has argued before state commissions in California, Indiana and Texas, that because un-terminated fiber is not connected to equipment at the customer location at the termination point it need not be unbundled. The California Public Utilities Commission ("California PUC") rejected SBC's contention, noting that it "is an attempt to define away its legal obligations"[305] and that the California PUC did "not want to set a rule in place that would allow [SBC] to evade its obligations to unbundle dark fiber for CLECs, as mandated by the FCC."[306] Likewise, SBC made similar assertions with a similar result before the Texas Public Utilities Commission ("Texas PUC"). The Texas PUC found:

> that SWBT incorrectly interprets the FCC's intention. SWBT states that, consistent with the FCC's mandate in Paragraph 328, it is only obligated to provide dark fiber as a UNE if the fiber connects two points in SWBT's network. The Arbitrators, however, agree with CoServ's argument that "connectivity does not equal termination." Consequently, the Arbitrators find that the *UNE Remand Order* discussed connectivity in the context of distinguishing dark fiber that was already "in place and called into service" from the example of unused copper wire "stored in a spool in a warehouse."[307]

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304 *D.C. Dark Fiber Order*, at ¶ 33 (emphasis added).

305 *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-01-010, Final Arbitrator's Report Cal. PUC, July 16, 2001 at 139.

306 *Id.*

307 Docket 23396, Petition of CoServ, Inc. for Interconnection Agreement with SWBT, Arbitration Award, at 113-114 (Texas PUC, April 17, 2001).

Accordingly, the Texas PUC ruled that "unterminated and unspliced fibers should be made available to [the CLEC] for use as UNE dark fiber," and that "[SBC] has an obligation to provide that unspliced UNE dark fiber to [the CLEC] and splice it upon request."[308]

Most importantly, Verizon's refusal in this proceeding to make unterminated dark fiber available to Covad as a UNE is inconsistent with Verizon's own position in the Yipes arbitration and this Commission's decision in that proceeding. More specifically, in the Yipes arbitration Verizon reached the following agreement with Yipes, which was adopted by the Commission:

> *It is Verizon's standard practice that* when a fiber optic cable is run into a building or remote terminal, *all fibers in that cable will be terminated* on a Verizon accessible terminal in the building or remote terminal. Should a situation occur in which a fiber optic cable that is run into a building or a remote terminal is found to not have all of its fibers terminated, then Verizon agrees to complete the termination of all fibers in conformance with its standard practices and to do so expeditiously at the request of Yipes.[309]

In fact, Verizon testified in the Yipes arbitration that under Verizon's standard practices "*every* outside fiber cable has a connectorized cable attached to it and has a patch panel installed with connectors plugged into the patch panel, so there is a complete path ending at the termination point at the fiber patch panel."[310] Accordingly, Judge Weismandel determined that Verizon should not be permitted to deviate from its standard practices in serving CLECs and determined that as a general rule, consistent with its alleged standard practices, Verizon was required to

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308 *Petition of El Paso Networks, LLC For Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Co.*, PUC Docket No. 25188, Revised Arbitration Award, at 139 (Texas PUC 2002) ("Texas Revised Arbitration Award").

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

310 *Id.*, at 11.

terminate all fibers in a building or at a remote terminal at an accessible terminal.[311] Verizon's position in the instant proceeding is inconsistent with the result in Yipes and its own assertions that Verizon's standard practice in Pennsylvania is to terminate all fiber. Thus it appears that either Verizon has changed its so-called standard practices in order to gut the Yipes decision or Verizon is no longer willing to terminate all dark fiber for CLECs. Accordingly, Verizon's position regarding unterminated dark fiber should once again be rejected by this Commission.

In sum, by attempting to exclude unterminated dark fiber from the inventory of dark fiber that is available to CLECs, Verizon hopes to evade its obligation to provide unbundled dark fiber. The Commission should preclude this unlawful conduct by adopting the position of other state commissions that have addressed the issue and clarifying that the definition of unbundled loop, subloop, and transport dark fiber includes fiber that is deployed in the network but not yet terminated. Verizon should be required to terminate unterminated dark fiber for requesting CLECs.

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

Covad Request: Covad requests that the Commission adopt Covad's proposed section 8.1.5 and find that Verizon cannot limit Covad's access to dark fiber based on Verizon's definition of Dark Fiber Loops, Dark Fiber Sub Loop, or Dark Fiber IOF because doing so would diminish Covad's right to access dark fiber pursuant to Applicable Law.[312] Covad's proposed language, which permits it to have access to dark fiber in technically-feasible configurations consistent with Applicable Law, is simple, reasonable, and comports with the Act and FCC rules.

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311 *Id.*, at 11, 13-14.

312 *See* Covad's Arbitration Petition, Attachment A & Attachment B, Section 8.1.5. Please note that Covad's basis for its proposed language in section 8.1.1 is set out in Issue 45 ("Should

Section 251(c)(3) of the Act and FCC Rule 51.307(c) specifically provide that ILECs shall provide to a requesting telecommunications carrier for the provision of a telecommunications service, "nondiscriminatory access to network elements on an unbundled basis at *any technically feasible* point" on terms and conditions that just, reasonable, and nondiscriminatory."[313] Under the FCC definition of "technically feasible," access to unbundled network elements at a point in the network "shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier...for such access, or methods."[314]

Furthermore, Covad's proposed language, which specifies that that "[t]he description of Dark Fiber Loop, Dark Fiber Sub-loop, and Dark Fiber IOF products, does not limit Covad's right to access dark fiber in other technically feasible configurations consistent with Applicable Law," comports with FCC's findings in the *Virginia Arbitration Award.* In its Order, the FCC noted numerous times that contract language that references access to UNEs or interconnection at any technical feasible point is lawful.[315] Moreover, Covad's reference to "Applicable Law" is

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Verizon be obligated to offer Dark Fiber Loops that terminate in buildings other than central offices").

313 47 U.S.C. § 251(c)(3).

314 47 C.F.R. § 51.5

315 *See, e.g., In the Matter of Petition of WorldCom, Inc., Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Dockets No. 00-218, 00-249, 00-251, DA 02-1731, ("*Virginia Arbitration Award*") at ¶ 57 & n.141 (emphasizing that "[t]echnical feasible interconnection is the right of every carrier."), ¶ 231 (adopting WorldCom's proposed language and finding that is consistent with Commission precedent that "any requesting carrier may choose any method of technically feasible interconnection ...at a particular point"), ¶ 338 (noting that "Verizon has contractual obligation to provide AT&T with nondiscriminatory access to UNEs, including combinations of UNEs, at any technically feasible point and including all other UNE's features, functions and capabilities."), ¶ 353 (rejecting Verizon's requirement that CLEC be collocated to access UNEs

consistent with the FCC conclusion that such a reference is appropriate and properly protects rights and obligations of the parties.[316]

Verizon attempts to avoid its overarching statutory duty to provide dark fiber access at any technical feasible point by arguing that "dark fiber" is not a separate, stand-alone UNE under the FCC's rules and that it is available to a CLEC *only* to the extent that it falls within the definition of specifically designated UNEs set forth in 47 C.F.R. § 51.319(a) and (d) — in particular, the loop network element, subloop network element, or interoffice facilities ("IOF"). Verizon speciously claims that Covad's proposed § 8.1.5 purports to expand Covad's right to dark fiber beyond the loop, subloop, or IOF network elements is inconsistent with the FCC's rules implementing § 251(c)(3) of the Act.

Verizon's assertions are incorrect. In fact, Verizon defies FCC rule 51.309(a)[317] by seeking to limit Covad's legal right to access to dark fiber and the FCC has rejected similar arguments made by Verizon where Verizon has sought to escape its statutory obligations. For instance, the FCC has concluded with respect to number of similar issues that Verizon's proposed contract language that serves to limit CLEC options to interconnect or access UNEs and enable Verizon to refuse a CLECs request to do so is improper.[318] The same holds true here

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because such a provision is not consistent with Verizon's statutory obligation to provide access to UNEs "at any technically feasible point.").

316 *Virginia Arbitration Award*, ¶ 477.

317 47 C.F.R. § 51.309(a) ("An incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends.")

318 *Virginia Arbitration Award*, ¶ 147 (rejecting Verizon's proposed language that permits Verizon to refuse a request for technically feasible interconnection on the grounds that such terms violate the Act and the Commission's implementing rules), ¶ 231 (rejecting Verizon's proposed language because it did not reflect a carriers right to choose any method of technically feasible interconnection and it would improperly give Verizon the discretion to decide whether

and Verizon seeks to limit Covad's access to dark fiber UNEs through its definition of dark fiber UNEs rather than allowing Covad to access the UNEs at any technically feasible point as permitted by Applicable Law. Clearly, how dark fiber is defined in the Agreement should in no way diminish Covad's legal right to access such dark fiber at any technically feasible point in Verizon's network in accordance with Applicable Law. For these reasons, the Commission should reject Verizon's efforts to dodge its legal obligations and should accordingly adopt Covad's proposed language.

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

Covad Request: Covad requests that the Commission adopt Covad's proposed contract language for sections 8.1.1, 8.1.2, 8.1.3, 8.1.4 (proposed), 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5, and 8.2.9. Specifically, the Commission should affirm that ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for requesting CLECs on a time and materials basis in order to provide a continuous fiber strand. Consistent with *the Virginia Arbitration Award* and Verizon's most recent proposed contract language, the Commission should require Verizon to route dark fiber transport through two or more intermediate central offices for Covad without requiring collocation at the intermediate central offices. Further, the Commission should require Verizon to provide any needed cross connects or splices between such fibers in order to facilitate routing of dark fiber through intermediate central offices.

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to permit technically feasible interconnections), ¶ 237 (rejecting Verizon's proposal that would limit interconnection options available to CLECs and enable Verizon to refuse a request for technically feasible interconnection), ¶ 353 (rejecting Verizon's language that requires a competitor to collocate at Verizon's facilities in order to gain access to UNEs because such a provision is not consistent with Verizon's statutory obligation to provide access to UNEs "at any technically feasible point.").

As directed by the FCC's in the *Virginia Arbitration Award*,[319] Verizon has proposed contract language that requires Verizon to route dark fiber transport through two or more intermediate central offices for Covad.[320] Except to the extent that Verizon has reserved the right to limit the number of intermediate Verizon central offices through which such dark fiber transport may pass and other issues, Covad accepts Verizon's proposal regarding routing through intermediate offices.[321] Further, in its Response Verizon commits to providing "fiber optic cross-connects to join two terminated dark fiber IOF strands at the intermediate central offices."[322] Accordingly, the remaining disputed item in Issue 44 appears to be limited to whether or not Verizon should be required to permit access to existing splice points and splice dark fiber on behalf of Covad, on a time and materials basis in order to provide a continuous dark fiber strand on a route requested by Covad.

Far from prohibiting splicing as urged by Verizon, this Commission has already determined that "creation of an accessible terminal is a technically feasible means to access dark

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319 *Virginia Arbitration Award*, at ¶ 457 (July 17, 2002) ("We reject Verizon's position that connecting fiber routes at central offices may not be required of Verizon . . . Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311.").

320 Email from Verizon's Steven H. Hartmann to Covad's Tony Hansel, dated Nov. 24, 2002, Revised Proposal Re: Dark Fiber ("Hartmann email"), at ¶¶ 8.1.3, 8.2.5. Verizon's latest proposal provides, for example, that "[w]here a direct Dark Fiber IOF route is not available, Verizon will provide, where available, Dark Fiber IOF via a reasonable indirect route that passes through intermediate Verizon Central Offices at the rates set forth in the Pricing Attachment." *Id.*, at ¶ 8.2.5. Also, Verizon promises in its Response that "[I]n the event Covad wishes to order dark fiber IOF on an indirect route basis, Verizon PA would provide fiber optic cross-connects to join the terminated dark fiber IOF strands at the intermediate central offices." Verizon's Response, at 26.

321 Hartmann email, at ¶ 8.2.5. Covad addresses Verizon's proposed limitation on the number of intermediate central offices through which dark fiber may pass under Issue 44 in this Brief.

322 Verizon's Response, at 25, 26.

fiber at existing splice points."[323] In reaching this decision the Commission clearly rejected Verizon's tired argument, raised again in its Response, that requiring Verizon to splice for CLECs is tantamount to constructing new UNE fiber routes. Instead, the Commission underscored that the unbundling obligations imposed under the Act "include modifications to ILEC facilities to the extent necessary to accommodate access to network elements."[324]

In addition to this Pennsylvania precedent, when the issue has been raised, many other state commissions have recognized that the ILEC's refusal to splice dark fiber for CLECs violates their unbundling obligations and unreasonably limits the amount of unbundled dark fiber available to CLECs. For example, the Texas PUC recently ruled that "unterminated and unspliced fibers should be made available to [the CLEC] for use as UNE dark fiber," and that "[SBC] has an obligation to provide that unspliced UNE dark fiber to [the CLEC] and splice it upon request."[325] The Texas PUC explained its decision by noting that it found "no reason to distinguish between fiber that is deployed and spliced and fiber that is deployed and un-spliced; doing so would limit [the CLEC's] ability to request UNE dark fiber."[326]

The *UNE Remand Order* describes its connection standard as meaning that the fiber is "in place."[327] Even if a strand is not spliced, it is still "in place." Fibers that have been deployed in

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323 *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Verizon Pennsylvania, Inc.*, Docket No. A-310964, Opinion and Order, at 8 (Order adopted April 11, 2002).

324 *Id.* (*Citing* Local Competition Order, at ¶ 198).

325 Texas Revised Arbitration Award, at 139.

326 Texas Revised Arbitration Award, at 139.

327 *Implementation of the Local Competition Provisions of the Telecommunications Act of* 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 15 FCC Rcd. 3696, at ¶ 174 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

cables but not yet spliced are within the FCC's definition of unbundled dark fiber. Whether or not a loop has been spliced or not does not change the fact that the fiber cable is connected to SWBT's network and is easily called into service; therefore, both spliced and unspliced dark fiber fit within the FCC's definition of dark fiber UNEs, just as unspliced and unterminated copper dead count falls within the definition of unbundled loops.[328] It is clear that un-spliced or un-terminated dark fibers have been deployed and are connected to the ILEC network. This fiber is not lying idle on a spool in a warehouse. Rather, extensive funds have been spent to secure rights of way, dig up city streets, lay the conduit and fiber along the proper path to the respective customer premise or central office, close up the trenches and re-pave the city streets.[329] This fiber is deployed, in-place fiber.

Because the splicing process is routine and is performed by legions of ILEC trained full-time splicing specialists, unspliced fiber is easily called into service. The most obvious evidence that unspliced fibers can be easily called into service is the fact that ILECs perform thousands of fiber splices for their own use.[330] Further, SBC performed approximately 300 fiber splices for El Paso Networks, LLC ("EPN"), apparently without experiencing any difficulty.[331] Finally, SBC is also required to splice dark fiber in Indiana and Ohio, and other ILECs perform splicing for CLECs in other states.[332]

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328 *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Dockets No. 01-339, 96-98, 98-147, EPN Reply Comments, at 51-53 (July 17, 2002) ("EPN Reply Comments").

329 EPN Reply Comments, at 50-56.

330 EPN Reply Comments, at 62-66.

331 EPN Reply Comments, at 53-55, 62-66.

332 EPN Reply Comments, at 53-55.

In light of these facts, the Commission should adopt the best practices regarding splicing of dark fiber developed by state commissions around the country. In addition to the Texas PUC, Several other state commissions, including those in the District of Columbia,[333] Indiana,[334] Massachusetts,[335] New Hampshire[336] and Rhode Island[337] have examined the issue and have ordered ILECs to splice dark fiber for requesting CLECs.[338] For example, the Massachusetts Department of Telecommunications and Energy ("MA DTE") dismissed the arguments raised by Verizon regarding the technical feasibility of splicing dark fiber and concluded "that it is *technically feasible* and *consistent with industry practice* to lease dark fiber at splice points."[339] In fact, the MA DTE concluded that Verizon itself resplices "from time to time" and that those "splice points are designated for [Verizon], itself, to use as junction points in its network."[340]

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333 *D.C. Dark Fiber Order*, at ¶ 62, 87.

334 *Re: AT&T Communications of Indiana, Inc.,* Cause No. 40571-INT-03, Slip Opinion, at 79, 129-130 (Nov. 20, 2000) ("Indiana Order").

335 *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts,* Decision D.P.U./D.T.E. 96-83, 96-94-Phase 4-N, at 33 (Mass. DTE Dec. 13, 1999).

336 Re: Deliberations in DT 01-206 Regarding Rates, Terms and Conditions for the UNE Remand Unbundled Network Elements, Policy Letter, at 2 (N.H. PUC, March 1, 2002).

337 *In re: Verizon-Rhode Island's TELRIC Studies - UNE Remand,* Docket No. 2681, Report and Order, at 19, 22-23 (Rhode Island PUC, Dec. 3, 2001) *("RI Dark Fiber Order")* ("Verizon is required to splice dark fiber at any technically feasible point on a time and materials basis, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC to be collocated at any such offices.").

338 EPN Reply Comments, at 48-66.

339 *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts,* Decision D.P.U./D.T.E. 96-83, 96-94-Phase 4-N, at 33 (Mass. DTE Dec. 13, 1999) ("We impose no collocation requirement ... it is technically feasible and consistent with industry practice to lease dark fiber at splice points.") ("Mass. DTE Phase 4N Order") (emphasis added); *New England Telephone and Telegraph Company d/b/a NYNEX, et al.*, Decision D.P.U. 96/73-74, 96/80-81, 96-84-Phase 4-R Order at 4-5 (Mass. DTE Aug. 17, 2000).

340 *New England Telephone and Telegraph Company d/b/a NYNEX,* Decision D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3, at 48-49 (Mass. DTE Dec. 4, 1996) *("Mass. DTE Phase 3 Order").*

Accordingly, the MA DTE saw "little distinction between a splice performed on behalf of [Verizon] and that performed for another carrier" and ordered Verizon to provide access to dark fiber at any technically feasible point including existing splice points as well as hard termination points.[341] The MA DTE required Verizon to perform splicing at the CLEC's request in order to make a fiber strand "continuous by joining fibers at existing splice points within the same sheath."[342]

The District of Columbia Public Service Commission ("DC PSC")[343] observed that the Indiana commission and MA DTE permit access to dark fiber at splice points[344] and in light of this precedent and other analysis, concluded that Verizon must provide access to dark fiber at splice points.[345] The Rhode Island Public Utilities Commission, following the lead of the Massachusetts DTE, ordered Verizon to "*splice* dark fiber at any technically feasible point so as to make dark fiber continuous through one or more intermediate offices *without requiring the CLEC to be collocated at any such intermediate offices*."[346]

On March 1, 2002, the New Hampshire Public Utilities Commission ("NH PUC") underscored its view that "[d]ark Fiber is an important resource for promoting competition and encouraging broadband deployment in New Hampshire," and decided to "adopt the [MA DTE]

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341 *Mass. DTE Phase 3 Order*, at 48.

342 *Mass. DTE Phase 4N Order*, at 33; *D.C. Dark Fiber Order*, at ¶¶ 62, 87.

343 *D.C. Dark Fiber Order*, at ¶ 57.

344 *D.C. Dark Fiber Order*, at ¶ 61.

345 *D.C. Dark Fiber Order*, at ¶ 62, 74, 87.

346 *In re: Verizon-Rhode Island's TELRIC Studies – UNE Remand*, Docket No. 2681, Report and Order, at 19, 22-23 (Rhode Island PUC, Dec. 3, 2001) (emphasis added).

determination that access to existing splice points is technically feasible."[347] In Order No. 23,948, the NH PUC determined that Verizon had "not met its burden to prove technical infeasibility" and directed Verizon to revise its UNE tariff to allow access to dark fiber at existing splice points.[348] In light of the best practices adopted by these state commissions, the Commission should seize this opportunity to clarify its rules and affirm that ILECs must provide unbundled access to dark fiber at existing splice points and splice dark fiber for requesting CLECs on a time and materials basis in order to provide a continuous fiber strand.

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

Covad Request: Covad requests that the Commission adopt Covad's proposed revision to section 8.1.1 and find that Covad should be able to access Dark Fiber Loops without regard to whether they terminate in Central Offices or other buildings *that effectively perform the functions of a Central Office for the Dark Fiber Loop.* The language that Covad proposes in Section 8.1.1 of the UNE Attachment that Verizon opposes is underlined below:

> A "Dark Fiber Loop" consists of ...fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center or other Verizon premises in which Dark Fiber Loops terminate, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.

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347 *Re: Deliberations in DT 01-206 Regarding Rates, Terms and Conditions for the UNE Remand Unbundled Network Elements*, Policy Letter, at 2 (March 1, 2002).

348 *Order Approving in Part and Denying in Part Statement of Generally Available Terms and Conditions Additional Unbundled Network Elements*, Docket No. DT 01-206, Order No. 23,948, at 21-23 (April 12, 2002); *Order Denying Motion for Reconsideration, Rehearing, and/or Clarification*, Docket No. DT 01-206, Order No. 23,993, at 18-19 (June 13, 2002).

This proposed language is innocuous, unambiguous, comports with federal law, and protects Covad's legal rights to access Dark Fiber Loops. In particular, Section 51.319(a)(1) of the FCC's rules defines the loop network element as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC *central office* and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC."[349] Verizon's proposed contract language, however, does not follow this definition. In fact, Verizon's proposed definition defies FCC rule 51.309(a)[350] because it limits the availability of dark fiber loops to "Wire Center" locations rather making dark fiber loops available in all Central Offices or Verizon locations that are de facto Central Offices.

By choosing "Wire Center" as the operative phrase in its definition of Dark Fiber Loops, Verizon attempts to evade the full extent of its legal obligations under the Act. To explain, "Wire Center" is defined in § 2.115 of the Glossary Attachment to the Agreement as "[a] building or portion thereof which serves as a Routing Point for Switched Exchange Access Service. The Wire Center serves as the premises for one or more Central Offices." Furthermore, "Central Office" is defined in § 2.20 of the Glossary Attachment as:

> [a] local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

Given these definitions, a Central Office can be found at either (1) a Wire Center location or (2) a location that does not serve as a Wire Center, i.e, where the Central Office is not serving as a

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349 47 C.F.R. § 51.319(a)(1) (emphasis added).

350 47 C.F.R. § 51.309(a) ("An incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends.")

routing point for Switched Exchange Access Service traffic and funnels that traffic to another Central Office that does serve as a Wire Center, such as an Access Tandem. Hence, under Verizon's definition of Dark Fiber Loops, Covad would not be able to avail itself of dark fiber that terminates to a Central Office that is not a Wire Center location. Significantly, Covad is aware of Verizon locations that serve as central offices or provide switching functionality and serve essentially as central offices but do serve as Wire Centers, i.e., routing points for Switched Exchange Access Service traffic.[351]

Moreover, Verizon's reference to "Wire Center" in its proposed Dark Fiber Loop definition is not consistent with Verizon's reference to "Central Office" in its proposed Dark Fiber IOF definition. Specifically, Verizon's proposed definition for Dark Fiber IOF in Section 8.1.3 includes "fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a Covad Central Office..." and unlike Verizon's proposed definition of Dark Fiber Loop does not refer to a Verizon Wire Center.[352] Thus, given Verizon's definition of its dark fiber offerings, Covad could potentially get Dark Fiber IOF to a Central Office but may not be able to get a Dark Fiber Loop out of that Central Office if the Central Office is not located in a Wire Center.

Verizon's efforts to modify the definition of Dark Fiber Loop strongly indicates Verizon is surreptitiously attempting to avoid its obligations to provide Dark Fiber Loops to CLECs by playing such games of semantics. Because of this, Covad requests its proposed language that makes clear that Covad has access to Dark Fiber Loops without regard to whether they terminate

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351 Exhibit 1, at Issue 45.

352 *Compare* Verizon's proposed section 8.1.1 *with* section 8.1.3.

in a Wire Center or other buildings (that effectively perform the functions of a Central Office for the Dark Fiber Loop).

Although Verizon contends that Covad's proposed language is misleading, Verizon's language, if anything, is just that for the above reasons. Indeed, contrary to Verizon's claims, Covad is not attempting to "conflate" the definitions of Dark Fiber Loops and Dark Fiber Subloops but rather Covad is protecting its basic legal rights under the Agreement to access Dark Fiber Loops as permitted by law and not have them limited as Verizon proposes. For these reasons, the Commission should adopt Covad's proposed language.

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

Covad Request: Covad requests that the Commission adopt its proposed contract language for sections 8.1.3, 8.2.3, 8.2.5, 8.2.5.1 (proposed), and 8.2.9. Specifically, the Commission should reject Verizon's proposed restriction on the use of dark fiber. Further, the Commission should require Verizon to provide access to dark fiber transport UNEs on indirect routes and information regarding indirect dark fiber transport routes regardless of the number of intermediate offices that are traversed by alternative indirect routes.

As mandated by the *Virginia Arbitration Award*,[353] Verizon has agreed to route dark fiber transport through intermediate offices for CLECs without requiring collocation at the intermediate central offices (an indirect route).[354] Verizon has also agreed that where a direct route is not available, Verizon will provide in its response to a Dark Fiber Inquiry information

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353 *Virginia Arbitration Award*, at ¶¶ 457, 472-473.

354 Hartmann email, at ¶ 8.2.5.

regarding alternative indirect routes.[355] Verizon seeks to unreasonably limit its unbundling obligations, however, by imposing a restriction on its obligation to provide access to dark fiber UNEs and information regarding dark fiber UNEs that is inconsistent with FCC rules and the VA Arbitration Decision. Specifically, Verizon refuses to provide access to indirect dark fiber routes or information regarding such routes that exceed Verizon's view as to the number of intermediate central offices that it is reasonable for an indirect route to traverse.[356]

Verizon's proposed limitation on indirect routes is unreasonable because it is the CLEC's network engineering that should limit the number of central offices traversed by an indirect dark fiber route, rather than "Verizon's network design" or Verizon's self-serving view of the industry standard as proposed by Verizon. In fact, under Verizon's latest dark fiber terms the CLEC takes the dark fiber "as is" and is fully responsible for engineering and "providing all transmission, terminating and lightwave repeater equipment necessary to light and use" the dark fiber.[357] Verizon refuses to provide transmission loss and other test data to assist CLECs in using UNE dark fiber as discussed in issue 48 below. CLECs tend to use newer and more capable transmission and terminating equipment to light their dark fiber and this equipment can light fiber over much longer distances than the equipment Verizon employs in its legacy hub-and-spoke network.[358] In sum, in actual practice and under Verizon's own proposed terms, CLECs are fully and solely responsible for designing their fiber routes that incorporate Verizon dark fiber UNEs and should be free to determine the technically feasible length of an indirect dark fiber route based upon their own network engineering design without interference from Verizon.

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355 *Id.*

356 Verizon's Response, at 26; Hartmann email, at ¶ 8.2.5.

357 Hartmann email, at ¶¶ 8.2.10, 8.2.13, 8.2.17.

358 Exhibit 1, at issue 46.

Most importantly, Verizon's proposed limitation is inconsistent with the FCC's conclusion that "Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311."[359] The FCC expressly directed Verizon to provide dark fiber transport through "*two or more* central offices" and chose not to impose a limit on the number of central offices along an indirect route.[360] Verizon's proposed usage limitation on dark fiber has no basis in law and is inconsistent with, among other rules, FCC rule 51.309(a) which provides that:

> *An [ILEC] shall not impose limitations*, restrictions, or requirements *on* requests for, or *the use of*, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.[361]

In sum, by limiting the number of intermediate offices that dark fiber may traverse, Verizon seeks to impose a limitation on the usage of UNE dark fiber that violates FCC rule 51.309(a).

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

Covad Request: Covad requests that the Commission adopt its proposed contract language for sections 8.2.5, 8.2.5.1 (proposed), and 8.2.8.1 (proposed). Specifically, the Commission should specify that Verizon is required to afford CLECs nondiscriminatory, parity access to fiber maps, including fiber transport maps, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber.

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359 *Virginia Arbitration Award*, at ¶ 457.

360 *Id.* (emphasis added).

361 47 C.F.R. § 51.309(a).

In its latest proposal to Covad, Verizon has agreed to provide "a fiber layout map that shows the streets within a Verizon Wire Center where there are existing cable sheaths."[362] Also, Verizon has agreed that where no available dark fiber route is found during a record review:

> Verizon will identify the first blocked segment on each alternative indirect route and which segment(s) in the alternative indirect route are available prior to encountering a blockage on that route.[363]

Verizon's latest proposal is an improvement over its earlier position, however, Verizon's proposal falls short of the FCC's minimum unbundling requirements. Among other items, Verizon has not agreed to provide information readily available to Verizon in its TIRKS database and other sources regarding the amount of spare fiber on existing fiber strands and routes that is sufficient for CLECs to develop their business and network engineering plans.[364] Further, Verizon continues to refuse to provide detailed maps for specified dark fiber transport routes and refuses to provide baseline fiber test data from engineering records or inventory management.

The FCC concluded that "a requesting carrier that lacks access to the incumbent's OSS 'will be severely disadvantaged, if not precluded altogether, from fairly competing.'"[365] In addition, in its *UNE Remand Order*, the Commission clarified that "OSS includes the manual, computerized, and automated systems, together with associated business processes and the up-to-

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362 Hartmann email, at ¶ 8.2.20.1.

363 Hartmann email, at ¶ 8.2.5.

364 TIRKS stands for Trunks Integrated Record Keeping System. TIRKS is a legacy mechanized operations support system, that is a database where some ILECs maintain their equipment and circuit inventory. TIRKS is the inventory management system where some ILECs keep track of their working and spare equipment. TIRKS in general has four functions: service order control system, equipment inventory, facility inventory (tracking copper and fiber in the field), and circuit inventory. Exhibit 1, at issue 47; *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Dockets No. 01-339, 96-98, 98-147, El Paso Networks, LLC Comments, at 72 and n.267 (April 5, 2002) ("EPN Comments").

365 *UNE Remand Order*, at ¶ 421, *quoting*, First Local Competition Order, at ¶¶ 516-516.

date data maintained in those systems."[366] Accordingly, the FCC determined that ILECs must provide nondiscriminatory or parity access to the same detailed, up-to-date information about unbundled dark fiber and other UNEs that is available to the ILEC, and concluded that, "*at a minimum*, incumbent LECs must provide requesting carriers with *the same underlying information* that the incumbent LEC has *in any* of its own databases or other internal records."[367] In other words, Verizon is required to provide access to requesting CLECs to the information available in any of its OSS, not merely the limited maps and other information it is convenient for Verizon to provide. Accordingly, Verizon cannot lawfully withhold detailed dark fiber transport maps, TIRKS data regarding availability of dark fiber, baseline fiber test data from engineering records or inventory management, and other data from CLECs as has been its standard practice.

Consistent with the FCC's decisions, Covad does not seek information that does not reside anywhere in Verizon's databases, fiber maps, paper records or elsewhere within Verizon's records, databases and other sources as alleged by Verizon in its Response. Rather, Covad seeks parity access to the same up-to-date pre-ordering and ordering information regarding dark fiber UNEs that is available anywhere in Verizon's backoffice systems, databases and other internal records, including but not limited to data from the TIRKS database, fiber transport maps, baseline fiber test data from engineering records or inventory management, and field surveys. The limited information offered by Verizon in its latest proposal to Covad, among other items, does not provide sufficient information regarding the availability of spare fiber strands along direct and indirect routes transport routes in its responses to a dark fiber inquiry. Further, Verizon should be required to provide dark fiber transport maps for requested routes can plan

366 *UNE Remand Order*, at ¶ 425; EPN Reply Comments, at 67-68.

their network design. Verizon admitted that such maps exist and offered to provide dark fiber maps during the Virginia Section 271 hearing before the Virginia State Corporation Commission, however, Verizon later rescinded this offer.[368] Finally, as discussed more fully in issue 48 Verizon refuses to provide the detailed results of dark fiber testing even when that information is available to Verizon. These policies violate FCC orders regarding parity and nondiscriminatory access to UNE information.

In addition to the FCC, several state commissions have recognized the importance to CLECs of nondiscriminatory, parity access to information regarding the location, quality, and availability of dark fiber. These state commissions have adopted orders that specify exactly what information and documentation the ILEC must provide during the dark fiber UNE preordering, ordering, and provisioning processes. This Commission should adopt requirements similar to those imposed by the New Hampshire, New Jersey, Maine and Texas commissions as described below.

The NH PUC, for example, concluded[369] that where Verizon determines that "no facilities are available," the information provided within 15 business days must "identify for the CLEC the route triggering the 'no facilities available' response, indicate what alternate routes have been investigated, and show the first blocked segment on each route as well as all of those segments which are not blocked."[370] In addition, the NH PUC requires that if Verizon determines that dark fiber is unavailable, unless the CLEC affirmatively declines by checking a

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367 *UNE Remand Order*, at ¶ 427 (emphasis added).

368 Exhibit 1, Issue 47.

369 *Order Approving in Part and Denying in Part Statement of Generally Available Terms and Conditions Additional Unbundled Network Elements*, Docket DT 01-206, Order No. 23,948, at 7 (April 12, 2002) ("Order No. 23,948").

370 Order No. 23,948, at 7.

box on the dark fiber inquiry form, Verizon shall provide a written response within thirty (30) days of the CLEC's dark fiber inquiry that sets forth specific reasons why dark fiber cannot be provided and must include, at a minimum, the following information:[371]

> Total number of fiber sheath and strands between points on the requested routes, number of strands currently in use and the transmission speed on each strand (e.g. OC-3, OC-48), the number of strands in use by other carriers, the number of strands reserved for Bell Atlantic's use, the number of strands lit in each of the three preceding years, the estimated completion date of any construction jobs planned for the next two years or currently underway, and *an offer of any alternate route* with available dark fiber. In addition, for fibers currently in use, Bell Atlantic shall specify if the fiber is being used to provide non-revenue producing services such as emergency service restoration, maintenance and/or repair.[372]

Such information is essential in order for a CLEC to determine the veracity of any claim by an ILEC that dark fiber is not "available" on a particular route and to determine whether alternative routes are available in planning its network deployment. Accordingly, the New Jersey Board of Public Utilities recently directed Verizon "to provide specific details to the CLEC and staff for review within five calendar days of the rejection" in order for the CLEC to "have the ability to challenge any claims by Verizon NJ that sufficient dark fiber does not exist."[373]

In addition, the Maine Public Utilities Commission ("ME PUC") has determined that if Verizon believes that dark fiber is unavailable, then within thirty (30) days of a separate request

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371 *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 8-9 (May 19, 1998) ("*NH Dark Fiber Order*").

372 *NH Dark Fiber Order*, at 8 (emphasis added); Order No. 23,948, at 7.

373 *NJ Dark Fiber Order*, at 248.

form a CLEC, Verizon must provide the CLEC with "written documentation and a fiber map."[374] The written documentation must, at a minimum include, the following detailed information:

- a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates;
- the total number of fiber sheaths and strands in between points on the requested routes;
- the number of strands currently in use or assigned to a pending service order;
- the number of strands in use by other carriers;
- the number of strands assigned to maintenance;
- the number of spare strands; and
- the number of defective strands.

Finally, the Texas PUC recently recognized that "[El Paso Networks, LLC ("EPN")] is attempting to buy unbundled dark fiber and cannot reasonably do so without knowledge of where such fiber exists."[375] Accordingly, the Texas PUC concluded that "CLECs are entitled *to all information available* in SWBT's backend systems, not a subset of that information that SWBT chooses to provide."[376] Therefore, the Texas PUC concluded that "in response to an EPN facility check request, SWBT's engineers will detail any and all facilities in or near the building that can be used for possible service to the customer," and will supply "all information relevant to EPN's request, including, but not limited to, fiber route and path information.[377]

In sum, the Commission should adopt the best practices of these state commissions and should specify that its requires Verizon to afford CLECs nondiscriminatory, parity access to fiber

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374 *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849, Letter of Dennis L. Keshl (March 1, 2002) ("*Maine Section 271 Order*").

375 *Petition of El Paso Networks, LLC For Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Co.*, PUC Docket No. 25188, Revised Arbitration Award, at 41 (Texas PUC 2002); EPN Reply Comments, at 74.

376 Texas Revised Arbitration Award, at 40.

377 Texas Revised Arbitration Award, at 40, 56, 64, 67.

transport maps, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other data regarding the location, availability and characteristics of dark fiber. The absence of such access impedes a CLECs ability to locate and use dark fiber and allows the ILEC to "hide the ball," and force the CLEC to "guess" where dark fiber is located.[378]

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

Covad Request: Covad requests that the Commission adopt Covad's proposed section 8.2.8.1 and require Verizon to provide information about dark fiber that Covad seeks via a response to a field survey request so that Covad has a meaningful opportunity to use dark fiber.[379] Covad pays Verizon a nonrecurring charge to perform field surveys and should receive critical fiber specifications, including whether fiber is dual window construction; the numerical aperture of the fiber; and the maximum attenuation of the fiber. In particular, Covad's proposed Section 8.2.8.1 provides that Verizon's:

> responses to field survey requests shall indicate whether: (1) the fiber is of a dual-window construction with the ability to transmit light at both 1310 nm and 1550 nm; (2) the numerical aperture of each fiber shall be at least 0.12; and (3) the maximum attenuation of each fiber is either 0.35 dB / km at 1310 nanometers (nm) and 0.25dB / km at 1550 nm.

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[378] EPN Reply Comments, at 76-77.

[379] As an initial matter, Verizon contends that the agreed upon language in Section 8.2.8 of the UNE attachment does not require Verizon North to perform field testing. Verizon is entirely wrong. Section 8.2.8 does not specify that Verizon North is relieved of this obligation and does not permit Verizon to discriminate unlawfully against Covad for the reasons discussed below. Moreover, Verizon's proposed Section 8.2.20.2A states that a field survey tests the transmission characteristics of Verizon's Dark Fiber Loop(s), Dark Fiber Sub-Loops(s), or Dark Fiber IOF and this obligation equally applies to Verizon North and Verizon PA. *See* Hartmann e-mail at ¶ 8.2.20.2A.

It is Covad's belief that Verizon undertakes far more extensive testing for itself and its customers than it undertakes for Covad. Furthermore, Verizon's field technicians likely customize the testing based on the instructions provided to them by Verizon's network engineers so that the engineers can later determine whether the fiber is suitable for its potential use. Through discovery, Covad is confident that it can prove that Verizon conducts its business in this reasonable manner. In short, Covad requests parity treatment, as the Act requires and as also discussed in Issue 47. All Covad is requesting is that when Verizon performs the field survey for which Covad is paying, it gather specific information and provide it to Covad so that Covad may determine whether fiber is suitable for its intended purpose and whether it should be lit.

To elaborate, the Act makes clear that Verizon must treat Covad in a nondiscriminatory manner.[380] Furthermore, the FCC has defined "nondiscriminatory access" to mean that, to the extent technically feasible, an ILEC must provide access to UNEs in "substantially the same time and manner to that which the incumbent provides *to itself*."[381] Nondiscrimination among CLECs is certainly necessary, but not sufficient, to fulfill Verizon's obligations.[382] Under the FCC's standard, Verizon must provide field testing to Covad at parity with the level of testing it provides, not only to other CLECs, but also to its affiliates and to itself.[383] Under this standard, Verizon discriminates against a CLEC if it provisions UNEs or services in a manner that is not consistent with the manner in which it provides them to itself (*i.e.*, to the retail or wholesale side of its operations) for use in its network.[384] Thus, if Verizon does provide certain fiber

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380 *See* 47 U.S.C. § 251(c)(3).

381 *UNE Remand Order*,¶ 490.

382 *Compare* 47 CFR §§ 51.311(a), 51.313(a) (parity among CLECs) *with* §§ 51.311(b), 51.313(b) (parity with ILEC).

383 *UNE Remand Order*, at ¶ 490.

384 *Id.*

information to itself and does not provide and make such information to available to Covad in a similar manner, Verizon's conduct is discriminatory.

Without equal access to this information, Covad will not have the necessary information to gauge the capabilities of the fiber, and it will thereby be deprived of the ability to utilize effectively the full features, functions and capabilities of the dark fiber. Relatedly, in a Texas arbitration, the Arbitrators addressed a similar issue and concluded as follows:

> The Arbitrators agree with EPN that it is entitled to testing on fiber that is in parity with testing that SWBT provides to itself. SWBT testified that when utilizing fiber for itself, it tests the fiber when it is initially deployed, and when it is ready to put the fiber into use ("light" it), it relies on the record of end-to-end testing and turns up the service without further proactive testing. If SWBT determines there is a problem in the fiber when it turns up the service, further testing is performed to locate the cause of the problem, including reflectance testing if necessary.
>
> To ensure parity, the Arbitrators find that EPN is entitled to contract language guaranteeing the same level of treatment, including reflectance testing...to identify problems with the fiber that are preventing performance at the designed level. The Arbitrators note that any testing equipment necessary or appropriate for tests that SWBT performs for itself shall also be used to test the UNEs. However, to the extent that EPN is asking SWBT to re-perform testing that was already done at the time of deployment, the Arbitrators find that EPN is responsible for compensating SWBT for the TELRIC costs of repeating these tests. Similarly, EPN may ask SWBT for additional tests not normally performed by SWBT for itself, but must pay the SWBT the TELRIC costs for this service.[385]

Likewise, Verizon should treat Covad at parity with respect to field testing. To the extent Verizon tests facilities under multiple standards for use in its network, it should also test facilities it provides Covad under the same standards and provide certain fiber specifications to Covad such as whether fiber is dual window construction; the numerical aperture of the fiber; and the

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385 *Petition of EL Paso Networks, LLC For Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket 25188, Revised Arbitration Award, at 78 (Tex. P.U.C. July 29, 2002), *available at*

maximum attenuation of the fiber. Without Verizon's cooperation, Covad would not be able to design and deploy a network that is at parity with, or as reliable as, the network Verizon deploys today.

Verizon objects to Covad's proposed language and contends that the type of detailed information is requested is not the type of information that should be defined on an interconnection-agreement-by-interconnection-agreement basis. Verizon ostensibly seeks to avoid any obligation by not having such language in the Agreement. This language is, however, needed in the Agreement because it is Covad's experience that Verizon will deny any request for anything not made explicit in the Agreement.[386] Notably, the agreed upon language of Section 8.2.8 of the UNE attachment provides that Verizon will perform field testing at Covad's request, will perform transmission loss tests, and will document and provide the results of the tests to Covad. However, for these terms to be meaningful, Verizon must provide Covad critical fiber specifications, including whether fiber is dual window construction; the numerical aperture of the fiber; and the maximum attenuation of the fiber.[387] Furthermore, because Covad compensates Verizon for performing the tests providing the information, Verizon's opposition to such clarifying language establishes that Verizon's intent is to utilize such silence and/or ambiguity in the Agreement to thwart Covad's ability to compete with Verizon. The Agreement must therefore be clear in this respect.

In addition, Verizon cannot argue that any fiber capable of passing light is good enough for CLECs because such a claim flies in the face of its obligation to offer UNEs that are at least

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http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=25188&TXT_ITEM_NO=319.

386 Exhibit 1, at Issue 48.

387 Exhibit 1, at Issue 48.

equal in quality to what it provides itself. It is common industry knowledge that ILECs have processes for testing each and every splice that is made in a fiber optic cable, as well as end-to-end readings for each fiber strand.[388] In providing access to its UNEs, Verizon is legally obligated to perform testing at the same level at which it performs for itself.[389] In particular, the FCC has stated that to the extent technically feasible, ILECs "must provide unbundled elements, as well as access to them, that is 'at least' *equal in quality* to that which the incumbent provides itself."[390] The FCC has further stated that ILECs "may not provision unbundled elements that are inferior in quality to what the incumbent provides itself because this would likely deny an efficient competitor a meaningful opportunity to compete."[391] By refusing to provide field testing to Covad in the same manner and using all relevant standards that Verizon provides to itself, Verizon is providing Covad with inferior network elements in a manner that denies Covad a meaningful opportunity to compete. It is technically feasible for Verizon to run these tests, especially when Verizon does so for itself and it is industry standard to do so.[392]

Furthermore, Verizon cannot in good conscience dispute that if, for example, fiber is being used for an optical system at 1550 nm, but was tested only at 1310 nm, it is possible that the optical system may not properly function, even if one test indicated the fiber was good.[393] For this reason, if only one test is performed, there might be deficiencies in the fiber that remain

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388 Exhibit 1, at Issue 48.

389 *UNE Remand Order*, at ¶490.

390 *Local Competition Order*, at ¶314 (emphasis added).

391 *Local Competition Order*, at ¶315.

392 Exhibit 1, at Issue 48.

393 Exhibit 1, at Issue 48.

undetected.[394] It is not until certain tests are performed on the fiber and that information is relayed to Covad can Covad determine that the fiber can perform for its intended use.[395]

When providing fiber to Covad as a UNE, Verizon uses only the minimal standard that the fiber should "transmit light"— even though it undoubtedly applies much more rigorous testing standards for fiber used in its own retail and wholesale services. In order to ensure parity treatment, and to prevent Verizon from further backsliding, Verizon should be required by contract to supply Covad the information it seeks when Verizon performs a field survey.

Significantly, Covad is not asking that Verizon fix or build fibers to Covad's expectations. Covad merely asks that Verizon test the fibers for Covad at the same levels Verizon tests them for use in its network. That way, the fiber may be fixed by Verizon to correct the deficiencies revealed by the tests. Verizon should not, as it contends, be permitted to provision dark fiber "as is" and allow the CLEC to choose whether to accept or reject if the facility does not support the CLEC's services.[396] It is Covad's understanding that when Verizon lights up fiber to provide service to itself or its customers and encounters problems provisioning the service over the fiber, Verizon will likely retest the fiber strands to determine if a section being used to provide the service or system is degraded.[397] Verizon will then investigate to determine if it needs to resplice that section or replace that section altogether.[398]

Clearly, reasonable, and pragmatic engineering principles require that multiple levels of testing be performed to look at the characteristics of a fiber segment to make sure the system

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394 Exhibit 1, at Issue 48.

395 Exhibit 1, at Issue 48.

396 Exhibit 1, at Issue 48.

397 Exhibit 1, at Issue 50.

would properly function, before placing services on the facilities.[399] Efficiency and logic require that an engineer first test the fiber, determine the quality of the fiber, and if there are any impairments on it, repair the fiber, prior to turning up a system on that fiber.[400]

At bottom, when Verizon refuses to perform field testing or perform the field tests that Covad requires and provide that data to Covad, Covad is disadvantaged in its ability to compete with Verizon and its affiliates in marketing its services to Pennsylvania consumers. Verizon's refusal to provide non-discriminatory field testing, perform certain tests, access to the results of tests performed and information gathered delays Covad's circuit provisioning process and in turn delays Covad's ability to process new customer applications. To the extent Verizon does perform field tests on fiber optic facilities and gathers certain information about the facilities for itself, which by industry standards it undoubtedly does, Verizon should treat Covad at parity and provide Covad with the information it seeks regarding the fiber. This is especially justified since Covad is paying for the field testing. As shown above, arbitrators in Texas recently came to this conclusion. For these reasons, Covad's position is reasonable, consistent with the principle of true "parity" treatment, and should be adopted by the Commission.

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398 Exhibit 1, at Issue 50.

399 Exhibit 1, at Issue 50.

400 Exhibit 1, at Issue 50.

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

Covad Request: Covad requests that the Commission reject Verizon's proposed contract language that prevents Covad from leasing more than twenty-five percent (25%) of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. Despite recent Commission precedent on this very issue that fully rejects Verizon's language, Verizon again argues that it should be permitted to limit Covad to a maximum of 25% of the dark fiber in any given segment of Verizon's network. Verizon's reiteration of this recently rejected position in this arbitration is shocking. Consistent with Commission decisions, the Commission should once again reject Verizon's proposed language. In addition, the Commission should strongly admonish Verizon for its failure to accede to such precedent, resulting in the waste of the Commission's and Covad's resources that are needed to re-arbitrate this issue.

To elaborate, in the Yipes Arbitration, the Commission adopted the ALJ's recommended decision that rebuffed similar language proposed by Verizon.[401] Furthermore, in the Yipes arbitration against Verizon in Washington, DC, the DC Commission adopted an arbitrator's ruling that refused to adopt the same language proposed by Verizon.[402] It is significant to note that Verizon did not appeal either of these decisions but surprisingly continues to arbitrate the issue here.

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401 *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Pennsylvania, Inc.*, Docket No. A-310964, Recommended Decision, at 14 (Penn. P.U.C. Aug. 20, 2001) ("PA Recommended Dark Fiber Decision"); Opinion and Order, at 7-8 (Penn P.U.C. Oct. 12, 2001) ("PA Dark Fiber Decision").

402 *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington, DC*, TAC 12, Arbitration Decision, at 28 (D.C. P.S.C. Oct. 29, 2001).

In the Yipes arbitration before this Commission, the Commission held that:

> In the UNE Remand Order, the FCC has given clear guidance on the subject of an ILEC's ability to limit any particular CLEC's access to the dark fiber UNE. The FCC stated that:
>
> > [i]f incumbent LECs are able to demonstrate to the state commission that unlimited access to unbundled dark fiber threatens their ability to provide service as a carrier of last resort, state commissions retain the flexibility to establish reasonable limitations governing access to dark fiber loops in their states.

UNE Remand Order, at¶199.

The FCC went on to say:

> [I]f incumbent LECs are able to demonstrate to a state commission that unbundling dark fiber threatens their ability to provide service as a "carrier of last resort," states have the flexibility to establish reasonable limitations and technical parameters for dark fiber unbundling. We conclude, however, that for a limitation on dark fiber to be reasonable, it must relate to a likely and foreseeable threat to an incumbent LEC's ability to provide service as a carrier of last resort. In establishing reasonable limitations and technical parameters for dark fiber, states should acknowledge that the requesting carriers require regulatory certainty in order to implement their business plans.

UNE Remand Order, at ¶352 (footnote omitted).

Verizon offered no evidence that the imposition of a limitation on Yipes of up to 25% of the available dark fiber or four strands of dark fiber (whichever is greater) in any given segment of Verizon's network during any two-year period is related to a "likely and foreseeable threat" (emphasis added) to its ability to provide service as a carrier of last resort.

As a further indication that Yipes' position is the correct one on this issue, it is noted that Verizon's tariff Pa. P.U.C. – No. 216, Section 3, B.1.k.1 states:

> Dark fiber is provided subject to the availability of facilities on a first-come first-served basis. Reservations for dark fiber are not accepted.

1st. Revised Sheet 5G (effective August 10, 2001).

> If dark fiber is available on a "first-come first-served basis", Verizon must not, at this time, perceive a likely and foreseeable threat to its ability to provide service as a carrier of last resort. Yipes' proposal should be approved and its proposed language should be adopted with respect to this issue.[403]

Consistent with the above precedent, Verizon has offered no evidence that the imposition of a limitation on Covad of up to 25% of the available dark fiber is related to a "likely and foreseeable threat" (emphasis added) to its ability to provide service as a carrier of last resort. Furthermore, given that dark fiber is available on a first come and first serve basis, Verizon must not perceive a likely and foreseeable threat to its ability to provide service as a carrier of last resort.

For these reasons, the Commission should summarily reject Verizon's language. In addition, the Commission should condemn Verizon for flouting recently established Commission precedent, and for wasting the Commission's and Covad's resources by continuing to arbitrate this issue.

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

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403 *PA Recommended Dark Fiber Decision, at 14; PA Dark Fiber Decision* at 7-8.

Covad Request: Verizon should be required to provide sufficient notice of tariff charges that change or add rates.

The prices that Covad pays Verizon for UNEs are among the most important aspects of this Agreement.[404] Verizon typically uses tariff filings as a vehicle for changing UNE rates under its interconnection agreements. Covad proposes that Verizon provide direct and meaningful notice of such filings (which are in effect proposals to amend Covad's Agreement) to ensure that Covad can protect its interests. Verizon files a large number of tariffs with the Commission and it is unreasonable to expect that Covad can devote substantial resources to obtain and review all of the various filings to prevent a tariff amendment from becoming effective as filed that serves to change or add UNE rates with no further regulatory review. Furthermore, to make sure the rates in Verizon's tariff filings and the rates set out in Appendix A to the Pricing Attachment ("Appendix A") mirror each other, Verizon should also update the Appendix on an informational basis when the Commission orders new rates.

Covad's request in this regard is extremely reasonable and abundantly necessary. As indicated in the attached affidavits, Covad does not receive sufficient notice of tariff changes that effectively change or add rates in Appendix A.[405] Without sufficient notification, both Covad, and other CLECs, will continue to face difficulties when trying to verify, reconcile, and compare charges on the bill to the products and services it has ordered.[406] For instance, Covad spent over 9 months and numerous meetings and conference calls with Verizon in an attempt to get Verizon to identify how it determined the charges it manually applied to a New York bill for Line Shared

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404 *See* Exhibit 1 at Issue 38.

405 *See* Exhibit 1 at Issue 38.

406 *See* Exhibit 1 at Issue 38.

loops.[407] Verizon was unable to produce adequate supporting documentation until Covad issued repeated requests and the issue was escalated to a Verizon Vice President.[408] One of the factors that impacted the extended resolution interval was Verizon's inability to identify the applicable source for each of the charges, which were a combination of state commission decisions, Interconnection Amendments, and Interconnection Arbitration awards.[409]

Consequently, Covad expends tremendous resources monitoring Verizon's tariff activity and associated rate changes, which could be avoided if Verizon provided meaningful notification that it was planning to make a rate change.[410] It is much more efficient for Verizon to notify its Pennsylvania CLEC customers when it is proposing to change the rates they pay for their most critical inputs than it is for each of a large number of CLECs to attempt to monitor Verizon's tariff filings.

Verizon opposes Covad's request and claims that it already provides public notice to its customers, including wholesale customers, of its tariff filings and that Verizon should not also be required to provide individualized notice to each of the CLECs operating in Pennsylvania. Verizon misses the point. The public notice that Verizon refers to is insufficient and is usually sent out after the rates become effective.[411]

One way of providing adequate notice of tariff filings that Covad requests, which effectively serve to change or add a UNE rate in Appendix A, is for Verizon to provide informational updates to Appendix A that include all new or changed rates once the rates are

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407 *See* Exhibit 1 at Issue 38.

408 *See* Exhibit 1 at Issue 38.

409 *See* Exhibit 1 at Issue 38.

410 *See* Exhibit 1 at Issue 38.

411 *See* Exhibit 1 at Issue 38.

approved and become effective. Contrary to Verizon's assertion, Verizon is far better suited to make informational updates to Appendix A. Indeed, Verizon's template agreement is constantly updated for interconnection negotiation purposes and such updates include revisions made to Appendix A to the *Pricing Attachment* that reflect recently approved tariff filings. Covad only asks that Verizon provide, on a timely basis, a copy of this updated Appendix. If Verizon forwarded the proposed changes to Covad, Covad would have notice of the proposed change and can be responsible to either challenge the change, or accede to the change.[412] Certainly, by putting the change in the context of the original Agreement, i.e., Appendix A, Covad would have the opportunity to at least understand the change and its relationship in the context of the Agreement.[413] This would have the impact of eliminating unnecessary disputes generated from a lack of understanding.[414] Moreover, as explained in the attached declaration, Verizon's billing organization would greatly benefit from such information and, as a result, Verizon will benefit as a whole because such information would help to minimize future billing disputes between Verizon and Covad.[415]

Notably, Verizon's billing organization is not connected to the regulatory organization and is very often not informed of rate changes in a timely fashion.[416] For instance, Covad has been trying to identify Verizon's rate source for electronic loop extensions for over six months.

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412 *See* Exhibit 1 at Issue 38.

413 *See* Exhibit 1 at Issue 38.

414 *See* Exhibit 1 at Issue 38.

415 *See* Exhibit 1 at Issue 38.

416 *See* Exhibit 1 at Issue 38.

By its own admission, Verizon on a conference call, stated that it was unable to identify why the rates were changed and when those changes were implemented in its billing system.[417]

In addition, Verizon manually charged Covad for Line and Station Transfers on a February 2002 New York bill.[418] Subsequently, after numerous requests, Verizon provided a spreadsheet itemizing only 60% of the charges.[419] To date, Covad has had continuous discussions with Verizon attempting to identify the source of Verizon's charges.[420] After ten months of discussions, Verizon provided a chart identifying that the charges were based on an internal cost study, rather than on Commission approved rates.[421] Clearly, Covad has no insight into Verizon's rate application process. 100% of Verizon's charges in New York were inaccurate.[422] In fact, Verizon's own chart indicated that its New York charges should have been withdrawn in December 2001.[423] Nevertheless, up to December 2002, Verizon incorrectly maintained that its charges were effective rates.[424] This problem could have been easily rectified had Verizon provided Covad with an updated Pricing Appendix.[425]

By implementing a process whereby Verizon's regulatory organization would be required to modify Covad's Interconnection Agreement, Verizon's billing organization would also

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417 *See* Exhibit 1 at Issue 38.

418 *See* Exhibit 1 at Issue 38.

419 *See* Exhibit 1 at Issue 38.

420 *See* Exhibit 1 at Issue 38.

421 *See* Exhibit 1 at Issue 38.

422 *See* Exhibit 1 at Issue 38.

423 *See* Exhibit 1 at Issue 38.

424 *See* Exhibit 1 at Issue 38.

425 *See* Exhibit 1 at Issue 38.

receive the same information at the same time and would then update the billing systems.[426] This would significantly reduce the numerous claims Covad submits in order to get the billing rates corrected and refunds for the overcharges and associated late fees. [427] It is Covad's understanding that Verizon's billing tables are already maintained in its systems on a CLEC-by-CLEC basis.[428] Therefore, it should not be unreasonably burdensome for Verizon to follow Covad's proposal.[429]

Given this, there is no reason why Verizon cannot send out a revised Appendix A. Outside of pushing unnecessary administrative burdens and costs on Covad, there is no good reason for Verizon to withhold providing that updated information to Covad or CLECs in general. Covad relies heavily upon the UNE rates set forth in Appendix A when establishing end user rates for the services it will offer and for billing verification. However, because Verizon's tariff is formatted in an entirely different manner when compared to Appendix A, Covad finds that updating Appendix A to reflect newly tariffed rates that are set out in a tariff filing can be an extremely difficult and time consuming process and sometimes nearly impossible.[430] As an example, Verizon will often price new services in accordance with a similar service and the CLEC will be unaware of the appropriate rate. Such an effort is unnecessary and could be avoided entirely if Verizon provided an updated Appendix A to Covad each time Verizon revised it.

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426 *See* Exhibit 1 at Issue 38.

427 *See* Exhibit 1 at Issue 38.

428 *See* Exhibit 1 at Issue 38.

429 *See* Exhibit 1 at Issue 38.

430 *See* Exhibit 1 at Issue 38.

For these reasons, the Commission should adopt Covad's proposed contract language. It is in the best interest of both parties to have the rates for the services clearly defined in the Interconnection Agreement.

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

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

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

In its position statement, Verizon argues that all terms and conditions regarding collocation, including those for the offering of DC power, should be provided in Verizon's effective Pennsylvania collocation tariff. [431] Verizon maintains that under Verizon's currently effective Pennsylvania collocation tariff, Covad can order power in the amounts and increments it wants. This is, however, misleading. While Verizon states that it has a policy that allows Covad to order power in the amounts and increments it wants, the tariff contains no such language. As a result, Verizon could easily change its policy without even changing the tariff language and prevent Covad from purchasing the minimum amount of power Covad may order per arrangement (2 amps) and the minimum additional increments of power Covad may order (1 amp).

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[431] Although it cites the *AT&T NY Arbitration Award*, Verizon overlooks the Commission statement that CLECs are not "prohibited from negotiating terms, conditions and rates that

Indeed, because the tariff is silent in this regard, the interpretation of it (without going into legal proceedings) and the policy implementing it is generally based on Verizon's sole discretion. At any time, Verizon could send out an Industry Letter – as it has in the past[432] – that dramatically changes amount and increments of power that can be ordered. To protect itself from such an occurrence, Covad is not asking for terms that are inconsistent with the tariff but rather is seeking express contract language that definitively establishes an obligation that Verizon claims is already part of Verizon's policy.[433]

As shown by in the attached declarations, Covad has unique needs and requires that the powering provisioning increment language be express and unequivocal. Indeed, in a correspondence dated May 8, 2001, Verizon itself admitted that Covad's minimum configuration at the time would only require 2 amps of power.[434] While Verizon should have included specific terms in the tariff that mirror its stated policy regarding the amount and increments of power that can be order, it did not do so. Whether Verizon's decision not to include such language was intentional or not, Covad should not have to expose itself to Verizon's future unpredictable discretion and should have the right to include clarification language in the Interconnection Agreement. This is nothing more than a simple tariff interpretation woven into the Agreement. Accordingly, Covad's proposed contract language should be adopted.

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different from Verizon's tariff where circumstances may require a divergence (i.e., where the tariff does not address the unique needs of a given CLEC)." *AT&T NY Arbitration Award* at n.6.

432 *See* Exhibit 1 at Issue 41.

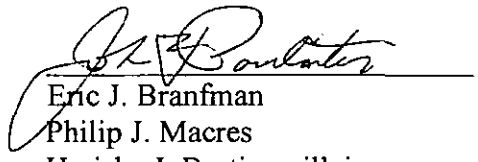
433 *See* Exhibit 1 at Issue 41.

434 See Exhibit 10; *see* Exhibit 1 at Issue 41.

III CONCLUSION

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

Respectfully submitted,



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Dated: January 17, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISISON

DIECA Communications, Inc.	:	
t/a Covad Communications Company	:	
Petition For Arbitration of Interconnection	:	
Rates, Terms and Conditions And Related	:	Docket Nos.
Arrangements with Verizon Pennsylvania Inc.	:	A-310606F7000
and Verizon North Inc. Pursuant to Section 252(b)	:	A-310606F7001
of the Communications Act of 1934	:	

CERTIFICATE OF SERVICE

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

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EXHIBIT 1

JOINT DECLARATION OF VALERIE EVANS AND MICHAEL CLANCY
ON BEHALF OF
COVAD COMMUNICATIONS COMPANY

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIECA Communications, Inc. t/a Covad Communications Company	
Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Verizon Pennsylvania Inc. and Verizon North Inc. Pursuant to Section 252(b) of the Communications Act of 1934	Docket Nos. A-310696F7000 A-310606F7001

JOINT DECLARATION OF VALERIE EVANS AND MICHAEL CLANCY ON BEHALF OF COVAD COMMUNICATIONS COMPANY

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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with New York Telephone d/b/a/ Verizon	)	
New York Inc. Pursuant to Section 252(b)	)	
of the Communications Act of 1934	)	

JOINT DECLARATION OF VALERIE EVANS AND MICHAEL CLANCY
ON BEHALF OF
COVAD COMMUNICATIONS COMPANY

Valerie Evans and Michael Clancy, being duly sworn upon oath, depose, and state, respectively, that the following is true and correct to the best of our knowledge and belief:[1]

1. My name is Valerie Evans, Vice President – Government and External Affairs for Covad. I act as a liaison between Covad's business personnel and Verizon. I am also responsible for participating in various federal and state regulatory proceedings, representing Covad.

2. Before joining Covad, I was employed by Verizon Communications for 13 years. After joining that company in 1985, I held various management positions including Assistant Manager of Central Office Operations and Manager of Installation, Maintenance and Dispatch Operations. In those positions, I oversaw the installation and maintenance of services to retail customers. Specifically, I

[1] Being a joint affidavit, Valerie Evans attests to paragraphs 1-2, and 5 through to the conclusion of the affidavit. Likewise, Michael Clancy attests to paragraphs 3-4, and 5 through to the conclusion of the affidavit.

supervised several groups that were responsible for the physical end-to-end installation of facilities and the correction of any defects or problems on the line. In 1994, I became Director of ISDN Implementation. In that position, I established work practices to ensure delivery of ISDN services to customers and to address ISDN facilities issues -- issues very similar to those encountered in the DSL arena.

3. My name is Michael Clancy, Director of Government and External Affairs for Covad. Prior to my current position, I performed customer support and operations functions for Covad's New York Tri-State region. In particular, I was responsible for building out Covad's network in New York and all other operations activities.

4. Prior to coming to Covad, I was employed by Verizon's predecessor companies, in various Network Services, Special Services, and Engineering assignments, with increasing levels of responsibility, for over 27 years. My last assignment in Verizon New York was Director of Interoffice Facility Provisioning and Process Management for the Bell Atlantic 14-state footprint.

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

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

5. Verizon's ability to assess previously unbilled charges for services rendered should be limited to services rendered within one year of the current billing date. The time and expense necessary to resolve back-bills older than one year as well

as the difficulty of accounting for back-bills older than one year cause a serious impediment to Covad's ability to manage its business effectively.

6. For instance, between the August 4, 2001 and September 4, 2001 billing cycles, Verizon inexplicably added approximately one million one hundred thousand dollars ($1.1 million) for various unidentified back-billed charges dating back to July 1, 2000. Incredibly, for a one million dollar back-bill, Verizon did not set apart the charge as a "new" charge under the current charges section of the bill. Rather, the charges showed up for the first time under "Balance Due Information." Additionally, Verizon placed this back-bill on a New York High Capacity Bill despite the fact that the back-bill was for line sharing charges in numerous jurisdictions.

7. The detail regarding the $1.1 million back-bill was limited to "Adjustment of local switching charges loop/line sharing 7/1/00-6/30/01." There was no identification of the circuits being billed. After expending significant resources over a period of 9 months to identify what the $1.1 million in charges where for, Covad determined, and Verizon agreed, that over $358,000 of the back-bill – or more than 30% of the bill – were invalid charges.

8. To add insult to injury, during the period that Covad and Verizon were resolving the claim, Verizon erroneously billed the $1.1 million *again*. Covad filed another claim for the second application of the $1.1 million, while the original claim for the $1.1 million remained open. Despite repeated requests, Verizon was unable to produce adequate supporting documentation until the issue was escalated to Verizon's Vice-President.

9. Allowing Verizon to backbill without time limitations creates significant problems for Covad. One, Covad is not the ultimate party to be billed. As a wholesale provider, Covad may still have to pass these charges through to its retail customer. Backbilling a retail customer results in a loss of goodwill and creates other potential problems.

10. Also, Covad's officers must attest to the accuracy of financial statements filed with the Securities and Exchange Commission ("SEC"). If Verizon is able to back-bill Covad for material billing errors as old as six years out of date – as Verizon proposes—then Covad may be faced with amending multiple years of SEC filings to adjust for errors created by Verizon's poor billing practices.

11. What makes this interaction more burdensome is Verizon's manual processes. Verizon manually places charges on Covad's bills and then provides a spreadsheet as support for the charges. This method is excessively troublesome for CLECs and prolongs an already lengthy and unreasonable claims and dispute process.

12. On a New York February 2002 bill, Verizon back-billed Covad for Line and Station Transfer charges amounting to $12,173.35 and $9,064.86. A spreadsheet was sent to Covad by its Verizon account manager asserting Verizon's erroneous Line Station Transfer charges for the $12,173.35 amount (attached hereto). The spreadsheet extends over nine different states, including New York, and Covad never agreed to Verizon's line and station transfer charge of $169.52 nor has this Commission approved such a rate in New York. In fact, in December 2002 Verizon acknowledged that it had withdrawn such a charge in New York as of

December 2001. Nevertheless, this charge was manually applied to a February 2002 invoice. Verizon never explained the charges associated with the $9,064.86 charge.

13. Verizon is not adequately updating its billing system to support new products. When Verizon provides a new product, it does not create billing codes for elements that will allow it to bill on a mechanized basis. As a result, Verizon is manually processing invoices and spreadsheets, increasing human error and greatly increasing the chance for incorrect billing. Further, once the billing is mechanized, this is not effectively communicated through the Verizon organization and the CLEC sometimes is doubled billed, on a manual and mechanized basis. While Verizon recently stated in its OSS Reply Declaration in the Virginia 271 proceeding that, as of January 2002, it had ceased manually billing for rate elements that have not been mechanized, Verizon has no requirement to do so and may change its policy at anytime.[2]

14. Covad receives thousands of bills from Verizon and other ILECs and carriers monthly, which all have to be reconciled within the appropriate payment period. It is Covad's desire to have these bills processed in a mechanized fashion. When Verizon manually applies charges, Covad is required to invest significant resources to investigate the legitimacy of the charges. This negatively impacts Covad's ability to pay these charges in a timely fashion.

15. As discussed further under Issues 4 and 5, Covad receives a large volume of bills and files over 1,300 billing disputes a year. Given the volume of Verizon bills

received by Covad on an annual basis, the volume of bills in dispute, and the unreasonably lengthy claims process, it is clear that Covad's complaints about Verizon billing represent material problems for Covad's business and customer satisfaction.

Issue 3: When a good faith dispute arises between the Parties, how should the claim be tracked and referenced?

16. When Covad submits a dispute to Verizon, Covad assigns its own claim tracking number to the dispute. In fact, Verizon requires that Covad assign its own claim number to the dispute. Verizon uses Covad's claim number in an infrequent and haphazard manner. Verizon's failure to include the claim number assigned to claims by Covad on all documents related to a claim makes verifying the charges and resolving claims extremely difficult.

17. Although Verizon puts a claim number on some letters related to a dispute, sometimes the claim number is Covad's and sometimes it is Verizon's. If it is Verizon's claim number it is useless to Covad.

18. For instance, when issuing credits on the bills, Verizon does not always reference the claim number. In fact, at times Verizon fails to reference any claim number, neither Covad's nor its own, when issuing credits on a bill. Across the spectrum of claims, credits and debits, Verizon is inconsistent on whether they reference the claim number with the credit on the bill.

19. When Verizon puts an adjustment for late fees or tax claims on the bill they will usually, but not always, provide Covad's claim number. However, if the claim is

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[2] In the Matter of the Inquiry into Verizon Virginia Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. Section 271(c), OSS Reply Declaration on Behalf of Verizon Virginia Inc., Case No. PUC-2002-0046, pg. 69 (May 31, 2002).

for incorrect quantities or incorrect rates, the claim number is not given with the credit. Verizon's practice of inconsistently using Covad's tracking number makes verifying credits difficult. For example, if Verizon charges Covad incorrectly for power, such as charging for two feeds instead of one, Verizon will issue a credit for two feeds and a charge for one feed, instead of just issuing one credit. Typically, the charge and credit cover more than a one-month period (fractional charges). Therefore, Covad receives a credit that has been combined and cannot – absent Covad's original claim number -- be searched for by the amount of the claim submitted.

20. Edward Morton, Verizon's Vice President of Billing, has told Covad numerous times that the new WCIT (Wholesale Claim and Inquiry Tracking) system -- that will be implemented by the end of the second quarter 2003 -- will address this problem. Initially, Covad was informed that WCIT would be implemented by the end of the first quarter 2003. More recently, Verizon has pushed back this date to the second quarter of 2003. However, Verizon has not proposed an interim resolution to this problem.

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

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

21. *In the past, Verizon has failed to respond to disputes filed by Covad or responded* at an unacceptably slow pace. With respect to UNE loops, there have been

numerous instances where Verizon has taken months to get back to Covad after Covad filed a dispute. These delays apply to other services as well. For example, Covad submitted claims and, as agreed to by the parties, sent monthly spreadsheets for collocation claims. Verizon was supposed to return the spreadsheet with the status of the claims within 30 days. However, it took Verizon over six to eight months to get that back to Covad.

22. In the year 2002, Covad has filed over 1,300 billing claims with Verizon East. In Covad's experience, it takes an average of 221 days to resolve a high capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to resolve a collocation claim in the Verizon East region. Covad still has 3 disputed billing claims open with Verizon since the year 2001. These disputed charges total to more than $100,000, yet Verizon has continued to drag its feet in resolving them. In New York, Covad still has a billing claim open with Verizon since April 2002. Covad even escalated these billing disputes to Verizon's Vice-President of billing, and Covad received assurances that these disputes would be resolved by August 15, 2002. Nonetheless, Verizon allowed the August 15 date to pass by without taking any action on Covad's disputed charges. As a consequence, Covad is forced to more closely monitor its bills and pursue expensive and time consuming billing disputes, claims and queries.

23. When asked to improve their responsiveness to claims in the Verizon West region, Verizon started closing out claims within 24 hours by denying claims without any investigation. Such a response is clearly unacceptable. The Interconnection Agreement between Verizon and Covad must provide for specific

deadlines for the procedures used to resolve claims. When not clearly set-out, Verizon has shown a willingness to play games with the claim resolution procedures. Verizon also claims that billing metrics requiring resolution of billing claims within 28 calendar days only apply to UNE loop claims and do not apply to high capacity access/transport and collocation claims.

24. As Covad recently explained in detail to Verizon, Verizon has been repeatedly misapplying Covad payments to the wrong accounts, resulting in underpayments in the accounts for which payment was intended, unnecessary and unwarranted late fees for Covad, and raising the prospect of unwarranted service disconnection by Verizon. Indeed, Covad has received multiple disconnect notices for several billing account numbers for which Covad's records indicate it has paid all amounts due in full. Verizon agreed that Covad's accounts were correct and is adjusting their accounts accordingly. Verizon's inability to correctly apply Covad's payments results in wasteful efforts by both Verizon's and Covad's organizations to identify and resolve unnecessary billing disputes. Furthermore, as Covad's experience illustrates, these disputes are not isolated occurrences. Rather, Covad's experience illustrates that Verizon's inability to bill competitors correctly is a problem that is growing in scope and prevalence, reflecting a pattern of behavior that is anticompetitive and discriminatory, whether by design or otherwise.

25. Once a claim has been acknowledged by Verizon, the late payment charges associated with that claim should be suppressed until the claim is resolved. Verizon's current practice results in numerous unnecessary claims. Currently,

Verizon is assessing Coväd late payment charges on amounts that are in the process of being disputed. Covad then files a dispute for those late payment charges. The following month, Verizon will assess late payment charges on the original disputed amount *as well as* the disputed late fee charges from the prior month.

26. It can take months for a dispute to be resolved and Covad must file a dispute each time a late payment charge is assessed in addition to the original dispute. So, instead of having to file only one claim for a dispute, Covad ends up having to file multiple claims to address the late payment charges, depending on how long it can take to resolve the claim and issue a credit. Typically, Covad gets charged a late fee for the disputed amount on the same invoice that has the credit on it and therefore, Covad must, yet again, file one more claim for late payment charges once the credit has been applied. All of this unnecessary bureaucracy can be avoided easily by suspending late payment charges until the underlying dispute is resolved.

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

27. In order to enter into and compete in the local exchange market throughout New York State, Covad must be assured that if Verizon sells or otherwise transfers operations in certain territories to a third-party, then such an event will not alter or cast doubt on Covad's rights under the interconnection agreement, or undermine Covad's ability to provide service to its residential and business customers. If Verizon's contract language is adopted, Covad – and its customers - will be unable to rely on continuous wholesale service

pursuant to the terms of a fully negotiated and arbitrated, and fully known, interconnection agreement.

28. Such an unforeseen and dramatic shift would be a devastating blow to Covad, potentially negating and rendering obsolete Covad's capital investment in equipment, software, and systems used in or for various exchanges. Covad could potentially lose many customers and the associated revenue streams. Moreover, Covad's extensive investments made in marketing efforts and the development of customer good will would essentially be stranded.

29. Giving Verizon the option to terminate the Agreement upon sale or transfer creates an unusual and non-mitigatable business risk that could cost Covad millions of dollars.

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

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

30. Firm Order Commitments ("FOCs") are critical to Covad's ability to provide its customers with reasonable assurances regarding the provisioning of their orders. A FOC from Verizon confirms that Verizon will deliver what Covad requested and allows Covad to inform a customer that the service they requested will be delivered. A FOC date is also critical for the provisioning process of stand-alone loops. It identifies the date Verizon will schedule its technician to perform installation work at the end user's address. The end user is required to provide access to their premises, and potentially to negotiate access to shared facilities,

where Verizon's terminal is located, at their premises. Providing a FOC within a single day facilitates Covad's ability to contact the end user, and assure they will be available. This capability assists in resolving one of the remaining inefficiencies that remain in the provisioning process: "No Access" to the end user's premises for the Verizon technician. If the end user is not able to provide access on the originally scheduled FOC date, Covad can communicate with the end user and get back to Verizon to reschedule the FOC. The efficiency gained by such an improvement will provide significant savings to Verizon and Covad -- as well as significantly improving the customer experience.

31. With respect to line sharing, Verizon's current business target of provisioning loops within three days is outdated and should be significantly shortened. If Verizon is claiming that it provides good performance on loop provisioning intervals, then it should be the goal of the Commission to continually seek to raise the bar and have the intervals shortened in order to bring advanced services to New York consumers more quickly.

32. This concept was explored by the DSL Collaborative and in Technical Conferences related to Case 00-C-0127 in July and August 2000. The participants discussed starting the Line Sharing interval at three days and revisiting the interval to progressively reduce it; first to two days and possibly to a single day. This was based upon the significant difference in the amount of work required to deliver a line shared service rather than a stand-alone service.

33. For line sharing, the loop already exists and working since the voice line is in service. Covad has become aware that the Hot-Cut process calls for all the pre-

wiring to be complete within two days. Since the cross-wiring and assignment requirements for line sharing are less than those required for Hot Cuts, and there is no coordination requirement, Verizon should recognize these facts and reduce the line sharing interval to two days. Notably, BellSouth, where the splitter is ILEC owned and requires an additional assignment step, has reduced the line sharing provisioning interval to two days.

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

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

34. Covad is losing customers as Verizon's unlawful "no facilities" policy results in order cancellations and order rejections. Verizon's policy has caused and continues to cause Verizon to reject Covad's UNE DS-1 loop orders unlawfully. As of July 15, 2002, 38% of Covad's UNE DS-1 orders in New York were cancelled or rejected because of Verizon's determination that there were "no facilities." Covad met with Verizon to explore the reasons for Verizon's rejection of several Covad UNE DS-1 loop orders. In the course of that meeting, Covad discovered circumstances in which Verizon's practice was to refuse to provision loops to Covad. Specifically, Covad discovered that Verizon was rejecting Covad's orders where provisioning the loop would require the addition of doubler cases, central office shelf space, repeaters, or other equipment to the loop.

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

35. Verizon should be obligated to provide its customer (Covad) a commercially reasonable appointment window when it will deliver the product (the loop). Verizon should be required to provide Covad with either a morning ("AM") or afternoon ("PM") appointment window.

36. Verizon provides morning or afternoon appointments for its retail operations. By clarifying the time that the customer needs to be available, AM or PM appointment windows would make a contribution toward limiting the number of Verizon dispatches that result in "no access" situations, *i.e.*, those situations where Verizon cannot gain access to the end user's premises to complete the installation. No access is a problem because it causes a significant delay in service installation. Covad's end users have to stay home more than one time for Verizon to complete its installation, which makes Covad's end users and customers frustrated and unhappy. Subsequent appointments are often at least a week later than the original date, thus, adding more delay. In some instances, end users report that they were indeed home when Verizon reported the no access. This puts us in a "he-said, she-said" situation with our customers. Also, Covad incurs a financial penalty from the ILEC for each no access situation and for the processing to generate the new date. Covad has every incentive, therefore, to reduce the no access problem. While Covad has been successful in reducing no access, limiting the appointment time can further reduce no access situations.

37. Covad and Verizon have used the AM and PM appointment window structure in the past to help resolve technician meet problems. In the past, Verizon and Covad

had difficulties successfully scheduling technician meets to resolve ongoing trouble reports. Verizon and Covad decided to schedule these as the first job in the morning or the first job after the lunch break. As a result of the AM/PM scheduling, the number of meetings where the appointments were met significantly increased such that this is no longer considered a problem. When the same issue arose in Verizon West, this solution, developed in Verizon East, was employed. Technician meet scheduling is no longer an issue for Operations in Verizon or in Covad.

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

38. Covad anticipates that spectrum management law is likely to change during the term of the Agreement as a result of proposed industry proposals presently before the FCC, and agreed to by both Covad and Verizon. (*See* NRIC V FG3 Recommendation #7: Exchange of spectrum management information between loop owners, service providers and equipment vendors (dated Nov. 27, 2001)).

39. Given that current rules and regulations will inevitably change, Covad's reference to Applicable Law is appropriate and ensures that that the Agreement comports with any changes in law that may occur in the future.

40. Moreover, Verizon's contention that Covad must use the BFR process is entirely unreasonable and burdensome.

Issue 26: Should Covad be able to offer full-strength symmetric DSL services?

41. Covad seeks specific contract language because providing advanced telecommunications services that meet SMC7 and SMC8 is critical to Covad's market entry business strategy and will require a significant investment on Covad's part in the expectation that it will be able to offer such services. If Covad is unable to provide its customers with these services, which differentiate it from other carriers, Covad runs a significant risk that these customers will seek alternative service providers, including Verizon. Hence, iron clad language is vital to Covad's market entry strategy and accompanying investment, and if Verizon is able to populate this agreement with vague, undefined obligations that it may subsequently disavow, Covad will be at risk of losing revenue, customers and credibility in the marketplace.

42. There are numerous separate spectrum management ("SM") classes with different power conformance criteria. Verizon is attempting to limit a CLEC's ability to deploy specific industry approved technologies by basing its loop definitions on a single SM class conformance standard. There are multiple methods of complying with SM standards, such as belonging to an SM class or satisfying technology-specific guidelines.

43. Also, standard T1E1.4/2000-002R3 was a draft standard. This draft standard should be replaced in the contract and reference the current Spectrum Management Standard T1.417-2001. The new standard represents a compromise between incumbent and competitive carriers and provides a more up-to-date yardstick for determining how new DSL technologies can be deployed.

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

44. End users expect and are entitled to receive the quality of service that they pay for and are promised. Verizon's promise to provision industry standard loops pursuant to FCC rules and the Interconnection Agreement rings hollow unless Verizon explicitly promises to provision and maintain in accordance with industry standards. Lacking such promise, Verizon could immediately degrade the quality of the loop below industry standards. Covad has experienced incidents where Verizon evidently changed the underlying facility make-up of UNE Loops that had been provisioned by Covad, and delivered to an end user providing a particular quality of service. Following Verizon maintenance activity, on that loop or an adjacent loop in the terminal, the quality of service delivered to the end user materially declined. Verizon is proposing to be permitted to unilaterally change the characteristics of a service, even to the point where the service no longer behaves in accordance with industry standards, immediately after provisioning a loop. Covad and other CLECs would experience the loss of customer good will due to Verizon's refusal to maintain loops in accordance with industry standards.

45. By failing to maintain loops to industry standard levels, Verizon limits the services that competitors can provide and hampers its competitors' ability to commit to service level agreements with customers. Such behavior limits one of the effects of competition, i.e., improvement of service quality. Without compliance with minimum industry standards, consumers will be deprived of

meaningful competition. For the same reasons Verizon is required to provision industry standard loops, it should also be required to maintain industry standards.

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

46. Significantly, the cooperative testing methods and procedures as provided in Covad's proposed contract language were established, for the most part, in the New York DSL Collaborative, were further refined during the Massachusetts 271 proceeding between Covad, Verizon and the Massachusetts DTE and they address the issues outlined in the brief. Furthermore, they have been employed by Verizon, not only with Covad, but also with other CLECs, as part of Verizon's provisioning and maintenance processes for stand-alone UNE loops.

47. The only refinement in the process Covad seeks is that Verizon's technician use Covad's Interactive Voice Response Unit (IVR) while the Verizon technician is performing intermediate tests to either isolate trouble or assure loop continuity. The IVR is an automated way for Verizon to ensure it is delivering a working loop. Verizon technicians can access Covad's IVR through a toll free number. The IVR provides the Verizon technician access to Covad's test head in the collocation arrangement. This is similar to the testing Verizon performs on its retail lines. If Verizon takes advantage of using the IVR, when Verizon's technician contacts Covad for joint acceptance testing, the testing should not be delayed due to defects on the loop. It is during the joint acceptance call to Covad's toll free number, that Covad will test to assure that the loop can properly function, accept it, and receive demarcation information from Verizon. Covad makes this

request because it is more efficient for both companies and their respective technicians to communicate while the testing is being performed and cooperatively work together to ensure that newly ordered stand alone loops provisioned by Verizon are properly provisioned, and to provide information so Covad understands where to pick up the loop to connect Covad's service. Furthermore, this call will not be time consuming because Covad's proposed language limits the duration of the call to 15 minutes. The industry determined it is prudent to spend 15 minutes, to prevent potentially spending even more time later if it is found that the loop was not correctly provisioned.

48. Utilization of the IVR along with cooperative testing has proven to increase the amount of loops successfully provisioned or repaired by Verizon. Covad's proposed refinement to the cooperative testing process is intended to improve efficiency and increase quality. Before implementing and using the IVR process, Verizon's technicians would attempt to cooperatively test loops with Covad only to determine that the loop was not meeting specifications. As a result of utilizing the IVR process, Verizon's technicians have been able to accurately detect and repair loops prior to calling Covad to cooperatively test a loop. This has significantly reduced the number of incidents where a Verizon technician must perform necessary troubleshooting after an initial cooperative testing call. This directly improves the process by only requiring one cooperative testing call, rather than multiple tests. Such testing is needed (a) when Verizon newly provisions a loop because many of the loops that Verizon provides to Covad are at an unacceptable level of quality and (b) after Verizon maintains or repairs a loop

because without such testing, trouble tickets are closed prematurely and, as a result, the trouble remains on the loop and another ticket needs to be opened.

49. In addition to the above, it is imperative that Verizon be on the phone with a Covad employee to provide the test from the correct location. In order for a cooperative test to be valid, the Verizon field technician must be at the customer's network interface device ("NID"), the terminating point of the loop at the customer's premises. Only from the NID can the technician test the loop all the way back to the central office. If the technician, for example, tests the loop from a cross box rather than the NID, the technician is testing only the portion of that loop between the cross box and the central office and is not testing the portion of the loop between the cross box and the NID. This is an incomplete test because if there was a problem in the portion of the loop not tested, it would not be revealed during cooperative testing and could show up after that portion is connected, which in some instances, has occurred after the loop was cooperatively tested. Without cooperative testing, this fact would be unknown.

50. Relatedly, since Covad dispatches its own technician to complete xDSL installation after the loop is cooperatively tested, Verizon should also be required to label, or "tag", all circuits at the demarcation point. The need for this process is that the Covad technician (i) knows that Verizon has terminated the loop at the customer's premises and (ii) knows where the loop is located. For instance, a loop may be terminated on a pole or in a basement of a multi-dwelling unit instead of to the customer's premises. Verizon has a policy of not building out to the end-user on UNE loops if no facility from the building terminal to the end user

premise is available. If Verizon does not complete this activity, a CLEC will not be able to provide voice or data service. The CLEC will not be able to locate the UNE pair in the multi-pair terminal, or similarly in a common space with multiple terminations. Tagging a loop is a practice that has been followed for several generations in telephone operations. To not commit to do something that is recognized as prudently effective is to display an unwillingness to be responsible. Verizon tags loops for itself, particularly when circuits are provisioned to vendors.

51. Verizon agrees that cooperative testing can identify service-affecting issues with loops before they are provisioned.

Issue 37: Should Verizon be obligated to provide "Line Partitioning" (i.e., Line Sharing where the customer receives voice services from a reseller of Verizon's services)?

52. Covad has lost significant volumes of orders because of Verizon's unreasonable, discriminatory, and anti-competitive policy. The impact of these lost sales on Covad have been hard felt. Verizon's policy has been to the detriment of New Yorkers seeking competitive alternatives and is blatantly anti-competitive because it has done its job of significantly impeding competition, both in the voice and in the DSL markets. Verizon's discriminatory treatment of resellers is currently affecting as many as 25% of the requests for service that Covad is receiving in the state of New York and could potentially increase as consumers move to competitive alternatives.

53. From a technical perspective, Verizon's denial of providing access to the HFPL on resold voice lines is baseless. Verizon offers resold DSL over resold voice lines

to its resale customers. To provision this, Verizon must write an order to cross connect the office equipment, that provides dial tone for the voice service, to the splitter termination for the Verizon DSLAM. This requires the same work functions be performed that would be performed to write an order to direct a central office technician to perform a similar cross connection to wire the exact same office equipment to a different termination that would be a CLEC splitter termination. The exact same work function to provision resold DSL would be executed to provision Line Sharing on a resold line, that Covad refers to as "Line Partitioning." This work function is the same work function to provision Line Sharing, the addition of retail DSL to retail voice, or Line Splitting. There is no technical reason to not permit the execution of this work function. Not permitting this work function does limit consumer choice and the business partnership selection available to Verizon voice resellers. Both markets are artificially limited to the monopoly provider - Verizon. There is no technical reason to disallow the sharing of resold voice lines, or the migration of Line Shared loops to resold voice and HFPL DSL, or the migration of Line Splitting to resold voice and HFPL DSL.

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

54. The prices that Covad pays Verizon for UNEs are among the most important aspects of this Agreement. Verizon typically uses tariff filings as a vehicle for changing UNE rates under its interconnection agreement. It is vital for Covad's business to receive sufficient notice of rate changes to its interconnection agreement. Covad does not receive sufficient notice through mere tariff changes that effectively change or add rates in Appendix A and expends tremendous

resources trying to monitor such changes. Notably, the public notice that Verizon does provide is insufficient because it is usually sent out in a complex tariff after the rates become effective.

55. Verizon should provide meaningful notification that it is planning to make a rate change and also update the Appendix on an informational basis when the Commission issues new rates and/or Verizon files new tariffed rates that supercede the rates currently in the Appendix. Without sufficient notification, both Covad, and other CLECs, will continue to face difficulties when trying to verify, reconcile, and compare charges on the bill to the products and services it has ordered. For instance, Covad spent over 9 months and numerous meetings and conference calls with Verizon in an attempt to get Verizon to identify how it determined the charges it manually applied to a New York bill for Line Shared loops. Verizon was unable to produce adequate supporting documentation until Covad issued repeated requests and the issue was escalated to Vice President level. One of the factors that impacted the extended resolution interval was Verizon's inability to identify the applicable source for each of the charges, which were a combination of state commission decisions, Interconnection Amendments, and Interconnection Arbitration awards. Clearly, notifying Covad of new rates and providing updated Appendices would benefit both parties.

56. In addition, Verizon manually charged Covad for Line and Station Transfers on a February 2002 New York bill. Subsequently, after numerous requests, Verizon provided a spreadsheet itemizing only 60% of the charges. To date, Covad has had continuous discussions with Verizon attempting to identify the source of

Verizon's charges. After ten months of discussions, Verizon provided a chart identifying that the charges were based on an internal cost study, rather than on Commission approved rates. Clearly, Covad has no insight into Verizon's rate application process. 100% of Verizon's charges in New York were inaccurate. In fact, Verizon's own chart indicated that its New York charges should have been withdrawn in December 2001. Nevertheless, up to December 2002, Verizon incorrectly maintained that its charges were effective rates. This problem could have been easily rectified had Verizon provided Covad with an updated Pricing Appendix.

57. Very often when State Commission decisions are made effective, Verizon then produces a rate sheet that usually does not match from state to state. Therefore, it is very difficult to identify the elements and their associated rates. As noted above, it is clear that Verizon's billing people are no better at tracking and identifying the numerous elements and their associated rates.

58. Verizon's billing organization is not connected to the Regulatory organization and is very often not informed of rate changes in a timely fashion. For instance, Covad has been trying to identify Verizon's rate source for electronic loop extensions for over six months. By its own admission, Verizon on a conference call, stated that it was unable to identify why the rates were changed and when those changes were implemented in its billing system. By implementing a process whereby Verizon's regulatory organization would be required to modify Covad's Interconnection Agreement, Verizon's billing organization would also receive the same information at the same time and would then update the billing systems.

This would significantly reduce the numerous claims Covad submits in order to get the billing rates corrected and refunds for the overcharges and associated late fees. It is Covad's understanding that Verizon's billing tables are already maintained in its systems on a CLEC-by-CLEC basis. Therefore, it should not be unreasonably burdensome for Verizon to follow Covad's proposal.

59. When Verizon notifies the industry of proposed tariff filings, it references the tariff, but does not always disclose the specific change. Covad is on the Industry Change Notification list, and has not received notification every time a tariff has been changed. The notification process is not flawless. Having a commitment to notify a party to an agreement, when the other party to the agreement has a desire to change the agreement, seems reasonable. Most businesses operate that way.

60. Additionally, the rate elements and their descriptions differ from state to state, jurisdiction to jurisdiction, and do not specifically map to the elements described in Appendix A. This forces Covad to discern how the rate changes will be applied by Verizon relative to Appendix A. This is an inefficient process that increases the possibility of misunderstanding between the parties in this business relationship.

61. If Verizon forwarded the proposed changes to Covad, Covad would have notice of the proposed change and can be responsible to either challenge the change, or accede to the change. Certainly, by putting the change in the context of the original agreement, i.e., Appendix A, Covad would have the opportunity to at least understand the change and its relationship in the context of the agreement.

This would have the impact of eliminating unnecessary disputes generated from a lack of understanding.

62. Given this, there is no reason why Verizon cannot send out a revised Appendix A attached. Outside of pushing unnecessary administrative burdens and costs on Covad that are associated with reconciling rates, there is no good reason for Verizon to withhold providing that updated information to Covad or CLECs in general. Covad relies heavily upon the UNE rates set forth in Appendix A when establishing end user rates for the services it will offer and for billing verification. However, because Verizon's tariff is formatted in an entirely different manner when compared to Appendix A to reflect newly tariffed rates that are set out in a tariff filing can be an extremely difficult and time consuming process and sometimes nearly impossible. As an example, Verizon will often price new services in accordance with a similar service and the CLEC will be unaware of the appropriate rate. Such an effort is unnecessary and could be avoided entirely if Verizon provided an updated Appendix A to Covad each time Verizon revised it.

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

63. Because the tariff is silent in this regard, the interpretation of it and the policy implementing it is generally based on Verizon's sole discretion. At any time, Verizon could send out an Industry Letter – as it has in the past – that dramatically changes amount and increments of power that can be ordered. To protect itself from such an occurrence, Covad is not asking for terms that are inconsistent with the tariff but rather is seeking express contract language that

definitively establishes an obligation that Verizon claims is already part of Verizon's policy.

64. Covad has unique needs and requires that the powering provisioning increment language be express and unequivocal. Indeed, in a correspondence dated May 8, 2001, Verizon itself admitted that Covad's minimum configuration at the time would only require 2 amps of power.

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

65. Significantly, Covad is aware of Verizon locations that serve as central offices or provide switching functionality and serve essentially as central offices but do serve as Wire Centers, i.e., routing points for Switched Exchange Access Service traffic.

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

66. CLECs tend to use newer and more capable transmission and terminating equipment to light their dark fiber than ILECs. Generally, this equipment can light fiber over much longer distances than the equipment Verizon employs in its legacy hub-and-spoke network. In fact the advantage that newer fiber optics equipment provides carriers is that the electronics can use different light frequencies, sometimes called "lamdas," to increase the capacity of existing fibers. Vendors continually innovate and develop new electronics, which can result in higher capacity on existing fiber or more tolerance for attenuation on a fiber.

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

67. TIRKS stands for Trunks Integrated Record Keeping System. TIRKS is a legacy mechanized operations support system, that is a database where some ILECs maintain their network equipment and circuit inventory. TIRKS is the inventory management system where ILECs keep track of their working and spare network equipment. TIRKS in general has four functions: service order provisioning system, equipment inventory, facility inventory (tracking copper and fiber in the field), and circuit inventory.

68. Verizon admitted that it possesses dark fiber transport maps and offered to provide dark fiber maps during the Virginia Section 271 hearing before the Virginia State Corporation Commission, however, Verizon later rescinded this offer.

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

69. Verizon objects to Covad's proposed language and contends that the type of detailed information is requested is not the type of information that should be defined on an interconnection-agreement-by-interconnection-agreement basis. Verizon ostensibly seeks to avoid any obligation by not having such language in the Agreement. This language is, however, needed in the Agreement because it is Covad's experience that Verizon will deny any request for anything not made explicit in the Agreement. Notably, the agreed upon language of Section 8.2.8 of the UNE attachment provides that Verizon will perform field testing at Covad's request, will perform transmission loss tests, and will document and provide the results of the tests to Covad. However, for these terms to be meaningful, Verizon

must provide Covad critical fiber specifications, including whether fiber is dual window construction; the numerical aperture of the fiber; and the maximum attenuation of the fiber. Furthermore, because Covad compensates Verizon for performing the tests providing the information, Verizon's opposition to such clarifying language establishes that Verizon's intent is to utilize such silence and/or ambiguity in the Agreement to thwart Covad's ability to compete with Verizon. The Agreement must therefore be clear in this respect.

70. In addition, Verizon cannot argue that any fiber capable of passing light is good enough for CLECs because such a claim flies in the face of its obligation to offer UNEs that are at least equal in quality to what it provides itself. It is common industry knowledge that ILECs have processes for testing each and every splice that is made in a fiber optic cable, as well as end-to-end readings for each fiber strand. In providing access to its UNEs, Verizon is legally obligated to perform testing at the same level at which it performs for itself. By refusing to provide field testing to Covad in the same manner and using all relevant standards that Verizon provides to itself, Verizon is providing Covad with inferior network elements in a manner that denies Covad a meaningful opportunity to compete. It is technically feasible for Verizon to run these tests, especially when Verizon does so for itself and it is industry standard to do so.

71. Furthermore, Verizon cannot in good conscience dispute that if, for example, fiber is being used for an optical system at 1550 nm, but was tested only at 1310 nm, it is possible that the optical system may not properly function, even if one test indicated the fiber was good. For this reason, if only one test is performed, there

might be deficiencies in the fiber that remain undetected. It is not until certain tests are performed on the fiber and that information is relayed to Covad can Covad determine that the fiber can perform for its intended use.

72. Significantly, Covad is not asking that Verizon fix or build fibers to Covad's expectations. Covad merely asks that Verizon test the fibers for Covad at the same levels Verizon tests them for use in its network. That way, the fiber may be fixed by Verizon to correct the deficiencies revealed by the tests. Verizon should not, as it contends, be permitted to provision dark fiber "as is" and allow the CLEC to choose whether to accept or reject if the facility does not support the CLEC's services. It is Covad's understanding that when Verizon lights up fiber to provide service to itself or its customers and encounters problems provisioning the service over the fiber, Verizon will likely retest the fiber strands to determine if a section being used to provide the service or system is degraded. Verizon will then investigate to determine if it needs to resplice that section or replace that section altogether.

73. Clearly, reasonable and pragmatic engineering principles require that multiple levels of testing be performed to look at the characteristics of a fiber segment to make sure the system would properly function, before placing services on the facilities. Efficiency and logic require that an engineer first test the fiber, determine the quality of the fiber, and if there are any impairments on it, repair the fiber, prior to turning up a system on that fiber.

This concludes our joint declaration.

EXHIBIT 2

SEPTEMBER 2001 BACKBILL

PROPRIETARY INFORMATION

Docket Number A-310696

Name of Document Exhibit 2

Date Document Received 1-17-2003

DOCUMENT CONTAINS

PROPRIETARY INFORMATION

EXHIBIT 3

VERIZON'S ERRONEOUS LINE STATION TRANSFER CHARGES

line and station transfer charges
pair changes-December 2001

verizon

Shared Services Order	Shared Services TN	Wholesale Billing Order	Wholesale Circuit		CLEC	PON	WC CLLI	WFAC Complete DATE	STATE	CHARGE
C1TH8788	2124069033	C1TH8789	S96/SWXX/516612	/NY	COVD	1362612	NYCMNYWS	12/05	NY	169.52
C1TB9773	7185960989	C1TB9774	S74/SWXX/541552	/NY	COVD	1358274	NYCKNYBR	12/05	NY	169.52
C1UC2043	7188361368	C1UC2044	S74/SWXX/545664	/NY	COVD	1368244	NYCKNY77	12/10	NY	169.52
C1WE7268	7183245305	C1RW7664	S96/SWXX/512300	/NY	COVD	1344086	NYCXNYCR	12/05	NY	169.52
C1VJ3629	2126740678	C1VJ3630	S96/SWXX/521118	/NY	COVD	1374965	NYCMNY13	12/04	NY	169.52
C2BA5704	9149679270	C2BA5705	S88/SWXX/425853	/NY	COVD	1352527	RYEENYRY	12/05	NY	169.52
C1VF2109	2128290042	C1VF2110	S96/SWXX/521024	/NY	COVD	1378709	NYCMNY56	12/10	NY	169.52
C1ZY5184	7189419176	C1ZY5185	S74/SWXX/546291	/NY	COVD	1369289	NYCKNYAL	12/03	NY	169.52
C1WT9766	5185208520	C1WT9767	S72/SWXX/441371	/NY	COVD	1378568	LVTWNYLT	12/05	NY	169.52
C2BF5928	7184560414	C2BF5929	S74/SWXX/549663	/NY	COVD	1367558	NYCKNYFA	12/05	NY	169.52
C1ZF7660	2123438867	C1ZF7661	S96/SWXX/522044	/NY	COVD	1383307	NYCMNYVS	12/05	NY	169.52
C1WY6879	2124734072	C1WY6880			COVD	1383046	NYCMNY13	12/11	NY	169.52
C1YK9867	9143375143	C1YK9868	S88/SWXX/459504	/NY	COVD	1379707	TKHONYTU	12/08	NY	169.52
C2AG7314	2126204141	C2AG7315	S96/SWXX/523499	/NY	COVD	1388930	NYCMNY18	12/10	NY	169.52
C1ZB4363	2126274022	C1ZB4364	S96/SWXX/523308	/NY	COVD	1385828	NYCMNY18	12/08	NY	169.52
C1VT3116	9144724764	C1VT3117	S88/SWXX/458553	/NY	COVD	1377683	SCDLNYSR	12/19	NY	169.52
C1ZK9952	2129955888	C1ZK9953	S96/SWXX/524408	/NY	COVD	1390463	NYCMNY13	12/12	NY	169.52
C1ZM8861	2126455548	C1ZM8862	S96/SWXX/524766	/NY	COVD	1393728	NYCMNY18	12/13	NY	169.52
C1ZN1675	2127175229	C1ZN1676	S96/SWXX/524727	/NY	COVD	1393211	NYCMNY79	12/13	NY	169.52
C2EH5848	7185960989	C2EH5849	S74/SWXX/555096	/NY	COVD	1394556	NYCKNYBR	12/13	NY	169.52
C2AL9425	7183982423	C2AL9426	S74/SWXX/555284	/NY	COVD	1396265	NYCKNYCL	12/14	NY	169.52
C2EA0429	9149484375	C2EA0430	S88/SWXX/460688	/NY	COVD	1394610	WHPLNYWP	12/26	NY	169.52
C1ZZ8632	7186937034	C1ZZ8633	S74/SWXX/555070	/NY	COVD	1395256	NYCKNYAL	12/14	NY	169.52
C2AF8982	7186239560	C2AF8983	S74/SWXX/555483	/NY	COVD	1395519	NYCKNYCL	12/18	NY	169.52
C2BR7711	7184888892	C2BR7712	S74/SWXX/554792	/NY	COVD	1380104	NYCKNYBR	12/15	NY	169.52
C2AG8179	7184347119	C2AG8180	S74/SWXX/555499	/NY	COVD	1395027	NYCKNYKP	12/14	NY	169.52
C1ZL3857	7186327604	C1ZL3858	S74/SWXX/556117	/NY	COVD	1402736	NYCKNY14	12/18	NY	169.52
C2AV8889	9147692419	C2AV8891	S88/SWXX/461179	/NY	COVD	1403693	PSVLNYPV	12/18	NY	169.52
C2EL0187	7184511512	C2EL0188	S74/SWXX/555807	/NY	COVD	1399562	NYCKNYAI	12/18	NY	169.52
C2FB5032	7188559836	C2FB5033	S74/SWXX/556213	/NY	COVD	1400686	NYCKNYBR	12/20	NY	169.52
C2AU1367	7183693534	C2AU1368	S74/SWXX/556123	/NY	COVD	1403250	NYCKNY14	12/18	NY	169.52
C2CX7340	7187696538	C2CX7341	S74/SWXX/556550	/NY	COVD	1404110	NYCKNYAY	12/19	NY	169.52
C2CG4432	7183697617	C2CG4433	S74/SWXX/557287	/NY	COVD	1406292	NYCKNY14	12/19	NY	169.52
C2GH5783	7183585976	C2GH5784	S74/SWXX/558345	/NY	COVD	1403219	NYCQNYFL	12/20	NY	169.52
C2AT6905	7183697789	C2AT6906	S74/SWXX/557306	/NY	COVD	1395002	NYCKNY14	12/31	NY	169.52
C2CU4062	7186756955	C2CU4063	S74/SWXX/558090	/NY	COVD	1408683	NYCKNYAL	12/21	NY	169.52
C2BL1806	2128278766	C2BL1807	S96/SWXX/527928	/NY	COVD	1405365	NYCMNY18	12/24	NY	169.52
C2CT8973	7183257910	C2CT8974	S96/SWXX/528659	/NY	COVD	1412287	NYCXNYCR	12/26	NY	169.52
C2DW9531	7186431733	C2DW9532	S74/SWXX/560244	/NY	COVD	1417814	NYCKNYBR	12/28	NY	169.52
C2DK4634	7183989235	C2DK4635	S74/SWXX/558986	/NY	COVD	1410601	NYCKNYCL	12/27	NY	169.52
C2DX9313	2123344101	C2DX9314	S96/SWXX/529395	/NY	COVD	1415259	NYCMNYVS	12/27	NY	169.52
C2CS6497	7182523444	C2CS6498	S74/SWXX/559975	/NY	COVD	1414350	NYCKNYKP	12/30	NY	169.52
C2DR8650	7188029798	C2DR8651	S74/SWXX/560284	/NY	COVD	1412021	NYCKNYBR	12/28	NY	169.52
C5FN7841	6172546346	C5FN7842	S67/SWXX/214329	/NE	COVD	1299553	BITNMAWI	12/18	MA	149.11
C5RG8732	6177384551	C5RG8733	S67/SWXX/220555	/NE	COVD	1378929	BKLIMAMA	12/04	MA	149.11
C5SZ5690	7816625670	C5SZ5691	S67/SWXX/221033	/NE	COVD	1382959	LXTNMAWA	12/18	MA	149.11
C5SS6317	6036680132	C5SS6318	S73/SWXX/208543	/NE	COVD	1393629	MNCHNHCO	12/12	NH	154.89
C5TW9516	6176988027	C5TW9517	S69/SWXX/219950	/NE	COVD	1405857	MLTNMAAD	12/19	MA	149.11
C5UB6275	4018617263	C5UB6276	S75/SWXX/207949	/NE	COVD	1408083	PRVDRIWA	12/21	RI	144.83
C5UB1378	6172667065	C5UB1379	S69/SWXX/220347	/NE	COVD	1412128	BSTNMABE	12/24	MA	149.11
CEE3850	2018334041	NEE03851	S /SWXX/430767	/NJ	OVC	1376008	ENWDNJEN	12/06	NJ	145.96
CPN58158	9737360700	NTH15208	S /SWXX/702333	/NJ	OVC	1391441	WORNNJWO	12/12	NJ	145.96
CPN60026	6094664077	NTH15764	S /SWXX/702344	/NJ	OVC	1395674	HPWLNJHP	12/13	NJ	145.96
CPN60054	8564898638	NTH15773	S /SWXX/702346	/NJ	OVC	1394333	MARLNJMA	12/13	NJ	145.96
CPN60015	2018377008	NTH15770	S /SWXX/702343	/NJ	OVC	1395472	ENWDNJEN	12/14	NJ	145.96
CEF81011	9732763260	NEF81012	S /SWXX/431039	/NJ	OVC	1398539	FRFDNJFA	12/19	NJ	145.96

CPN62833	9734101977	NTH17468	S /SWXX/702362	/NJ	OVC	1403770	MDSNNJMA	12/18	NJ	145.96
CTH18558	9086309415	NTH18555			OVC	1405800	BRVLNJBE	12/21	NJ	145.96
C3IZ21271	3022831555	D3IZ21245	S3 /SWXX/703929	/DS	OVC	1391378	NWRKDENB	12/11	PA	149.95
C3IZ22961	7246959095	N3IZ22941	S7 /SWXX/722066	/PA	OVC	1397296	IMPRPAIM	12/14	PA	149.95
C3IZ55299	7246953186	N3IZ55292	S7 /SWXX/723434	/PA	OVC	1414900	IMPRPAIM	12/27	PA	149.95
C0QU74638	3015929380	N0QU68107	S36/SWXX/737426	/CM	OVC	1383525	SLSPMDNW	12/05	MD	147.75
F5RB97816	2029865154		S36/SWXX/926782	/CD	OVC	SL	WASHDCDP	12/07	DC	148.23
C9947637	4104338608	N9947636	S38/SWXX/717438	/CM	OVC	1389407	BLTMMDYK	12/07	MD	147.75
C1UE72411	7038203928	N1UE83861	S36/SWXX/956456	/CD	OVC	1387184	ALXNVABA	12/07	VA	127.28
C0QU78670	7574558486	N0QU82616	S52/SWXX/715805	/CV	OVC	1391364	NRFLVABL	12/10	VA	127.28
F5RH70943	2402210449		S36/SWXX/706937	/CM	OVC	SO	RKVLMDMR	12/07	MD	147.75
C0QU91747	7574609375	N0QU86095	S52/SWXX/716138	/CV	OVC	1397495	VRBHVARC	12/14	VA	127.28
C0QU91741	3019725313	N0QU86085	S36/SWXX/739387	/CM	OVC	1397561	GMTWMDGN	12/14	MD	147.75
C0QU91744	8047485168	N0QU86088	S48/SWXX/705385	/CV	OVC	1397292	CHESVACR	12/14	VA	127.28
C0QU93348	8047477234	N0QU87849	S48/SWXX/705431	/CV	OVC	1400495	RCMDVAPE	12/18	VA	127.28
C0QU96294	7039138455	N1QU01231	S36/SWXX/730943	/CV	OVC	1404838	SPFDVASP	12/19	VA	127.28
C0QU96525	4109621619	N1QU01503	S38/SWXX/737442	/CM	OVC	1406305	BLTMMDCH	12/20	MD	147.75
C0QU98085	7574860401	N1QU03127	S52/SWXX/716928	/CV	OVC	1408007	VRBHVAPT	12/21	VA	127.28
C1QU10286	4109924691	N1QU05630	S38/SWXX/738471	/CM	OVC	1413168	CLMAMDCB	12/28	MD	147.75
C1QU12091	4104200256	N1QU07653	S38/SWXX/738879	/CM	OVC	1414577	BLARMDBL	12/27	MD	147.75
C1UE89013	4109983571	N1UE89015	S38/SWXX/436651	/CM	OVC	1419562	OWMLMDOM	12/31	MD	147.75
									TOTAL:	12,173.35

EXHIBIT 4

E-MAIL FROM EDWARD MORTON RE WCIT

-----Original Message-----
From: edward.f.morton@verizon.com [mailto:edward.f.morton@verizon.com]
Sent: Monday, March 11, 2002 1:08 PM
To: Evans, Valerie
Cc: catherine.t.webster@verizon.com; Mike G Jernigan
Subject:

March 11, 2002

Valerie Evans
VP-External Affairs
Covad Communications Company
600 14th Street NW, Suite 750
Washington, DC 20005

Subject: Modifications to Claims Processing

Dear Valerie:

In response to your letter of February 25th, Verizon will be pleased to work with Covad to make enhancements to our joint claims process and to improve the communication between our companies. Our billing teams have reviewed your request for process changes and evaluated our ability to manage the process within our existing systems. I believe if we work together, we can satisfy both companies' requirements.

Verizon is also refining an existing West claims system, WCIT (Wholesale Claim and Inquiry Tracking) in order to implement this single claims system and its associated process throughout all wholesale billing centers by the end of the year. The system implementation will provide a consistent process among the centers and will provide standard management tools for monitoring claim responsiveness. WCIT will also accept a customer provided spreadsheet (see attached) to expedite loading, acknowledging and responding to claims. We will provide further details regarding our implementation plan later this year.

In the interim, please review our responses to your requests:

1. Specify the Covad claim number issued by Covad on the claim acknowledgment. Presently, a generic e-mail response is generated to a claim but it does not include the Covad claim number. We have found the generic response to be a hindrance in matching the claim to the acknowledgement, in the event that Verizon records do not indicate the existence of a claim submitted.
2. If you cannot specify the Covad claim number on the acknowledgment, in the alternative, we ask that you return the actual copy of the Covad claim with the acknowledgment.

Response: Verizon will ensure the acknowledgement to the Covad claim contains Covad's claim number or is attached to the Covad claim. As you know, the West B&COC accepts claims via a Web portal. The Web process provides an immediate acknowledgement with a date and time stamp. All other centers accept e-mail and will respond back to the e-mail address of the sender with an acknowledgment attached to Covad's claim. We plan to

implement the Web portal for all centers coincident with WCIT implementation to provide a consistent process and immediate acknowledgement.

3. We need a mechanism for matching credits issued by Verizon to Covad claims. Under the current system, Verizon credits a particular BAN without reference to a Covad claim or claim number. This makes it very difficult, if not impossible, for Covad to track the status of the Covad claims. As a result, we are forced to take time e-mailing and calling your agents to obtain information on what happened to pending claims. We have two suggestions about how you could easily provide this information to Covad. Verizon can

either provide written acknowledgment upon actual issuance of the credits (acknowledgments should be e-mailed to: claim@covad.com) or you could provide the Covad claim number on the bill along with the amount of the credit on the Invoice Summary Page. If you decide to send the e-mail, please include the following:

- BAN #
- Covad Claim #
- VZ Claim #
- Amount Credited

Most, but not all, of Verizon's billing systems allow us to include the Covad claim number on the adjustment. Where possible, Verizon will provide the Covad claim number on the billing adjustment to facilitate tracking. In addition, if Covad sends all claims via the claim@covad.com e-mail address, Verizon will respond to that address with the above requested information. This process will ensure all claims are sent and received via one e-mail box (with the exception of the West B&COC as noted above).

I believe these process changes and our further commitment to implement WCIT later this year will meet Covad's expectations. If you need further information or clarification, my team can establish a conference call to discuss. Please contact me on (703) 205-4191 if you wish to discuss further.

EXHIBIT 5

VERIZON'S JULY 24, 2001 DS1AND DS3 UNBUNDLED NETWORKS POLICY.

July 24, 2001

DS1 and DS3 Unbundled Network Elements Policy

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived *obligation* to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment

and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.

EXHIBIT 6

VERIZON MARYLAND INC.'S RESPONSE TO ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 1, CASE NO. 8921, DATED JUNE 19, 2002.

VERIZON MARYLAND INC.

CASE NO. 8921

RESPONSE TO

ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 1
DATED JUNE 19, 2002

What percentage of end user service orders does Verizon reject due to "no facilities"? Please describe the circumstances under which Verizon rejects end user service orders due to no facilities.

RESPONSE:

Generally speaking, Verizon MD does not reject DS1 requests for end users due to no facilities.

EXHIBIT 7

VERIZON MARYLAND INC.'S RESPONSE TO ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 2, CASE NO. 8921, DATED AUGUST 23, 2002.

VERIZON MARYLAND INC.

CASE NO. 8921

RESPONSE TO

ALLEGIANCE TELECOM OF MARYLAND, INC. DATA REQUEST NO. 2
DATED AUGUST 23, 2002

Q: Does Verizon reject orders from its retail customers for non-special access DS1 products for any of the reasons listed in Paragraph 82 of its Reply Checklist Affidavit? If so, which reasons are used to reject retail non-special access DS1 orders.

RESPONSE:

Please see response to Allegiance Set 1 question 3.

EXHIBIT 8

IN THE MATTER OF VERIZON VIRGINIA INC.'S COMPLIANCE WITH THE CONDITIONS SET FORTH IN 47 U.S.C. SECTION 271(C), CASE NO. PUC-2002-0046, JUNE 19, 2002 TRANSCRIPT PAGES 550-554, 655-662, & 679-682.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

IN THE MATTER OF

VERIZON VIRGINIA INC.'S compliance with the conditions set forth in 47 U.S.C. Section 271(c)

CASE NO. PUC-2002-00046

The complete transcript of the testimony and other incidents of the above-captioned matter when heard on June 19, 2002, before the Honorable Alexander F. Skirpan, Jr., Hearing Examiner for the State Corporation Commission, Richmond, Virginia.

Reported by:

Heidi L. Jeffreys

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APPEARANCES:

Honorable Alexander F. Skirpan, Jr.,
Hearing Examiner

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Lydia R. Pulley, Esquire
David W. Ogburn, Jr., Esquire
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Deborah Haraldson, Esquire
and
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and
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Kimberly A. Wild, Esquire
Counsel for WorldCom, Inc.

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and
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Alan M. Shoer, Esquire
Donald F. Lynch, III, Esquire
and
Stephen T. Perkins, Esquire
Counsel for Cavalier Telephone

Robert M. Gillespie, Esquire
Counsel for Virginia Cable
Telecommunications Association

Raymond L. Doggett, Jr., Esquire
Appearing on behalf of the Division
of Consumer Counsel, Office of the
Attorney General

Lawrence Freedman, Esquire
Counsel for OpenBand of Virginia,
L.L.C.

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APPEARANCES (continued):

Anthony Hansel, Esquire
Counsel for Covad Communications
Company

Mary McDermott, Esquire
Counsel for nTELOS

Robert E. Kelly, Esquire
Counsel for Allegiance Telecom of
Virginia, Inc.

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THE BAILIFF: All rise. The Commission resumes the session.
Be seated, please.
HEARING EXAMINER: I think we were to Mr. Doggett.
MR. HANSEL: I have one preliminary matter.
HEARING EXAMINER: Sure.
MR. HANSEL: Covad witnesses are unavailable tomorrow. I've spoken with Verizon, and they have no conflict with perhaps trying to put them in in the late afternoon today. Otherwise, they would be available on Friday, but to the extent this proceeding potentially will end tomorrow, you know, I'd rather put them in later this afternoon than request we extend the hearing.
HEARING EXAMINER: Well, being the eternal optimist, we'll go ahead and put them on this afternoon.
MR. HANSEL: Thank you.
MR. KELLY: Another preliminary matter. I'm here, Robert E. Kelly, representing Allegiance Telecom of Virginia, Inc.
HEARING EXAMINER: All right. Thank you.
MR. PAPPALARDO: Excuse me. Can we do

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migrations, voice migrations and data migrations. So it is a complicated topic and it is something that we need to work through as an industry.

Q. If a customer was to migrate from one CLEC to another CLEC, that information would be recorded in the Verizon systems, wouldn't it?

A. It depends upon the type of migration and the type of service.

Q. If it was a simple residential customer, assuming they use the same purchase of the UNE loop, would that information be tracked in a way that the double billing team would have access to it?

A. A resale-to-resale migration or UNE-P to-UNE-P or resale-to-UNE-P migration when it involves Verizon dial tone, then Verizon has a lot of that information in our records, yes. What we don't have in our records is the products and services that the CLEC has rendered to the end customer. We know what the CLECs have purchased from Verizon, but we don't necessarily know how that information is represented to the end customer and how it's being priced or represented to the end customer. So, we see the wholesale products that the CLEC has purchased from Verizon. We don't have any idea how they're representing that or charging their end customer for

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that.

MR. DOGGETT: Thank you, Your Honor. I have no further questions.

HEARING EXAMINER: Okay. Mr. Mueller?

MR. MUELLER: None, Your Honor.

HEARING EXAMINER: I have no questions for this panel. Any redirect?

MS. HARALDSON: Yes, Your Honor, just two quick questions.

EXAMINATION

BY MS. HARALDSON:

Q. This is to Mr. Sullivan.

Was the double-billing team established in November, 2000 or November, 2001?

A. The double-billing team was established in November, 2000.

Q. How many months, then, has that been in place?

A. It's been a year and -- you're going to test me on my math now. About a year and a half.

Q. Thank you very much.

A. Certainly.

MS. HARALDSON: Nothing further, Your Honor.

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HEARING EXAMINER: Okay. Thank you. This panel may be excused.

* * * * *

(Panel stood aside.)

HEARING EXAMINER: Call your next one.

MS. PULLEY: Your Honor, Verizon calls Rose Clayton, John White, Claire Beth Nogay, Maureen Davis, Tom Church, and Don Albert.

These witnesses are the loop panel, which is checklist item number 4.

Your Honor, I need to make one correction to the witnesses I just called. Instead of calling Tom Church, we're substituting Julie Canny.

HEARING EXAMINER: Okay.

MS. PULLEY: Thank you.

ROSEMARIE CLAYTON, JOHN WHITE, CLAIRE BETH NOGAY, MAUREEN DAVIS, JULIE CANNY and DONALD E. ALBERT, the Loops Panel, having first been duly sworn, testify as follows, viz:

EXAMINATION

BY MR. SMITH:

Q. Good morning.

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I would like each one of the panel members to please state their full name, their title, and give a brief description of their work responsibilities, starting with Ms. Nogay and working down the line?

A. (Nogay) My name is Claire Beth Nogay, Vice President for CLEC Operations, Verizon South, which constitutes the geography for all the Potomac states, Pennsylvania, Delaware and New Jersey, and I'm responsible for provisioning all CLEC local services.

(Davis) And my name is Maureen Davis. I'm the Executive Director for the National CLEC Maintenance Centers, and I have responsibility for the maintenance and repair of all resold and unbundled services.

(White) My name is John White. I'm the Executive Director for Wholesale Technology, and I support all of the wholesale operations and all the CLEC issues when technology issues come up.

A. (Clayton) My name is Rosemarie Clayton, Senior Product Manager for xDSLs and line sharing in the Verizon territory, and my responsibilities include product development to line sharing, conditioning and DSLs in general.

(Albert) My name is Don Albert, Director

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of Network Engineering and, fortunately, my title and responsibilities are the same as they were on Monday.
(Canny) I'm Julie Canny, the Executive Director to Verizon Wholesale Assurance. My responsibilities are development and performance assurance measures and remedies for all of Verizon.
Q. Thank you. With respect to checklist item 4, did you or one of your colleagues prepare or have prepared prefiled testimony on this checklist item"
A. (Collective) Yes.
Q. Referring to the exhibit that has been marked Exhibit 1, is your direct testimony on this checklist item paragraphs 124 through 207, including the attachments referenced within those paragraphs?
A. (Collective) Yes.
Q. In referring to the exhibits that have been marked as 8 and 9A, is your reply testimony paragraphs 77 through 140, including the attachments referenced within those paragraphs?
A. (Collective) Yes.
Q. Thank you. Are there any additions or corrections that you would like to make to any of those paragraphs?
A. (Clayton) I have a correction.

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Q. What is that correction?
A. The correction is to paragraph 130 of the checklist declaration, the second sentence, and it should read "During the year 2001, the volume of UNE-P combinations and stand-alone loops combined increased by approximately 130 percent."
Q. Do you have any other corrections?
A. No.
Q. Thank you.
Do you adopt those designated paragraphs with this one correction as your testimony on checklist item 4 in this case?
A. (Collective) Yes.
Q. Thank you.
MR. SMITH: Before tendering the panel for cross-examination, we would like to ask a few direct questions to Ms. Clayton regarding the responsive supplemental testimony on electronic billing of Ms. Evans on behalf of Covad Telecommunications Company that raised issues related to loop and loop pricing.
HEARING EXAMINER: Okay.
BY MR. SMITH:
Q. Ms. Clayton, are you familiar with this supplemental testimony I just referred to?

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A. (Clayton) Yes, I am.
Q. Do you have it with you?
A. Yes, I do.
Q. Could you turn to paragraph 5 of that testimony?
A. I've got it.
Q. There's an allegation or allegations made in that paragraph stating that, "Contrary to Verizon's declaration that in no case will the new UNE rates be higher than the rates the CLECs are currently being billed. several of Verizon's charges are significantly higher than the charges currently in Covad's interconnection agreement with Verizon in the Commonwealth of Virginia."
Do you see that allegation?
A. Yes, I do.
Q. Would you like to comment on that allegation?
A. Yes, I would. Although the supplemental testimony focuses on electronic billing, there are allegations made in here by Covad that are inaccurate. All CLECs have the same rates, and they are the rates that are in the billing systems today, and the rates are higher than those that Covad has presented here, and they are the same rates that we filed with

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the Commission in the March time frame of this year.
Q. Thank you.
A. You're welcome.
Q. Ms. Clayton, are these rates in Covad's interconnection agreement?
A. They are not in an existing interconnection agreement that I am aware of in Virginia today, no.
Q. And what is the status of that interconnection agreement in Virginia today?
A. The status is the interconnection agreement or the amendment itself is in limbo. Apparently, Covad was presented with the interconnection agreement; the agreement had never been signed.
Q. Thank you.
A. You're welcome.
MR. SMITH: The panel is available for cross-examination.
MR. SHOER: Thank you.

EXAMINATION
BY MR. SHOER:
Q. Good morning. My name is Alan Shoer. I represent Cavalier Telephone.

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your question.
Q Are you aware that there were meetings that took place at the FCC during the Pennsylvania 271 process where competitors were complaining about the provisioning of DS1 loops in Virginia?
A I'm generally aware of the complaints. I'm not certain on the timing, you know, whether it was during the Pennsylvania hearings or not. But I'm generally aware that there were complaints, yes.
Q And as I understand it, it's your testimony that in the Pennsylvania 271 context, the FCC was revealing the July, 2001 policy statement for determination of Verizon's compliance with the checklist requirements for 271, correct?
A Right. They addressed this issue in the Pennsylvania ruling and held that the policy that was in place at the time was consistent with current FCC rules.
Q All right. At no point during that review in the FCC did the FCC consider whether this three, triplicate conversion order we described is compliant with the checklist items for 271 application, did it?
A I'm not aware of exactly what elements of the policy they looked at. I think that what we

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looked at was the fact that we would build or would not build, and the actual conversion, special access to UNE conversion policy, I don't think was part of that review.
Q. Now, going back to your analogy about buying a dress, which you probably have more experience with than I do --
A. Let's hope so.
(Laughter)
Q. I can state for sure that that's a fact.
Can you think of any circumstance where that particular shop, that retail store, would request you to place three separate requests, three separate orders, for the same dress?
A. Not that I'm aware of, no.
Q. Would you agree with me that having a competitor submit three separate requests for the conversion ultimately to a UNE rate going forward raises the competitor's processing costs, as compared to just submitting one order?
A. I believe Verizon is in the process of considering a single request process where a UNE request is submitted, and if there are no facilities, then not having the CLEC required to submit a second one as a special access. I think those conversations,

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although I'm not totally up to speed on them -- I think those kinds of process changes have begun to be discussed.
Q And can you provide us with what level in Verizon's operations that discussion is going on?
A I'd have to check on that.
Q Does Verizon require its own retail organization to submit three orders for the same DS1 capacity or DS1 service?
A Well, it's not the same situation, because retail customers are not ordering UNEs, they're ordering either special access or they're ordering retail DS1s, and we build special access, and we build for the retail side. We're not required to build UNEs.
Q Does Verizon offer DS1 services to its retail customers?
A Yes.
(Albert) Maybe if I could just add a little on your question of the three orders to do the conversion.
At the time that we got long distance FCC approval for Vermont and Rhode Island, that process did exist there. You're talking about the UNE order, then the special access order and then the UNE order.

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Q. That was available where, Mr. Albert?
A. Vermont and Rhode Island at the times those were done.
Q. And in the Vermont and Rhode Island 271 review, was there a discussion or an examination of that triplicate process for determination of checklist compliance, do you know?
A. Not that I know of.
(Canny) It was discussed on the state level and covered, I believe, in CLEC testimony.
Q. How about in the FCC determination?
A. The whole process was included as part of their overall evaluation of our DS1 performance.
Q. How about the specific triplicate process we've been talking about?
A. I'm not sure if that was specifically mentioned.
Q. How long does it take Verizon to complete a DS1 installation for its retail customer?
A. (Nogay) If there's no construction?
Q. Uh-huh.
A. I think the intervals for special access are five-day firm-order confirmation periods -- you know, I'm not exactly sure of the total, but it's probably in the 10- to 13-day range for special

EXHIBIT 9

NRIC V FG3 RECOMMENDATION #7: EXCHANGE OF SPECTRUM MANAGEMENT INFORMATION BETWEEN LOOP OWNERS, SERVICE PROVIDERS AND EQUIPMENT VENDORS (DATED NOV. 27, 2001).

NRIC V FG3 Recommendation # 7:
Exchange of spectrum management information between loop owners, service providers and equipment vendors

I. Background:

In the interest of wireline spectrum management and spectral compatibility, the FCC issued its Line Sharing Order[1], which required that certain information be shared between loop owners and those providing services on unbundled or shared copper loops[2]. When the Line Sharing Order was adopted, the requirements for information exchange (a product of the NPRM process) seemed complete, fast and fair. Since that time, implementation of these rules have proven them to be incomplete, slowing the deployment of DSL services and causing both loop owners and service providers to incur undue expense. The recommendations NRIC V FG3 propose herein provide foundational understandings, a streamlined approach to the sharing of spectrum management information and a process to be followed prior to escalating to interference dispute. As an alternative to the current rules and practices, NRIC V FG3 believes that these recommendations will benefit DSL consumers.

The copper loop plant was designed, and is maintained, to provide voice-grade services (POTS). The economics for DSL assume that DSL can be deployed on this loop plant as a by-product of it being so maintained. The American National Standard "Spectrum Management for loop transmission systems" T1.417-2001, is based on statistical modeling of the crosstalk coupling characteristics of this loop plant, and establishes limits on the power (and frequencies) which a DSL transceiver can inject on the loop. These power limits[3] have been established such that DSL service providers can determine their own service deployment guidelines with an expectation that the interference on the loop is below a specified level. As a result, interference disputes should be rare events.

NRIC V FG3 recognizes that all parties involved in the deployment of DSL equipment in the public network must adhere to spectrum management guidelines for the provisioning of DSL loops to be successful in providing the maximum benefit to end users. We believe it is in the best interest of the industry to require that each service provider take responsibility for ensuring that its equipment is deployed according to the aforementioned spectrum management guidelines.

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[1] *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (Released December 9, 1999) ("Line Sharing Order").

[2] *See* Line Sharing Order, paragraph 204.

3 These power (or more accurately, Power Spectral Density) limits are not restricted to Power Spectral Density masks, they also include formula or calculation based criteria.

II. Recommendations:

A. As a consequence of these NRIC V FG3 Recommendations, the exchange of spectrum management and spectral compatibility related information (other than EWL as specified in section II.B.2 of this recommendation) is not required at the time the loop is provisioned [4]. Previous FCC action in Paragraph 204 of the Line Sharing Order requiring initial disclosure of spectrum management information is no longer valid. NRIC V FG3 therefore recommends that rules 51.231 (a)(3), (b) and (c) be rescinded.

B. NRIC V FG3 recommends that the loop providers' spectrum management responsibilities shall be:

1. Ensuring that the loop plant is maintained to an acceptable level to provide analog voice-grade service. Specific parameters are shown in Annex A.

2. Upon request, providing the service provider with loop information that can be used to derive Equivalent Working Length (EWL) such that the service provider may determine conformance to T1.417-2001[5], and;

3. After all of the requirements have been met for escalating to an "interference dispute"(see section II.D. of this recommendation), identifying all service providers that it reasonably concludes might have an impact on the dispute as well as the circuit IDs and Connecting Facility Assignments of those services. This will allow the service providers to then start a process among themselves to resolve the conflict.

[4] However, service providers are encouraged to disclose whether or not the service being provisioned is compatible with known disturbers, so the loop provider knows to choose facilities that avoid known disturbers if possible.

[5] Several automated methods for obtaining such information may be available; one example is obtaining a loop makeup from a database (e.g. LFACS). NRIC V FG3 is currently considering another possibility, where EWL could be inferred from capacitive loop length measurements. In addition, future DSL transceivers may have the ability to infer EWL based on characteristics of the received signal. Where an automated method to obtain the information exists, it should be used in lieu of manual compilation. It is the expectation that future revisions of T1.417-2001 will more readily accommodate these automated measurements. To the extent that the providers of such information have not already done so, they shall be entitled to recovery of fair and reasonable costs to provide such information.

C. To enable adherence to spectrum management guidelines, it will be necessary for DSL equipment vendors, loop providers and service providers to exchange spectral management information at times (as specified in this recommendation) other than provisioning. This information shall be provided in a timely manner when requested, and any charges for costs associated with providing this information shall be fair and reasonable. NRIC V FG3 recommends the following requirements regarding compliance and exchange of spectrum management information:

1. Compliance to T1.417-2001: On a going forward basis, service providers shall deploy DSL equipment in a manner that complies with the requirements of the American National Standard, "Spectrum Management for Loop Transmission Systems" T1.417-2001. In the event of escalation to a spectral interference dispute, all involved service providers shall make relevant spectral management compliance information available to all parties involved in the dispute as follows:

a) In cases where compliance is claimed using a SM Class, the specific SM Class information shall be provided.

b) In cases where compliance is claimed using technology specific guidelines, technology specific designations (e.g. TS xxx, per T1.417-2001) shall be provided.

c) In cases where the analytical Method in Annex A of T1.417-2001 has been used, the transmit PSD, analytical method calculations, and resulting maximum EWL of the specific technology shall be provided.

d) In all cases, EWL derivation(s) for the loop and all other data needed to demonstrate compliance to T1.417-2001 shall be provided.

e) In all cases, all service providers shall identify those systems not covered by the requirements of T1.417-2001 that they reasonably conclude might have an impact on the interference issue.

f) In all cases, all service providers should cooperate in an attempt to resolve all interference disputes in a timely manner.

2. Spectral Compatibility Measurements and Calculations: The party, e.g., equipment vendor, responsible for verifying the spectral compliance of a particular service provider owned[6] DSL product for use in the public network shall ensure that the equipment conforms to the requirements of T1.417-2001. Appropriate laboratory measurements or calculations used to determine this conformance shall be kept on file by this party, and made available to those service providers deploying that equipment.

3. Equivalent Working Length Information: For many loop technologies, compliance to T1.417-2001 requires knowledge of the Equivalent Working Length (EWL). The service provider is responsible for estimating EWL, either from its own data or from data obtained per II.B.2. Service providers shall keep EWL information, and associated measurements or calculations, on file. Upon escalation to an interference dispute, this information shall be made available as necessary to parties in the dispute.

[6] Spectral Compliance of end-user owned TU-R products must be covered under a future version of ANSI/TIA-968 or similar ACTA approved document for prevention of harms to the network.

D. There should be universal recognition that the DSL industry is best served if the Incidence of 'Interference Dispute' is extremely rare. It should also be recognized that there will always be loops that qualify for DSL that will not support DSL. As a baseline, loops that are maintained to an acceptable level to provide analog voice-grade services are deemed acceptable. In fact, the experience of those in Focus Group 3 is that most conditions resulting in DSL 'troubles' will be detected as POTS 'trouble.' NRIC V FG3 recommends that escalation into 'Interference Dispute' will require the complainant service provider to first do the following:

1. Investigate if any additional customer equipment has been added to line;

2. Verify proper DSLAM and CPE operation;

3. Ensure that the service providers own internal deployment rules have been followed;

4. Ensure that the service degradation is not due to network congestion or a transport network fault.

5. Verify that the loop can provide analog voice-grade service, per the requirements shown in Annex A ;

6. Verify that the DSL service is deployed in compliance with T1.417-2001;

7. Make a wideband noise measurement to determine if an unacceptable level of interference exists.

III. Additional Considerations

1. The actual resolution of interference disputes is beyond the scope of this recommendation. Conditioning or rearrangement of loops (to resolve interference disputes) continues to be the subject of interconnection agreements or other regulations which should be considered unaltered by the contents of this recommendation.

2. It should be noted that the exchange of information other than the spectrum management and spectral compatibility related information specifically addressed by this recommendation is beyond its scope. Such information exchanges, especially with regard to provisioning, are the subject of interconnection agreements and should be considered unaltered by the contents of this recommendation.

3. The reader is encouraged to ensure that there is not confusion between an "interference dispute" and "repair". "Interference dispute" denotes that service providers are convening to jointly resolve an interference problem. "Repair" denotes that a loop provider is working to correct a loop that did, but now does not, meet the analog voice-grade service parameters[5]. Therefore, the time during which a complainant service provider is performing the duties enumerated in Part D of these recommendations as well as time spent in "interference dispute" among service providers should not be counted towards a loop provider's MTTR metrics.

4. Work has been done in the industry to create many NC/NCI codes for service ordering. These codes have been created with the rules of 51.231 (a)(3), (b) and (c) in mind and therefore are associated with specific spectrum management information, often including technology type, SM Class or PSD mask. In order to be consistent with the NRIC V FG3 recommendations contained herein, NC/NCI codes containing spectrum management information should not be used on a going-forward basis. Efforts to address this discontinuity are the subject of liaison work between the NC/NCI Tag and NRIC V FG3. The NC/NCI Tag is Co - chaired by Bob Mierzejwski (732) 699-5420 and Rick Gonzalez (732) 699-5842.

5. The contents of this recommendation refer to and are based on T1.417-2001 as published. This recommendation, and any items implementing its content, should be reviewed upon publication of any future editions of T1.417 to ensure the relevance of this reference. If the NRIC VI charter includes a group similar (to NRIC V Focus Group 3) in mission and scope, that should be the body to review and if necessary revise, and seek approval of, such revisions.

IV. Annex A - Pass/Fail Criteria for Metallic Loops

NRIC V Focus Group 3 wishes to acknowledge and thank T1E1.3 for providing this information.

Table 1- Pass/Fail Criteria for Metallic Loops

Test Type	Loop Parameter	Pass/Fail Criteria
End-to-End	LS/GS dc Loop Current Or dc Loop Resistance (Note 1)	Greater than or equal to 20 mA
		Less than or equal to 1300 ohms (Note 2)
	C-Message Metallic Noise	Less than or equal to 30 dBrnC
	1004 Hz Transducer Loss	Less than or equal to 10.5 dB (Note 2)
Single-Ended	dc Insulation Resistance	Greater than or equal to 100k ohms T-G, R-G, or T-R
	Foreign dc Voltage	Less than or equal to 6 Vdc T-G, R-G, or T-R with 100k ohm voltmeter
	Foreign Longitudinal ac Voltage	Less than or equal to 25 Vrms T-G or R-G With 100k ohm voltmeter
	Capacitive Balance T-G and R-G	Greater than or equal to 95%

1- The dc Loop Current test is applicable to loops that are used in connection with loop-start or ground-start voice service as in the case of Line Sharing. The dc Loop Resistance test is applicable to all other loops.

2- The dc Loop Resistance and 1004 Hz Transducer Loss criteria are based on Non-Loaded Resistance Design guidelines. If a loop was originally designed using other design guidelines such as Unigauge Design, Loaded Resistance Design, or Long Route Design and the load coils were removed to support an advanced service, then the values shown in the table for the dc Loop Resistance and 1004 Hz Transducer Loss criteria would not be applicable.

Description of End-to-End Tests[7]

1- dc Loop Current or dc Loop Resistance. Loop current is measured when the loop is used with a loop-start or ground-start voice service. Loop resistance is measured for all other applications.

Loop current is measured with a 430-ohm load substituted for the CI at the NI. The requirement is 20 mA or more (i.e., 8.6 Vdc across the 430-ohm resistor).

Loop resistance is measured with an ohmmeter connected between the tip and ring conductors at one end of the metallic pair with the tip and ring conductors at the far end of the metallic pair shorted. The requirement depends on the loop design:

(a) Non-loaded metallic pairs designed to resistance design guidelines should have a dc loop resistance of 1300 ohms or less.

(b) Metallic pairs originally designed with load coils but no range extension with gain should have a dc loop resistance of 1500 ohms or less.

(c) Metallic pairs originally designed with load coils and range extension with gain should have a dc loop resistance of 3600 ohms or less.

2- C-Message Metallic Noise.[8] Voiceband metallic noise is measured per IEEE 743-1995 with a noise measuring set at the NI having an input impedance of 600 ohms resistive and a 900 ohms resistive termination at the CO. The metallic noise requirement is 30 dBrnC or less.

3- 1004 Hz Transducer Loss. Transducer loss[9] is defined as - 10 log P_L/P_{AS}, where P_L is the power delivered to the load, and P_{AS} is the maximum power that is available from the source. Specifications for the measurement of transducer loss are defined in IEEE 743-1995. For this test, the impedance at the CO end of the loop shall be a 900 ohms resistive and the impedance at the NI shall be a 600 ohms resistive. The transmitted signal power shall be greater than -20 dBm but less than or equal to 0 dBm. The 1004 Hz transducer loss shall not exceed 10.5 dB for metallic pairs that were originally designed to conform to non-loaded Resistance Design guidelines.

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[7] End-to-end tests are measurements at the Network Interface (NI) that are made with the indicated condition or termination at the CO end of the loop.

[8] The C-Message metallic noise test measures the unwanted metallic signals resulting from internal and external interference. An example of an internal noise source is thermal noise. Examples of external noise sources are power line induction and crosstalk.

[9] Transducer loss is not the same as insertion loss.

Description of Single-Ended Tests[10]

1- Insulation Resistance. Insulation resistance is the dc resistance between (1) the tip conductor and ground, (2) the ring conductor and ground, and (3) the tip and ring conductors. The requirement is a dc resistance of 100k ohms or more Tip-to-Ring, Tip-to-Ground, and Ring-to-Ground.

2- Foreign dc Voltage.[11] Foreign dc voltage is measured between (1) the tip conductor and ground, (2) the ring conductor and ground, and (3) the tip and ring conductors with the far-end open using a voltmeter that has an internal resistance of 100k ohms.[12] The foreign dc voltage requirement is 6 Vdc or less.

3- Foreign Longitudinal ac Voltage. This test measures the magnitude of ac voltage that has been coupled to the pair from commercial power lines. Foreign ac voltage is measured at the CO with the far end open using a voltmeter having an internal impedance of 100k ohms. The requirement is 25 Vrms or less tip to ground, and ring to ground.[13]

4- Capacitive balance. This test compares the capacitance to ground of each conductor with the far end open. Capacitive balance is expressed as the percentage that results when the larger capacitance value is placed in the denominator and the smaller capacitance value is placed in the numerator. The requirement is 95% or greater.

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[10] Single-ended tests are measurements made from the CO with the far-end (i.e. the NI) open. If an open termination is not provided at the NI, measurement results may be affected by customer premises equipment and wiring.

[11] The foreign dc voltage test measures the magnitude of the dc voltage coupled to the tip and ring conductors from external sources (e.g., CO battery).

[12] The use of a higher impedance voltmeter will result in significantly higher values of foreign voltage than would be measured with a voltmeter impedance of 100k ohms.

[13] There is no single-ended test for ac voltage between the Tip and Ring conductors. Foreign ac Tip-to-Ring voltages are manifested in the C-Message Metallic Noise test.

EXHIBIT 10

CORRESPONDENCE DATED MAY 8, 2001 REGARDING DC POWER.

-----Original Message-----
From: karen.a.maguire@verizon.com [mailto:karen.a.maguire@verizon.com]
Sent: Tuesday, May 08, 2001 3:35 PM
To: Moscaritolo, Michael; Shea, Bart; Hall, Mark
Cc: Evans, Valerie; william.m.gentry@verizon.com;
susan.e.lefevre@verizon.com
Subject: RE: Reduce Power

Michael,

Based on the information described below, it appears that lamp is not enough, but 2 amps will be required. With that in mind, if you revise the request to 2 amps for the jobs on your original spreadsheet below, we will still make it effective 4/2/01.

To ensure we update our billing records appropriately, pls. complete a power down form, which can be found at: http://128.11.40.241/east/wholesale/resources/master.htm. You can chose between the word (individual for each job) or the excel (one spreadsheet for all jobs). Instead of sending the forms to the normal collocation application address, pls. send them to Sue Lefevre, so she can make sure to put in a 4/2/01 effective date.

P.S. I'm not sure what exactly you are protesting. If you wish to ellaborate, please respond or call me on 212-395-3403.

"Moscaritolo, Michael" <michaelm@covad.com>
04/10/2001 02:48 PM

To: Karen Maguire@VZNotes
cc: "Bart Shea" <bshea@covad.com>, "Mark Hall" <mhall@covad.com>
Subject: RE: Reduce Power

In accordance with your request and under protest I have attached the Covad
Minimum Configuration.
Please review and provide your response. As I stated originally I would prefer
to work directly with Verizon to reach closure on this proposal.
Thank you for your consideration

Michael A. Moscaritolo
National Director - Network Deployment
Site Engineering and Implementation
Covad Communications
2650 North Military Trail - Suite 200
Boca Raton, Fl 33431
Business Office 941-390-9758
Virtual Office 978-774-2669
Mobile Office 508-878-3165
Fax 786-524-8568

Email: michaelm@covad.com
Website: www.covad.com

-----Original Message-----
From: karen.a.maguire@verizon.com [mailto:karen.a.maguire@verizon.com]
Sent: Tuesday, April 03, 2001 7:05 PM
To: Moscaritolo, Michael
Cc: william.m.gentry@verizon.com; susan.e.lefevre@verizon.com; kerry.white@verizon.com
Subject: Re: Reduce Power

Please provide us with the list of equipment that will remain in these arrangements and how you will configure the one amp of power. Specifically, please explain how the equipment remaining in your collocation arrangement will use the one amp of power to provide service to any end-users. We will proceed with your request, effective as of 4/2 (the date of your email below), provided that you are able to demonstrate by April 17th that the equipment in your collocation arrangements will use one amp of power to interconnect or gain access to UNEs to support services to end users. If you cannot provide this information by the 17th, please let me know when you can provide it. Thank you.

P.S. I'm sure Bart already told you, but the Buffalo issue has been resolved and you are starting up again tomorrow am.

(Embedded image moved to file: pic17634.pcx)

"Moscaritolo, Michael" <michaelm@covad.com>
04/02/2001 03:19 PM

(See attached file: VZpwrreduct.xls)

- Covad Minimum Configuration.xls

To: Karen Maguire@VZNotes
cc:
Subject: Reduce Power

Ms. Karen Maguire

Please be advised that Covad is requested that Verizon reduce the -48 Volt power feeds in the attached Central Offices to 1 amp.
I consider this notice to be effective this date and look forward to seeing revised billing for each of these Central Offices.
Thank you in advance for your anticipated cooperation with this effort.

<<VZpwrreduct.xls>>

Michael A. Moscaritolo
National Director-Network Deployment
Site Engineering and Implementation
Covad Communications
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(See attached file: VZpwrreduct.xls) (See attached file: Covad Minimum Configuration.xls)

EXHIBIT 11

HARTMAN EXHIBIT

-----Original Message-----
From: steven.h.hartmann@verizon.com
[mailto:steven.h.hartmann@verizon.com]
Sent: Sunday, November 24, 2002 2:59 AM
To: Hansel, Tony
Cc: marilyn.f.rhodovi@verizon.com; steven.h.hartmann@verizon.com
Subject: dark fiber language

Tony,

Attached is Verizon's revised proposal re. dark fiber. The new language includes what's referenced in VZ's PA and FL briefs re. cross connecting existing DF IOF strands at intermediate central offices (see, for example, PA east issues 44 and 46).

As you'll see, the numbering and indenting is not correct, but we can get that cleaned up the week after Thanksgiving.

Consistentwith our discussion on Wednesday w/ Valerie and Marilyn, this new language will not go into the "pre-arbitration" agreements already finalized.

(See attached file: Dark Fiber Revisions 112302.doc)

Steve Hartmann
Verizon
1515 North Court House Rd., Suite 500
Arlington, VA 22201-2909
phone: 703.351.3059
fax: 703.351.3660

Dark Fiber Revisions 112302.dc

8. Dark Fiber

8.1 Subject to the conditions set forth in Section 1 and upon request, Verizon shall provide Covad with access to unbundled Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF (as such terms are hereinafter defined) in accordance with, and subject to, the rates, terms and conditions provided in the Pricing Attachment and to the extent consistent with this Principal Document rates, terms and conditions of Verizon's applicable Tariffs. Access to unbundled Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF will be provided by Verizon, where existing facilities are available. ~~at the requested availability date~~ Access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF will be provided in accordance with, but only to the extent required by, Applicable Law. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF consist of Verizon optical transmission facilities without attached multiplexers, aggregation or other electronics. To the extent Verizon's Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF contain any lightwave repeaters (e.g., regenerators or optical amplifiers) installed thereon, Verizon shall not remove the same. Except as otherwise required by Applicable Law, the following terms and conditions apply to Verizon's Dark Fiber offerings.

8.1.1 A "Dark Fiber Loop" consists of ~~continuous~~ fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to the electronics that "light" it, and render it capable of carrying Telecommunications Services.

8.1.2 A "Dark Fiber Sub Loop" consists of ~~continuous~~ fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.

8.1.3 A "Dark Fiber IOF" consists of ~~continuous~~ fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two or more Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a Covad Central Office, but, in either case, that has not been activated through connection to multiplexing, aggregation or other electronics that "light it" and thereby render it capable of carrying Telecommunications Services.

8.2 In addition to the other terms and conditions of this Agreement, the following terms and conditions shall apply to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF:

8.2.1 Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Central Office that can be cross-connected to Covad's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure that can be cross-connected to Covad's collocation arrangement or adjacent structure. A Covad demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be determined by Verizon. A Covad demarcation point at a Customer premise shall be established at a location that is no more than thirty (30) (unless the Parties agree otherwise in writing or as required by Applicable Law) feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the Covad demarcation point by installing a fiber jumper no greater than thirty (30) feet in length.

8.2.2 Covad may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF, and Covad may not access a Dark Fiber Loop, Dark Fiber Sub-loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF are not available to Covad unless such Dark Fiber Loops, Dark Fiber Sub-loops or Dark Fiber IOF already terminate on a Verizon Accessible Terminal. ~~Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points to accommodate Covad's request.~~ Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch, are not available to Covad.

8.2.3 ~~A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).~~ Except if and, to the extent required by, Applicable Law, Verizon will not perform splicing (e.g., introduce additional splice points or open existing splice points or cases) to accommodate Covad's request.

8.2.4 Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to a Covad collocation arrangement or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office.

8.2.5 A "Dark Fiber Inquiry Form" must be submitted prior to submitting an ASR. Upon receipt of Covad's completed Dark Fiber Inquiry Form, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop(s), Dark Fiber Sub-loop(s) or Dark Fiber IOF may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) business days from receipt of the Covad's Dark Fiber Inquiry Form~~request~~, indicating whether Dark Fiber Loop(s), Dark Fiber Sub-loop(s) or Dark Fiber IOF may be available (if so available, an "Acknowledgement") based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loop(s), Dark Fiber Sub-loop(s) or Dark Fiber IOF. Where a direct Dark Fiber IOF route is not available, Verizon will provide, where available, Dark Fiber IOF via a reasonable indirect route that passes through intermediate Verizon Central Offices at the rates set forth in the Pricing Attachment. Verizon reserves the right to limit the number of intermediate Verizon Central Offices on an indirect route consistent with limitations in Verizon's network design and/or prevailing industry practices for optical transmission applications. Any limitations on the number of intermediate Verizon Central Offices will be discussed with Covad. If access to Dark Fiber IOF is not available, Verizon will notify Covad, within fifteen (15) Business Days, that no spare Dark Fiber IOF is available over the direct route nor any reasonable alternate indirect route, except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. Where no available route was found during the record review, Verizon will identify the first blocked segment on each alternate indirect route and which segment(s) in the alternate indirect route are available prior to encountering a blockage on that route, at the rates set forth in the Pricing Attachment.

8.2.5.1 Covad shall indicate on the Dark Fiber Inquiry Form whether the available Dark Fiber should be reserved, at the rates set forth in the Pricing Attachment, pending receipt of an order for the Dark Fiber.

8.2.5.2 Upon request from Covad as indicated on the Dark Fiber Inquiry Form, Verizon shall hold such requested Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF for Covad's use for ten (10) Business Days from Covad's receipt of Acknowledgement and may not allow any other party (including Verizon) to use such fiber during that time period.

8.2.5.3 Covad shall submit an order for the reserved Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF as soon as possible using the standard ordering process or parallel provisioning process as described in Section 0~~8.2.5.5~~. The standard ordering process shall be used when Covad does not have additional requirements for collocation. The parallel provisioning process shall be used when Covad requires new collocation facilities or changes to existing collocation arrangements.

8.2.5.4 If no order is received from Covad for the reserved Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF within ten (10) Business Days from Covad's receipt of Acknowledgement, Verizon shall return to spare the reserved Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF that Verizon previously notified Covad are available. Should Covad submit an order to Verizon after the ten (10) Business Day reservation period for access to a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF that Verizon has previously notified Covad was available, Covad assumes all risk that such Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will no longer be available.

8.2.5.5 Upon Covad's request, the Parties will conduct parallel provisioning of collocation and Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF in accordance with the following terms and conditions:

8.2.5.5.1 Covad will use existing interfaces and Verizon's current applications and order forms to request collocation and Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF.

8.2.5.5.2 Verizon will parallel process Covad's requests for collocation, including augments, and Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF.

8.2.5.5.3 Before Covad submits a request for parallel provisioning of collocation and Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF, Covad will:

8.2.5.5.3.1 submit a Dark Fiber Inquiry Form and receive an Acknowledgement from Verizon; and

8.2.5.5.3.2 submit a collocation application for the Verizon Central Office(s) where the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF terminates and receive confirmation from Verizon that Covad's collocation application has been accepted.

8.2.5.5.4 Covad will prepare requests for parallel provisioning of collocation and Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF in the manner and form reasonably specified by Verizon.

8.2.5.5.5 If Verizon rejects Covad's Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF request, Covad may cancel its collocation application within five (5) Business Days of such rejection and receive a refund of the collocation application fee paid by Covad, less the costs Verizon incurred to date.

8.2.5.5.6 If Verizon accepts Covad's Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF request, Verizon will parallel provision the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF to a temporary location in Verizon's Central Office(s). Verizon will charge and Covad will pay for parallel provisioning of such Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF at the rates specified in the Pricing Attachment beginning on the date that Verizon accepts each Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF request.

8.2.5.5.7 Within ten (10) days after Verizon completes a Covad collocation application, Covad shall submit a Dark Fiber change request to reposition Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF

from the temporary location in that Verizon Central Office(s) to the permanent location at Covad's collocation arrangement in such Verizon Central Office(s). Covad will prepare such request(s) in the manner and form specified by Verizon.

8.2.5.5.8 If Covad cancels its collocation application, Covad must also submit a cancellation for the unbundled Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF provisioned to the temporary location in the Verizon Central Office(s).

~~8.2.7~~8.2.6 Covad shall order Dark Fiber IOF, Dark Fiber Loops and Dark Fiber Sub Loops UNEs by sending to Verizon a separate ASR for each A to Z route.

8.2.8 ~~Field Survey: In the former Bell Atlantic jurisdictions, if the dark fiber inquiry response indicates that fiber is available, Covad may request that Verizon perform a field survey to ensure that such fiber pairs are available (i.e., not defective and have not been used by field personnel for prior emergency restoration activity) and to perform transmission loss test(s). The test results will be documented and provided to Covad. Covad will be charged Verizon's standard time and materials rates for the field survey.~~

8.2.9 ~~Access~~Where a collocation arrangement can be accomplished in a Verizon premises, access to Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF that terminate in a Verizon premises, must be accomplished via a collocation arrangement in that Verizon premise. In circumstances where a collocation arrangement cannot be accomplished in ~~the~~a Verizon premises, the Parties agree to negotiate for possible alternative arrangements.

8.2.10 A Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will be offered to Covad in the condition that it is available in Verizon's network at the time that Covad submits its request (i.e., "as is"). In addition, Verizon shall not be required to convert lit fiber to a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF for Covad's use.

8.2.11 Spare wavelengths on fiber strands, where Wave Division Multiplexing (WDM) or Dense Wave Division Multiplexing (DWDM) equipment is deployed, are not considered to be Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, and, therefore, will not be offered to Covad as Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.

8.2.12 Fiber that has been assigned to fulfill a Customer order ~~or~~ for maintenance purposes or for Verizon's lit fiber optic systems will not be offered to Covad as Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.

8.2.13 Covad shall be responsible for providing all transmission, terminating and lightwave repeater~~regeneration~~ equipment necessary to light and use Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF.

8.2.14 Covad may not resell to third parties unlit Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, purchased pursuant to this Agreement.

8.2.15 In order to preserve the efficiency of its network, Verizon may, upon a showing of need to the Commission, ~~will~~ limit Covad to leasing up to a maximum of twenty-five percent (25%) of the ~~Dark~~ Fiber Loops, ~~Dark~~ Fiber Sub-Loops or ~~Dark~~ Fiber

IOF in any given segment of Verizon's network. In addition, except as otherwise required by Applicable Law, Verizon may take any of the following actions, notwithstanding anything to the contrary in this Agreement:

8.2.15.1 Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Covad upon a showing of need to the Commission and twelve (12) months' advance written notice to Covad; and

8.2.15.2 ~~Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to Covad upon a Commission finding that Covad underutilized fiber within any twelve (12) month period;~~

~~8.2.15.3~~Verizon reserves and shall not waive, Verizon's right to claim before the Commission that Verizon should not have to fulfill a Covad order for Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF because that request would strand an unreasonable amount of fiber capacity, disrupt or degrade service to Customers or carriers other than Covad, or impair Verizon's ability to meet a legal obligation.

8.2.16 Except as expressly set forth in this agreement, Covad may not reserve Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF.

8.2.17 Covad shall be solely responsible for: (a) determining whether or not the transmission characteristics of the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF accommodate the requirements of Covad, based upon Covad's service requirements, any testing by Covad, and potentially upon information about the facilities that may be provided by Verizon pursuant to a field survey that Covad may request; (b) obtaining any Rights of Way, governmental or private property permit, easement or other authorization or approval required for access to the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF; (c) installation of fiber optic transmission equipment needed to power the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF to transmit Telecommunications Services traffic; (d) installation of a demarcation point in a building where a Customer is located; and (e) except as set forth with respect to the parallel provisioning process addressed above, Covad's collocation arrangements with any proper optical cross connects or other equipment that Covad needs to access Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF before it submits an order for such access. Covad hereby represents and warrants that it shall have all such rights of way, authorizations and the like applicable to the geographic location at which it wishes to establish a demarcation point for a ~~d~~Dark ~~f~~Fiber Loop, Dark Fiber Sub-Loop, or Dark Fiber IOF, on or before the date that Covad places an order for the applicable ~~d~~Dark ~~f~~Fiber Loop, Dark Fiber Sub-Loop, or Dark Fiber IOF, and that it shall maintain the same going forward.

8.2.18 Covad is responsible for trouble isolation before reporting trouble to Verizon. In the event that Verizon must perform emergency cable restoration to its facilities, reasonable efforts will be made to restore Covad's leased Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF in the same manner as other fibers in the same cable sheath using Verizon's standard restoration procedures. Verizon shall use the same methods, procedures, and practices to maintain Covad's fibers as it does for its own fibers. If an entire ribbon degrades and Verizon would, in the ordinary course of business, repair the fiber, then Verizon will repair all of the strands in the ribbon, regardless of whether the fibers are being used by Covad or by Verizon. A dark fiber cable consists of multiple ribbons,

which each contain individual fibers.

8.2.19 Covad is responsible for all work activities at the Customer premises. Except as otherwise required by Applicable Law, all negotiations with the premises owner are solely the responsibility of Covad.

8.2.19 Acceptance Testing: In the former Bell Atlantic jurisdictions, after a dark fiber circuit is provisioned, Covad may request testing of the dark fiber circuit to determine actual transmission characteristics. Covad will be charged Verizon's standard time and materials rates for the testing. If Covad subsequently determines that the dark fiber circuit provided by Verizon is not suitable, it must submit a request to disconnect the dark fiber circuit.

8.2.20 Covad may request the following, which shall be provided on a time and materials basis (as set forth in the Pricing Attachment):

8.2.20.1 A fiber layout map that shows the streets within a Verizon Wire Center where there are existing Verizon fiber cable sheaths. Verizon shall provide such maps to Covad subject to the agreement of Covad, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. Covad acknowledges that fiber layout maps do not show whether or not spare Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF are available. Verizon shall provide fiber layout maps to Covad subject to a negotiated interval.

8.2.20.2 A field survey that shows the availability of Dark Fiber Loop(s), Dark Fiber Sub-Loop(s) or Dark Fiber IOF between two or more Verizon Central Offices, a Verizon Central Office and a Covad Central Office or a Verizon End Office and the premises of a Customer, shows whether or not such Dark Fiber Loop(s), Dark Fiber Sub-Loop(s), or Dark Fiber IOF are defective, shows whether or not such Dark Fiber Loop(s), Dark Fiber Sub-Loop(s) or Dark Fiber IOF have been used by Verizon for emergency restoration activity and tests the transmission characteristics of Verizon's Dark Fiber Loop(s), Dark Fiber Sub-Loop(s) or Dark Fiber IOF. If a field survey shows that a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF is available, Covad may reserve the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF, as applicable, for ten (10) Business Days from receipt of Verizon's field survey results. If Covad submits an order for access to such Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF after passage of the foregoing ten (10) Business Day reservation period, Verizon does not guarantee or warrant the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will be available when Verizon receives such order, and Covad assumes all risk that the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will not be available. Verizon shall perform a field survey subject to a negotiated interval. If a Covad submits an order for a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF without first obtaining the results of a field survey of such Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF, Covad assumes all risk that the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will not be compatible with Covad's equipment, including, but not limited to, order cancellation charges.