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January 17, 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

VIA OVERNIGHT MAIL

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

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

Dear Mr. McNulty:

Please find enclosed an original and nine copies of the Opening Brief of Verizon Pennsylvania Inc. and Verizon North Inc. for filing in the above matter. Please also find enclosed one copy of an Appendix of state commission and FCC orders cited in the Opening Brief. Service of the Opening Brief has been made as indicated on the Certificate of Service. Please date stamp and return the extra copy of the brief in the enclosed, self-addressed stamped envelope.

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

Sincerely,



Aaron M. Panner

Enclosures

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

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

OPENING BRIEF OF VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC.

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January 17, 2003

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## I. INTRODUCTION AND SUMMARY

The issues addressed in this brief should be resolved in Verizon's favor, consistent with federal law and this Commission's precedent. The issues that Covad has raised generally focus on two areas. First, Covad raises issues related to the parties' business relationship — ordering, billing, and other logistics. Second, Covad seeks unprecedented access to Verizon's network — and even to have Verizon construct new network facilities for Covad's benefit — and to impose unprecedented burdens on Verizon to accommodate Covad's preferences without regard to the public interest. Covad's positions are without merit, first of all because the accommodations that Covad seeks are unauthorized by the federal Telecommunications Act of 1996 ("1996 Act" or "Act") and contrary to this Commission's policies.

Just as important, Covad seeks to relitigate in this bilateral proceeding matters that have already been resolved — or are being resolved — through *multilateral* processes.<sup>2</sup> Nearly all of the issues here already have been, or are being, addressed in other proceedings before this Commission or the Federal Communications Commission ("FCC"). Relitigating such issues in this bilateral arbitration would lead to endless — and needless — proceedings and would undermine the 1996 Act's strong policy in favor of uniform treatment for all industry participants. Covad has not identified any unique circumstances that distinguish it from other CLECs and that could justify standards that apply to it alone.

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<sup>2</sup> Where Covad seeks provisions in its interconnection agreement that differ from those generally applicable to all competitive local exchange carriers ("CLECs") in Pennsylvania — and that would require Verizon to develop unique processes for the benefit of Covad alone — it has not offered to pay more for this specialized service.

As noted above, this proceeding involves separate petitions for arbitration of interconnection agreements between Covad and Verizon PA and Verizon North. Although the issues raised in the two petitions overlap substantially, they are not identical. Two of the issues briefed here — Issue 38 (Verizon North) and Issue 56 (Verizon PA) — appear in only one of the petitions for arbitration. However, even where Covad has raised the same issues with respect to both companies — and even where the same legal standards apply and require resolution of those issues in Verizon’s favor — it must be remembered in resolving those issues that, although Verizon PA and Verizon North are affiliated companies, they are still separate entities.

Verizon PA, formerly Bell Atlantic-Pennsylvania, Inc., is both an incumbent local exchange company (“ILEC”) in Pennsylvania and a Bell Operating Company (“BOC”) under the 1996 Act. Verizon North is also an ILEC in Pennsylvania, but was previously an affiliate of GTE and is not a BOC under the 1996 Act. This historical difference is relevant in two respects here — one practical, the other regulatory. The practical difference is that, as a result of their history as separate companies, Verizon PA and Verizon North do not utilize the same underlying systems and processes for every order that CLECs, such as Covad, submit.<sup>3</sup> For example, as explained below, while both companies offer CLECs nondiscriminatory access to loop qualification information, they do so in different ways. The FCC has repeatedly held that

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<sup>3</sup> Pursuant to the conditions in the FCC’s *Bell Atlantic/GTE Merger Order*, Verizon is in the process of converting the Verizon North region of Pennsylvania to the operations support systems (“OSS”) interfaces and business rules in use in the Verizon PA region of Pennsylvania. See Bragg/Kelly Joint Decl. ¶ 8 (Exh. 2 hereto); *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (“*Bell Atlantic/GTE Merger Order*”). This conversion is currently scheduled to occur in two phases, and to be completed by May 2003. See Bragg/Kelly Joint Decl. ¶ 8. Nonetheless, even after the conversion, it will still be the case that Verizon PA and Verizon North may use different underlying systems for some order that CLECs submit through those common interfaces.

different ILEC systems and processes can equally satisfy the requirements of the 1996 Act. *See, e.g., New York 271 Order*<sup>4</sup> ¶ 228; *Texas 271 Order*<sup>5</sup> ¶¶ 109, 257.

The regulatory difference is that, because Verizon North is not a BOC under the 1996 Act, it was not required to demonstrate compliance with the requirements of 47 U.S.C. § 271 in order to provide long-distance service in Pennsylvania. *See Pennsylvania 271 Order*<sup>6</sup> ¶¶ 8, 134. As a result, regulatory efforts to ascertain whether Verizon PA complied with the requirements of section 271 — such as the Commission’s development of a comprehensive set of performance measurements or a performance assurance plan — were unnecessary for Verizon North.<sup>7</sup> This bilateral arbitration provides no reason for this Commission to ignore these practical and regulatory differences, or to alter its prior practice of treating Verizon PA and Verizon North as the separate companies that they are.

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<sup>4</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) (“*New York 271 Order*”), *aff’d*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

<sup>5</sup> *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) (“*Texas 271 Order*”).

<sup>6</sup> *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001) (“*Pennsylvania 271 Order*”), *appeal pending*, *Z-Tel Communications, Inc. v. FCC*, No. 01-1461 (D.C. Cir.).

<sup>7</sup> Verizon North, however, reports its performance in Pennsylvania under a set of measurements established as a condition of the FCC’s approval of the Bell Atlantic-GTE merger. *See Abesamis/Raynor Joint Decl.* ¶ 11 (Exh. 1 hereto).

## II. ISSUE-BY-ISSUE ARGUMENT

### A. Billing Issues

Covad raises a number of issues that pertain to the parties' billing relationship. Some of these issues — the use of claim tracking numbers and the time for responding to CLEC billing disputes — have been the subject of collaborative proceedings in Pennsylvania. The results of those proceedings apply to all CLECs, which is consistent with the explicit nondiscrimination provisions of the 1996 Act. Accordingly, Covad should not be permitted to relitigate matters resolved through those proceedings. The other billing issues raised here — the time limit for backbilling and the assessing of late payment charges — must be also resolved in Verizon's favor, as Covad's position is contrary to either federal or state law.

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

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

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

Contrary to Covad's description of this issue, Verizon does not seek the "unlimited right" to "backbill" Covad. Instead, Verizon contends that the only result consistent with federal and state law is that the four-year Pennsylvania statute of limitations for contract actions applies to any claim for charges properly assessed under an interconnection agreement, *see* 42 Pa. Cons. Stat. § 5525(8), unless the parties to a specific interconnection agreement *voluntarily* agree to a different arrangement. Nothing in the 1996 Act authorizes this Commission to force the parties to waive their rights under Pennsylvania law. *See, e.g.*, 1996 Act § 601(c)(1) (1996 Act "shall

not be construed to modify, impair, or supersede . . . State . . . law unless expressly so provided in [the] Act”), reprinted at 47 U.S.C. § 152 note. As this Commission has recognized, the four-year statute of limitations applies to a utility’s backbilling of its commercial customers. See *Cefalo v. Pennsylvania Gas & Water Co.*, 69 Pa. PUC 265, 268 (1989). The Commission has also adopted regulations providing a four-year period for backbilling residential utility customers, which it has held should apply to commercial customers as well. See *Angie’s Bar v. Duquesne Light Co.*, 72 Pa. PUC 213, 217 (1990) (citing 52 Pa. Code §§ 56.35, 56.83(7)).

Carrier-to-carrier billing is a complicated and evolving process. See Geller Decl. ¶ 4 (Exh. 4 hereto). For example, regulatory changes may make it difficult for carriers to bill promptly and completely for services that are required to be provided. See *id.* However, this Commission has found that it is “clear” that “the interests of justice will best be promoted by allowing the ‘back-billing’ of a commercial customer who has knowingly received and used the public utility service,” even when such backbilling is “due to the negligence of the public utility.” *Cefalo*, 69 Pa. PUC at 267. Otherwise, the customer that “paid nothing” for that service would be “unjustly enrich[ed] . . . at the expense” of other commercial customers. *Id.* This is all the more true when the commercial customer is a wholesale purchaser — if Covad’s limit on backbilling were adopted, it could be able to provide service and collect fees from its customers while avoiding the appropriate payments for the inputs that it purchases from Verizon.

Verizon’s position is thus both consistent with Pennsylvania law and even-handed — in that it applies to both backbilling and disputes of past charges — but Covad’s is not. First, Covad has arbitrarily selected a one-year limitations period to apply to backbilling, which has no counterpart in state law. Second, under Covad’s proposal, any challenges to previously billed services would remain subject to the four-year statute of limitations. This asymmetry belies

Covad's claim that a time limit on the right to backbill is necessary to provide "certainty in the billing relationship." *E.g.*, Covad Petition Attach. C at 1. If four years provides sufficient certainty for challenging alleged overbilling, then it must be equally sufficient in cases where one party has received service and has paid either no charge for the service or a charge that is less than the charge specified in its agreement or in the other party's tariffs.<sup>8</sup>

Finally, when Covad presented its claims regarding Verizon's backbilling in the Virginia 271 proceeding, the FCC "disagree[d] with Covad that Verizon's back billing for line sharing charges denies it a meaningful opportunity to compete," finding that "this problem is relatively unique" and "has been corrected." *Virginia 271 Order*<sup>9</sup> ¶ 50. In that proceeding, Covad complained of a single instance of backbilling, relating to line-sharing orders submitted from July 2000 through June 2001. *See* Geller Decl. ¶¶ 5-6. Even in that case, the bill was primarily for services rendered within the one-year limitation period that Covad proposes here; the oldest charges on the bill were for services rendered 14 months earlier. *See id.* ¶ 6. In any event, Covad never explains why Verizon would deliberately fail to bill in a timely manner charges that are due. To the contrary, Verizon has every incentive to collect amounts owed to it as promptly as possible.

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<sup>8</sup> In Issue 9, Covad has proposed to modify the anti-waiver provisions of the agreement to conform to its proposed addition of a one-year limitation on the parties' right to backbill. Because Issue 2 should be resolved in Verizon's favor, for the reasons explained above, there is no need to modify the anti-waiver provision.

<sup>9</sup> *Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, Memorandum Opinion and Order, 17 FCC Rcd 21880 (2002) ("*Virginia 271 Order*").

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

Although Verizon has committed to provide Covad with the information that it seeks, the process for tracking billing claims is an operational matter that should not be specified on an interconnection-agreement-by-interconnection-agreement basis.

Verizon is in the process of implementing a new Wholesale Claims and Inquiry Tracking (“WCIT”) system, which it will use to identify billing claims using the claim number that the CLEC assigns (assuming the CLEC enters one when submitting the claim). *See* Geller Decl. ¶ 8. This will be in addition to the unique claim number that Verizon already assigns to any billing dispute that a CLEC submits, and which Verizon uses to identify the dispute in further communication with the CLEC. *See id.* ¶ 7. Implementation of the first phase and part of the second phase of WCIT is already complete, and full implementation is scheduled for the third quarter of 2003. *See id.* ¶ 8. In the interim, and pursuant to a commitment made during the section 271 process in Pennsylvania, Verizon PA has implemented a manual process pursuant to which it will identify CLECs’ billing disputes regarding unbundled network element (“UNE”) and resale products in correspondence using both a Verizon- and a CLEC-assigned claim number (again, assuming the CLEC provides one when submitting a claim). *See id.* Thus, Verizon either already does, or soon will, provide Covad with the information that it requests here.<sup>10</sup> However, the process for tracking billing claims is an operational matter that should not be specified on an interconnection-agreement-by-interconnection-agreement basis, because the

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<sup>10</sup> Verizon notes that Covad’s statement of position, which states that “the *billing Party* should assign a Claim Number to the dispute for the purpose of allowing both Parties to reference the dispute,” *e.g.*, Covad Petition Attach. C at 1-2 (emphasis added), is inconsistent with its proposed language, which states that “[t]he *billing Party* shall use a Claim Number specified in the notice of the dispute . . . [from] the *billed Party*,” *id.* Attach. A at 2 (emphasis added).



processes at issue are ones of general applicability and cannot reasonably be customized to meet the changing needs of individual carriers. *See id.* ¶ 9.

Finally, the FCC has recently rejected Covad's challenges to Verizon's billing dispute resolution process. *See Virginia 271 Order* ¶ 49. Verizon uses the same billing dispute resolution process in the Verizon PA and Verizon North regions of Pennsylvania as it uses in Virginia and throughout the former Bell Atlantic region. *See Geller Decl.* ¶ 7. Thus, Covad's claim that it has any legal entitlement to the language that it proposes is wrong as a matter of law.

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

The standards that Covad proposes are unreasonable and contrary to the performance measurements that this Commission has adopted for Verizon PA; the agreement should state only that the parties are required to use commercially reasonable efforts to resolve billing disputes in a timely manner.

This Commission has already adopted intervals within which Verizon PA is required to respond to CLECs' billing claims. *See Abesamis/Raynor Joint Decl.* ¶ 14. Specifically, in December 2002, the Commission approved for Verizon PA the use of the May 2002 version of the New York performance measurements, which include two interim billing measurements, known as BI-3-04 and BI-3-05. *See Final Opinion and Order on Performance Measures and Remedies for Wholesale Performance for Verizon Pennsylvania Inc. (PMO II), Performance Measures Remedies*, Docket No. M-00011468, at 19 (Pa. PUC entered Dec. 10, 2002) ("*PMO II Order*"). The first measures Verizon PA's performance in acknowledging CLECs' billing disputes and has a standard of 95% of "valid/complete billing adjustment claims" acknowledged

within two business days. *See* Abesamis/Raynor Joint Decl. ¶ 14.<sup>11</sup> The second measures Verizon PA's performance in resolving those claims and has a standard of 95% of claims resolved within 28 calendar days after acknowledgement. *See id.* The New York Carrier Working Group is currently discussing final language for BI-3-04 and BI-3-05, which will be presented to that Commission for approval, and then to this Commission, pursuant to the processes adopted in the *PMO II Order* for the updating of the measurements. *See id.* ¶¶ 15-16; *PMO II Order* at 40. Because these issues are being discussed and resolved in these collaborative proceedings, and will apply to all CLECs, they should bind Covad, consistent with this Commission's "preference for a collaborative approach to refinements" to the performance measurements. *PMO II Order* at 11.

Covad's proposed language, which would require Verizon PA to "acknowledge receiving notices of Dispute Amounts within 2 business days" and to "provide an explanation for its position [on Covad's dispute] within 30 days of receiving the notice," Covad Petition Attach. A at 2, does not track the existing interim measurements. Among other things, those measurements do not require perfect performance, do require a CLEC's dispute notice to contain sufficient information for Verizon PA to investigate the claim, and exclude billing disputes for services other than wholesale billing.

Moreover, Covad's proposed language is unreasonable because it contains no requirement that the billing dispute be sufficiently current so that Verizon PA has relatively easy access to the data necessary to investigate Covad's claim within 30 days. In Rhode Island and other states where other Verizon operating companies report their performance under *final*

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<sup>11</sup> A billing dispute is "valid," for purposes of the measurement, if it pertains to wholesale billing, rather than, for example, to charges for directories or credits for performance remedies. A billing dispute is "complete" if the CLEC has followed the business rules for filling in the billing dispute form. *See* Abesamis/Raynor Joint Decl. ¶ 14.

versions of BI-3-04 and BI-3-05, the business rules for those measurements exclude billing disputes that are submitted more than 60 calendar days after the date of the bill containing the disputed charge. *See* Abesamis/Raynor Joint Decl. ¶ 7. Unless a billing dispute pertains to a recent bill, Verizon may not have easy access to the data necessary to investigate the CLEC's claim and may be unable to resolve it within 28 calendar days after acknowledgement of the CLEC's dispute. *See* Geller Decl. ¶ 11. In approving Verizon's section 271 application in Maine, the FCC found that the Rhode Island version of these billing measurements provided more meaningful data on Verizon's billing dispute resolution process than the interim New York measurements. *See* *Maine 271 Order*<sup>12</sup> ¶ 41. The FCC has relied on those measurements in other applications in finding that Verizon's billing dispute resolution performance satisfied the requirements of the Act. *See, e.g.,* *Virginia 271 Order* ¶ 49; *New Hampshire/Delaware 271 Order*<sup>13</sup> ¶ 103. Covad's claim that Verizon PA can be held to a stricter standard than those set forth in the measurements is thus incorrect as a matter of law.

Covad has proposed the same language for its interconnection agreement with Verizon North, which is unreasonable as applied to Verizon North for all of the reasons described above. Even if Covad's proposed language were reasonable, performance measurements should not be adopted on an interconnection-agreement-by-interconnection-agreement basis. Not only are such agreements not easily modified "to reflect accurately the experiences by the industry in the marketplace," *PMO II Order* at 85, but also doing so can result in an unworkable process as different timeliness standards apply to disputes raised by different CLECs. Instead, the

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<sup>12</sup> *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services In Maine*, Memorandum Opinion and Order, 17 FCC Rcd 11659 (2002) ("*Maine 271 Order*").

<sup>13</sup> *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, Memorandum Opinion and Order, 17 FCC Rcd 18660 (2002) ("*New Hampshire/Delaware 271 Order*").

appropriate standard for inclusion in an interconnection agreement is that parties shall use commercially reasonable efforts to resolve billing disputes in a timely manner.

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

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

This issue raises two policy questions regarding the late fees that Covad should be required to pay when it disputes amounts that Verizon billed, but it is ultimately determined that the billing (or a portion thereof) was appropriate. If Covad prevails in a billing dispute, no late fees are owed. However, if Verizon prevails, Covad should pay late fees on all amounts due, based on the entire length of time that the amounts due went unpaid, which is the same rule that this Commission has approved for Verizon's retail customers.

The purpose of the late-payment charge is to ensure that Verizon's customers, whether retail or wholesale, pay their bills promptly, and also to compensate Verizon for the time value of money and the cost of collection efforts when they do not. *See* Geller Decl. ¶ 14.<sup>14</sup> Providing CLECs with an incentive to manipulate the dispute resolution process in order to avoid making prompt payment would simply exacerbate an already-pressing problem for Verizon. *See id.* ¶¶ 13-14. Indeed, because Verizon does not require CLECs to pay disputed amounts during the pendency of a billing dispute, Covad's proposal — which would suspend the accrual of late-

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<sup>14</sup> Verizon has found that its uncollectable level for CLECs is well above the level for Verizon's retail customers. *See* Geller Decl. ¶ 14. This may reflect industry dislocation, but it also may reflect the fact that CLECs — as competitors of Verizon — may have an extra incentive to attempt to deprive Verizon of payment for the services that Verizon provides in order to inflict competitive harm.

payment charges if a dispute is not resolved within 30 days — would provide a CLEC with the incentive to submit barebones claims in order to generate “disputes” that will necessarily take longer than 30 days to resolve simply to avoid payment. *See id.* ¶¶ 12, 14.

In addition, Covad’s proposal suffers from the same flaws as its proposal to require Verizon to provide a response within 30 days of receiving the notice. As explained above, depending upon the degree of detail Covad provides when it submits its dispute and whether the dispute pertains to recent bills, 30 days may not be a commercially reasonable period in which to resolve a billing dispute. *See id.* ¶ 11.

Finally, the Commission should reject Covad’s proposal that would prohibit the compounding of the interest rate on late payments, by preventing a party from assessing late-payment charges when the other party fails to pay previously assessed late-payment charges. This is a matter of policy that this Commission has already resolved. This Commission’s regulations provide that a utility may charge late fees of up to 1.5% per month “on the full unpaid and overdue balance of the bill,” which includes any unpaid, past-due late-payment charges. 52 Pa. Code § 56.22(a); *see* Geller Decl. ¶ 15.

**B. Termination of the Agreement Following Sale of a Verizon Exchange**

The issue discussed below addresses the circumstances under which the rights and obligations under the agreement can be terminated following Verizon’s sale of some or all of its exchanges in Pennsylvania.

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

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

Although the agreement permits Verizon (or Covad), with the prior written consent of the other party, to assign the agreement to a third party, *see* Verizon Response Attach. E at 4, no provision of federal law *requires* Verizon to condition any sale of its operations on the purchaser agreeing to an assignment of this agreement. Indeed, once Verizon sells an exchange or territory, it is no longer the ILEC for that service area and has no obligations under the interconnection provisions of the 1996 Act. *See* 47 U.S.C. § 252(a) (obligating ILECs to enter into interconnection agreements); *id.* §§ 251(h), 252(j) (defining ILEC for purposes of § 252).<sup>15</sup> Nor can the purchaser be forced to accept Verizon's obligations under this agreement. Not only does federal law provide no basis for such obligations, but also any such requirement could impose on a would-be purchaser obligations under the agreement greater than those that apply to it under federal law. *See, e.g., id.* § 251(f) (exempting rural carriers from certain requirements under the 1996 Act). Moreover, such a requirement would likely reduce the price that Verizon could receive for a sale, and Covad has not offered to compensate Verizon for any potential loss in the value of Verizon's assets that results from this condition. In any event, if Verizon were to sell an exchange or territory in Pennsylvania, Covad can protect any rights and interests it has by participating in the Commission's proceeding regarding the sale. *See* 66 Pa. Cons. Stat. § 1103; *City of York v. Pennsylvania PUC*, 449 Pa. 136, 295 A.2d 825 (1972); *see also* Order Resolving

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<sup>15</sup> Verizon notes that Covad's proposed language states only that Verizon "may assign" the agreement to the purchaser of an exchange or territory. *E.g.*, Covad Petition Attach. A at 4. Nothing in that language would require Verizon to remain bound under the agreement in the event it does not assign the agreement to the purchaser.

Arbitration Issues, *Joint Petition of AT&T Communications of New York, Inc., et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case 01-C-0095, at 23-25 (N.Y. PSC July 30, 2001) (“*New York AT&T Order*”) (any interests a CLEC has “in the continuing performance of the terms in the agreement in the event of a transfer . . . are best addressed in the context of the Commission review of any proposed transfer of Verizon’s assets”).

### C. Operations Support Systems

The issues discussed below address two aspects of the performance of Verizon’s operations support systems (“OSS”) — Verizon’s return of order confirmation notices and of manual loop qualification information. These issues have been the subject of collaborative proceedings in Pennsylvania, and the Commission has already elected to resolve this issue for Verizon PA on an industry-wide basis. Verizon North’s performance with respect to order confirmation notices is similarly monitored on an industry-wide basis; Verizon North does not have a manual loop qualification process.

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

**38. What should the interval be for Covad’s line sharing Local Service Requests? [Verizon North petition only]**

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

This Commission has already established the interval in which Verizon PA must return Local Service Request Confirmations (“LSRCs”), formerly known as FOCs. Those intervals are contained in the Carrier-to-Carrier Guidelines, which were the result of collaborative efforts,

conducted under the auspices of the New York PSC and this Commission, by Verizon and interested CLECs, including Covad, which has been an active participant in the Carrier Working Groups in New York and Pennsylvania. *See* Abesamis/Raynor Joint Decl. ¶¶ 6-7, 18. In approving *eleven* Verizon section 271 applications, the FCC has found that these guidelines provide a “comprehensive” report of Verizon’s performance and that the business rules for the measurements are “clearly-articulated.” *E.g.*, *New York 271 Order* ¶¶ 438-439; *see also* Abesamis/Raynor Joint Decl. ¶ 8 (versions of the guidelines developed in New York, and recently adopted for Verizon PA, are used throughout the former Bell Atlantic jurisdictions). Indeed, as the New York PSC recognized, the guidelines that it adopted “go well beyond the [section 271 competitive checklist] requirements” and require Verizon “to achieve service quality that exceeds [those] requirements in specificity and degree.” Evaluation of the New York Public Service Commission at 3-4, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (FCC filed Oct. 19, 1999).

As relevant here, the guidelines that this Commission adopted for Verizon PA establish the following performance standards for the return of LSRCs on Covad’s stand-alone UNE loop orders:

**Electronically Pre-Qualified Orders**

Orders that flow through	95% within 2 hours
Orders that do not flow through and do not require a facility check	95% within 24 hours
Orders that do not flow through and require a facility check	95% within 72 hours

**Orders Requiring Manual Pre-Qualification** 95% within 72 hours

*See* Abesamis/Raynor Joint Decl. ¶ 19. Neither Covad nor any other carrier participating in either the New York or the Pennsylvania Carrier Working Group has requested that the intervals



be shortened. *See id.* ¶ 20. Because the Commission has already resolved this issue, and the Carrier Working Group process provides a mechanism for any changes to these intervals with the input of all CLECs, there is no reason for relitigation in this proceeding.

The performance measurements established in the *Bell Atlantic/GTE Merger Order* contain similar standards for Verizon North's return of LSRCs for Covad's stand-alone UNE loop orders (Issue 13) and for its line-sharing orders (Issue 38 [Verizon North petition only]):

<b>Fully Electronic/Flow Through</b>	95% within 2 hours
<b>Orders That Do Not Flow Through</b>	
UNE non-designed < 10 lines	95% within 24 hours
UNE designed < 10 lines	95% within 48 hours
UNE non-designed or designed >= 10 lines	95% within 72 hours

*See Abesamis/Raynor Joint Decl.* ¶ 21.

Nonetheless, Covad has proposed to add language that would require Verizon PA and Verizon North to return LSRCs on Covad's stand-alone UNE loop orders "within two (2) hours" for orders that Covad has electronically pre-qualified and "within twenty-four (24) hours" for orders that Covad did not, or was unable to, pre-qualify electronically. Covad Petition Attach. C at 6; *id.* Attach. D at 6. Covad's proposal would therefore substantially shorten the performance standard for all of its stand-alone UNE loop orders, except for those electronically pre-qualified orders that flow through. Covad's proposal also would apparently require Verizon to return 100% of LSRCs within these time frames, thereby further changing the performance standards that this Commission has established. Covad has also proposed to require Verizon North to return LSRCs on Covad's line-shared loop orders within "two business hours for all Covad LSRs." *Id.* Attach. D at 15. Again, this proposal is inconsistent with the standards set in the merger performance measurements, which require Verizon North to return only 95% of such

LSRCs within two hours, and only for pre-qualified orders that flow through. *See* Abesamis/Raynor Joint Decl. ¶ 21.

Covad claims that its proposed changes are reasonable and that “Verizon is already providing to CLECs” performance that meets its proposed standards. *E.g.*, Covad Petition Attach. C at 6. Although Verizon strives to provide Covad and other CLECs with the best possible service, the relevant question under the 1996 Act for OSS functions, such as LSRCs, that have no analogous retail function is whether Verizon’s “systems and performance allow an efficient carrier a meaningful opportunity to compete.” *Virginia 271 Order* App. C ¶ 36 & n.113. Covad has not even suggested — let alone shown — that the existing performance standards do not provide it with a meaningful opportunity to compete. Nor does the fact that Verizon exceeds a standard that already “go[es] well beyond the . . . requirements” of the Act justify increasing the stringency of that standard further.

Finally, the existing intervals in the applicable performance measurements enable both Verizon PA and Verizon North to process CLECs’ local service requests in a uniform fashion. The processing of such requests would soon become unmanageable if a different timeliness standard applied to the return of LSRCs to different CLECs. This is one reason why any standards for performance measurements should be established on an industry-wide basis, as the Commission has done for Verizon PA. *See* Abesamis/Raynor Joint Decl. ¶ 6.

Because Covad has shown no reason why the Commission should establish unique LSRC intervals for Covad’s orders, its proposed language should be rejected.

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

With respect to Verizon PA, Covad's proposals should be rejected because they are inconsistent with the performance measurements that this Commission has adopted and with Verizon's obligations to provide loop qualification information under federal law; Covad's proposals are generally inapplicable to Verizon North, which provides loop qualification information in a different manner from Verizon PA and does not have a manual loop qualification process.

As with the intervals for the return of LSRCs, this Commission has already established the interval in which Verizon PA must respond to a manual loop qualification request. Those measurements require Verizon PA to return 95% of such requests within 48 hours (excluding weekend and holiday hours). *See* Abesamis/Raynor Joint Decl. ¶ 27. Covad's proposal is inconsistent with the guidelines that this Commission has adopted, as it would shorten the interval to one business day and would apparently require Verizon PA to respond to 100% of Covad's requests in that interval. *See* Covad Petition Attach. A at 15-16. If Covad wishes to change the standards that this Commission established, it should seek to do so through the multilateral processes that this Commission adopted in the *PMO II Order*, not through a bilateral arbitration. *See PMO II Order* at 86-88.

Covad also wants to add language providing that, if a loop is not included in Verizon PA's mechanized database or the listing for that loop is "defective," then Covad may submit an Extended Query loop qualification transaction for free. Covad Petition Attach. A at 15.<sup>16</sup> Verizon PA's retail representatives utilize the same mechanized database (LiveWire) that is

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<sup>16</sup> Covad has proposed to modify § 3.13.5 of the UNE Attachment in order to permit Covad to submit, on a pre-order basis, either a manual loop qualification transaction or an Extended Query transaction in the event that a loop is not listed in Verizon PA's mechanized database. The Extended Query transaction is the pre-ordering version of the manual loop qualification transaction that Verizon PA offers. *See* White Decl. ¶ 9 (Exh. 6 hereto). Accordingly, Covad's proposed change is not necessary.

made available to Covad and other CLECs, *see* White Decl. ¶ 9; therefore, as the FCC has found, “any inaccuracies or omissions in [that] database are not discriminatory, to the extent they are provided in the exact same form to both retail and wholesale customers,” *Virginia 271 Order* ¶ 34. Accordingly, Covad has no right to make free use of Verizon PA’s systems when neither Covad nor Verizon PA can obtain mechanized loop qualification information from LiveWire. Finally, the FCC has repeatedly found that Verizon PA’s loop qualification process, which is the same process used throughout the former Bell Atlantic region, complies with the requirement under federal law to provide CLECs with nondiscriminatory access to that information. *See, e.g., id.* ¶¶ 34-36 (rejecting claims raised by Covad); *Massachusetts 271 Order*<sup>17</sup> ¶¶ 60-69 (same); White Decl. ¶ 9.

Covad has proposed to make the same changes to the manual loop qualification provision of its agreement with Verizon North. Covad’s proposals, however, are generally inapplicable to the procedures that Verizon North provides for retail and CLEC loop qualification requests in Pennsylvania. Verizon North has no manual loop qualification process or “extended query” — those transactions are available only in Verizon’s former Bell Atlantic Service Areas. *See* White Decl. ¶ 10. The single electronic loop qualification transaction that Verizon North offers to itself and to CLECs in Pennsylvania not only provides all the information that is provided by the various electronic transactions offered in Verizon’s former Bell Atlantic Service Areas, but also provides information that is usually only available on a manual basis in those areas. *See id.* Nonetheless, on an exceptions basis, Verizon North will manually investigate loop qualification information on particular loops for both for its retail DSL service and for CLECs, and will

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<sup>17</sup> *Application of Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) (“*Massachusetts 271 Order*”), *aff’d in part, dismissed in part, remanded in part, WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002).

provide both with any information found in substantially the same time and manner. *See id.* As is specified in Verizon North's proposed language, Verizon North will complete such investigations within the same intervals for both retail and CLECs — which is not a one-business-day interval. *See id.* ¶ \_\_. Verizon North's obligation is only to provide information to Covad in substantially the same time and manner that it provides such information to itself; Covad is not entitled to receive such information in shorter intervals. *See, e.g., Virginia 271 Order* ¶ 36.

**D. Scope of Verizon's Obligation to Provide Nondiscriminatory Access to Unbundled Network Elements**

All of the issues addressed here, which pertain to Verizon's provision of UNEs, have been conclusively resolved against Covad by the FCC and should not be relitigated in a bilateral arbitration.

19. **Should Verizon be obligated to provide Covad nondiscriminatory access to UNEs and UNE combinations consistent with Applicable Law?**
24. **Should Verizon relieve loop capacity constraints for Covad to the same extent as it does so for its own customers?**
25. **Should Verizon provision Covad DS-1 loops with associated electronics needed for such loops to work, if it does so for its own end users?**

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

Despite the titles of these issues, they are not about nondiscriminatory access to UNEs. Instead, they raise two distinct questions. The first is whether Verizon is required to build facilities in order to provision Covad's UNE orders when facilities are not available. The

second, which is raised only with respect to Verizon PA, pertains to the terms on which Verizon PA provides Covad with access to new UNE combinations.

The first question has been definitively resolved in Verizon's favor by the federal courts and the FCC, both as to incumbent LECs in general and as to Verizon in particular. As an initial matter, the United States Court of Appeals for the Eighth Circuit has held that, under the UNE provisions of the 1996 Act, CLECs are granted "access only to an incumbent LEC's *existing* network — not to a yet unbuilt superior one." *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). Consistent with that holding, the FCC has expressly affirmed that it "did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed [such] facilities for its own use." *UNE Remand Order*<sup>18</sup> ¶ 324. Similarly, in initiating its current rulemaking to address the scope of incumbents' unbundling obligations, the FCC stated that, under its current rules, "incumbent LECs are not required to build new facilities in order to fulfill competitors' requests for network elements." *Triennial Review NPRM*<sup>19</sup> ¶ 65. Reviewing this clear body of law, the FCC's Wireline Competition Bureau stated, in the context of an interconnection agreement arbitration, that "Verizon is . . .

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<sup>18</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), *petitions for review granted, United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *petition for cert. pending, WorldCom, Inc. v. United States Telecom Ass'n*, No. 02-858 (U.S. filed Dec. 3, 2002).

<sup>19</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) ("*Triennial Review NPRM*").

correct that the Act does not require it to construct network elements . . . for the sole purpose of unbundling those elements for . . . other carriers.” *Virginia Arbitration Order*<sup>20</sup> ¶ 468.

The FCC has also reviewed Verizon’s specific practices with respect to providing unbundled elements on numerous occasions and, in each case, has found that Verizon’s practices satisfy the requirements of the Act and the FCC’s regulations. In approving Verizon PA’s section 271 application, the FCC described Verizon PA’s practices as follows:

[W]here facilities are currently unavailable, but Verizon has construction underway to meet its own future demand, it will provide competitive LECs with an installation date based on the anticipated completion date of the pending job. Further, when requisite electronics, such as line cards, have not been deployed but space exists for them in the multiplexers at the central office and end-user premises, Verizon will order and place the necessary line cards in order to provision the high capacity loop. Verizon will also perform the cross connection work between the multiplexers and the copper or fiber facility running to the end user.

*Pennsylvania 271 Order* ¶ 91 (footnotes omitted). The practices that Verizon PA follows are substantially the same practices as those used in the other former Bell Atlantic jurisdictions; Verizon North follows substantially those same practices as well. *See Bragg/Kelly Joint Decl.* ¶ 4.

Pursuant to those practices, Verizon goes beyond its unbundling obligations to provide loops even in certain situations where all of the necessary facilities are not yet available. And, in the event that, despite these efforts, facilities are still unavailable, CLECs can still purchase facilities pursuant to Verizon’s special access tariff, on the same terms and conditions as Verizon makes available to retail customers. *See id.* ¶ 6; *see also Pennsylvania 271 Order* ¶ 91. In

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<sup>20</sup> *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, CC Docket Nos. 00-218, *et al.*, DA 02-1731 (Wireline Comp. Bur. rel. July 17, 2002) (“*Virginia Arbitration Order*”).

approving Verizon PA's section 271 application, the FCC "disagree[d] with commenters" — including Covad — "that Verizon's policies and practices . . . expressly violate the [FCC's] unbundling rules." *Pennsylvania 271 Order* ¶ 92. And the FCC has since reiterated that conclusion in approving Verizon's section 271 applications in New Jersey, New Hampshire, Delaware, and Virginia. *See Virginia 271 Order* ¶¶ 141, 144 (rejecting arguments raised by Covad, among other CLECs); *New Hampshire/Delaware 271 Order* ¶¶ 112-114; *New Jersey 271 Order*<sup>21</sup> ¶ 151.<sup>22</sup>

Accordingly, Covad's proposed language, which would require Verizon to construct new facilities, must be rejected. *See, e.g., Covad Petition Attach. A at 8-9, 11-12.*<sup>23</sup> Covad's proposals are based on a misunderstanding of the requirements of federal law: the fact that Verizon would build facilities in order to provision service to a retail customer does not mean that Verizon must do the same work in order to make the facilities available to a competitor on an unbundled basis. Instead, as described above, Verizon satisfies its obligation to provide nondiscriminatory service by offering to build facilities for CLECs pursuant to its special access tariff — that is, on the same terms and conditions that it offers to all of its access service customers. *See Bragg/Kelly Joint Decl. ¶ 6.* All access service requests — whether from

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<sup>21</sup> *Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, Memorandum Opinion and Order, 17 FCC Rcd 12275 (2002) ("*New Jersey 271 Order*").

<sup>22</sup> The FCC currently is considering this issue in its *Triennial Review NPRM*, and has stated that it expects to issue its order in that proceeding by February 20, 2003. Therefore, even if there were no law on this issue — which there is — that proceeding, not this one, would be the proper forum for resolving this issue.

<sup>23</sup> Covad has also proposed language that would require Verizon to "relieve capacity constraints in the loop network to provide ISDN loops to the same extent and on the same rates, terms, and conditions that it does so for its own customers." *E.g., Covad Petition Attach. A at 11-12.* By "relieve capacity constraints," Verizon understands Covad to refer to the addition of loop extension equipment to ISDN loops, rather than the removal of load coils or bridge taps.



CLECs, long-distance carriers, or end users — are handled in the same manner, precluding any claim of discriminatory conduct. *See id.*

The second question, which pertains to Verizon PA's offering of new UNE combinations, has also been resolved in Verizon PA's favor by the FCC. On May 30, 2002, Verizon notified CLECs throughout its region that, consistent with the Supreme Court's decision in *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646, 1686-87 (2002), they could submit requests for new UNE combinations through Verizon's bona fide request ("BFR") process. *See Bragg/Kelly Joint Decl.* ¶ 7 & Attach. 2. This process is contained in § 13.3 of the proposed interconnection agreement here. In approving Verizon's section 271 application for Virginia, the FCC rejected CLECs' complaints about the requirement to use the BFR process to order new combinations. *See Virginia 271 Order* ¶ 60; *see also New York AT&T Order* at 86-87 (finding that CLECs should use the BFR process to order new UNEs).

Nonetheless, Covad has proposed to add language that appears to be intended to provide Covad a basis for a claim that it should be permitted to order new UNE combinations without submitting a BFR. Specifically, Covad's proposal would require Verizon PA, to the extent that its tariff "does not reflect the current state of Applicable Law," to "provide combinations in whatever manner is necessary to comply with Applicable Law." Covad Petition Attach. A at 29. Strictly speaking, this language has no significance because the agreement itself, through the agreed-upon BFR language, already enables CLECs to order all UNE combinations required by applicable law. But the implication of this language is that Covad intends to pursue a means other than the BFR process set forth in the interconnection agreement to order new UNE combinations. Accordingly, Covad's proposed language should be rejected.

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

Verizon complies with federal law by offering the same appointment windows for CLEC and retail orders; Covad's proposal is also inconsistent with the separate measurements under which Verizon PA and Verizon North report their performance.

Under the FCC's orders, Verizon must provision Covad loop orders "in substantially the same time and manner as it provisions orders for its own retail customers." *Virginia 271 Order* App. C ¶ 37. Covad has proposed language that would require Verizon, when "provisioning loops that require Verizon to dispatch a technician to the end user's premises," to provide "Covad's end user with a three-hour appointment window on the day of the dispatch." *E.g.*, Covad Petition Attach. A at 11. This language should be rejected because it is contrary to federal law.

As an initial matter, it is important to note that Verizon does not interact directly with Covad's end user. *See Bragg/Kelly Joint Decl.* ¶ 9. Instead, Verizon provides appointment window information to Covad, which is responsible for passing that information on to its end-user customer and for ensuring that the customer will be available during the scheduled window. *See id.* In addition, because Verizon does not offer its retail customers a three-hour appointment window for orders requiring the dispatch of a technician, Covad is not entitled to such a window for its UNE orders. *See id.* ¶¶ 11, 13. Instead, Verizon normally offers its retail customers an "all-day" appointment window. *See id.* ¶ 11. Four-hour appointment windows are also available upon customer request, based on the available work force and the existing workload, and they are available equally to retail customers and to CLECs on a first-come, first-served basis. *See id.* ¶¶ 11, 13. Nor should appointment windows be established on an interconnection-agreement-by-interconnection-agreement basis in any event. Not only would it result in different treatment of CLECs' orders, based on the windows contained in their individual agreements, but also it would

be operationally unmanageable for Verizon to have to assign different appointment windows to orders depending on the identity of the CLEC submitting the order.

Finally, Covad's proposed language would require Verizon to pay a penalty whenever an appointment is missed, regardless of whether the missed appointment is caused by Verizon. As noted above, it is Covad's responsibility to ensure the availability of its end-user customer. For that reason, the performance measurements approved by this Commission for Verizon PA exclude "no access" situations — that is, instances in which a Verizon PA technician misses an appointment because he cannot obtain access to Covad's end-user customer's premises — from the missed appointment measurements for which the Commission established performance standards and associated remedy payments under the Performance Assurance Plan ("PAP") approved by this Commission. *See Abesamis/Raynor Joint Decl.* ¶¶ 24-25.<sup>24</sup> The same is true of the performance measurements and remedy plan established in the *Bell Atlantic/GTE Merger Order* for Verizon North. *See id.* ¶ 25. Accordingly, Covad's proposed language is inconsistent with this Commission's determinations in the *PMO II Order*, and must be rejected for this reason as well.

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<sup>24</sup> In addition, the Carrier-to-Carrier Guidelines, but not Covad's proposed language, exclude instances where Verizon PA could not complete a UNE 2-wire digital or xDSL loop on time because the facilities necessary to provision those orders did not exist. *See Abesamis/Raynor Joint Decl.* ¶ 24. As explained above, Verizon is not required to build facilities to provision a CLEC's UNE order.

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?**

Under federal law, Verizon is required to maintain and repair loops that it provisions for CLECs in substantially the same time and manner as it maintains and repairs analogous retail loops.

Under federal law, Verizon must provide CLECs “with nondiscriminatory access to its maintenance and repair systems,” which means that, “[t]o the extent [Verizon] performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions ‘in substantially the same time and manner’ as [Verizon] provides its retail customers.” *Virginia 271 Order App. C* ¶ 38. As the Eighth Circuit has explained, “[n]othing in the statute requires the ILECs to provide superior quality [service] to its competitors.” *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758 (8th Cir. 2000), *aff’d in part, rev’d in part sub nom. Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002). Consistent with this requirement, the parties’ proposed agreement provides that Verizon will maintain and repair loops in a nondiscriminatory fashion. *See, e.g.*, Verizon Response Attach. E at 76.

Covad, however, has proposed to add language to the agreement that would require Verizon to “maintain or repair such loops using standards that are at least as stringent as either (1) the standards it uses in maintaining or repairing the same or comparable loops for itself; or (2) applicable industry standards for maintaining or repairing such loops.” *E.g.*, Covad Petition Attach. A at 14. The first part of this proposed addition simply repeats the nondiscrimination requirement found elsewhere in the agreement. The second part — to the extent that it has any independent significance — could require Verizon to provide Covad with maintenance and repair service that is superior to the service that it provides to its retail customers. Yet, as the

FCC and the Eighth Circuit have made clear, the touchstone for an incumbent LEC's maintenance and repair obligations is the level of service that it provides to its own retail customers. Therefore, any supposed "industry standards" that are more stringent than the standards that Verizon uses for its own end-user customers' loops are simply irrelevant to Verizon's legal obligations. For these reasons, Covad's proposed language should be rejected as a matter of law; there are no disputed questions of fact relevant to this issue.

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

The process by which Verizon and Covad test loops that Verizon provisions is an operational matter that should not be specified on an interconnection-agreement-by-interconnection-agreement basis with the level of detail that Covad proposes.

Verizon PA performs cooperative testing with CLECs of xDSL Compatible and Digital Designed Loops, pursuant to processes that were initially established on a collaborative basis under the auspices of the New York PSC. *See* White Decl. ¶ 5. Verizon applies substantially the same process throughout the former Bell Atlantic jurisdictions, and the FCC has repeatedly reviewed that process in the course of approving Verizon's section 271 applications. *See, e.g., Pennsylvania 271 Order* ¶ 84; *Massachusetts 271 Order* ¶ 147 n.461; *New York 271 Order* ¶ 319; White Decl. ¶ 5.

Verizon PA's proposed language states that Covad may request (and Verizon will perform) cooperative testing for xDSL Compatible and Digital Designed Loops, at the rates set forth in the Pricing Attachment to the agreement. *See* Verizon Response Attach. A at 15-16. Verizon's proposed language also contains a general description of the procedures to be followed:

Covad may request, at its option, Cooperative Testing by entering a toll-free (e.g. 800) number in the Remarks field of the LSR of an xDSL Compatible or Digital Designed Loop Service Order, and the Verizon technician will call the toll-free

number to perform the Cooperative Test. When both the Verizon and Covad technicians agree that the Loop test shows that the Loop is operational, the Covad technician will provide the Verizon technician with a serial number to acknowledge that the Loop is operational.

*Id.* at 16. This language tracks the requirements of the collaboratively developed cooperative testing process, without the need for elaborating the details of that process in the text of the interconnection agreement. *See* White Decl. ¶¶ 6-7. As a result, in the event that the process changes through discussions with CLECs — and the process has changed in the past, as experience showed the need for enhancements to the process, *see id.* ¶ 5 — it is unlikely that the language of the agreement will need to be amended to conform to the enhanced process.

In contrast, Covad seeks to obtain its own, customized cooperative testing procedures, so that, in the event that further enhancements are made to the uniform cooperative testing process applicable to all CLECs, Covad apparently would have the option to continue obtaining cooperative testing under the terms in the agreement. Covad’s proposed language would also obligate Verizon PA to negotiate with Covad in order to implement additional cooperative testing procedures, outside of the established, industry-wide collaborative process for establishing such procedures.<sup>25</sup>

Covad has proposed to make the same changes to the cooperative testing provision of its agreement with Verizon North. Covad’s proposals, however, are generally inapplicable to the procedures that Verizon North follows in Pennsylvania. Indeed, Verizon North’s proposed language makes clear that the cooperative testing provision applies “[i]n the former Bell Atlantic

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<sup>25</sup> Verizon also notes that Covad has proposed deleting the language stating that “[c]harges for Cooperative Testing are as set forth in the Pricing Attachment,” but has not proposed any new language indicating the source of the charges for such testing. *See* Verizon Response Attach. A at 16. To the extent Covad is proposing that it should not pay the agreed-upon charges in the Pricing Attachment for cooperative testing — to which Covad has not objected in this proceeding — its proposal should be rejected. *See* 47 U.S.C. § 252(a)(1).

Service Areas only.” Verizon Response Attach. B at 14. Although Verizon North will perform installation testing of xDSL loops, it does not utilize a cooperative testing process akin to the collaboratively developed process that Verizon PA offers. *See* White Decl. ¶ 6.

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

Covad’s proposal to require Verizon to tag all loops that Verizon dispatches a technician to provision is inefficient and unnecessary to ensure that Covad can locate those loops; with respect to loops that Verizon does not dispatch a technician to provision, FCC precedent requires Verizon to provide Covad with only the same information that Verizon has regarding loop locations.

When Verizon dispatches a technician to provision a CLEC’s loop order, it provides Covad with specific demarcation point information or, if necessary, tags the loop, thereby ensuring that the CLEC can locate the loop. *See* White Decl. ¶ 11. Verizon also offers Covad the opportunity to request that Verizon dispatch a technician (at Covad’s expense) when a dispatch would not normally be required to provision the loop. *See id.* However, if a CLEC does not request such a dispatch, the FCC has made clear that Verizon’s obligation is only to provide the CLEC “with the same general information regarding the location of demarcation points that is available to [Verizon’s] own employees and in the same timeframe.” *BellSouth Five-State 271 Order*<sup>26</sup> ¶ 143 (rejecting Covad’s claim that federal law requires the provision of more specific information). Where Verizon has not dispatched a technician, Verizon provides Covad with the same information as is available to Verizon’s own employees, whether specific or general, that Verizon has about the demarcation point. *See* White Decl. ¶ 11.

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<sup>26</sup> *Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, Memorandum Opinion and Order, 17 FCC Rcd 17595 (2002) (“*BellSouth Five-State 271 Order*”).

Covad has proposed to add language to the agreement that would require Verizon always to tag loops when it dispatches a technician to provision the loop. *See, e.g.,* Covad Petition Attach. A at 18. Covad has not claimed that Verizon is not enabling it to locate the loops that are provisioned through a dispatch. However, the interconnection agreement should not require Verizon to tag loops where specific demarcation point information can be provided to Covad, because such information, when available, is both more efficient and more reliable than a tag, which may become dislodged or confused with other tags, assuming placement of a tag is physically possible. *See* White Decl. ¶ 12. Covad has also proposed language that would require Verizon, when a technician is not dispatched, to “provide sufficient information to Covad to enable Covad to locate the circuit being provisioned.” *E.g.,* Covad Petition Attach. A at 18. As explained above, this is not what federal law requires. Accordingly, Covad’s proposed language should be rejected.

**34. In what interval should Verizon provision loops?**

Consistent with federal law, Verizon will provision loops in the interval that it provides to itself or the Commission-established interval.

Under federal law, Verizon must provision loops that CLECs order “in substantially the same time and manner as it provisions orders for its own retail customers.” *Virginia 271 Order* App. C ¶ 37. Consistent with that standard, Verizon has proposed that, for Covad’s loop orders, it will perform any conditioning or loop extension work, as well as any provisioning work, in the shorter of the following intervals: (1) the interval that Verizon provides to itself, or third parties, or (2) the Commission-adopted interval. *See, e.g.,* Covad Petition Attach. A at 16, 20. Covad, however, has proposed to add a third option to that list: 10 business days for loop orders where Covad requests conditioning or loop extensions, and five business days for stand-alone loops where it does not request such work. *See id.* This proposed language — to the extent that it has



any independent significance<sup>27</sup> — conflicts with the requirements of federal law and this Commission’s decisions. First, Verizon would be required to provision Covad’s loops in shorter intervals than it provisions analogous retail loops. As noted above, federal law requires only that Verizon provision Covad’s loops in “substantially the same time and manner” as it provisions analogous retail loops — it does not entitle Covad to shorter intervals. Second, where this Commission has established provisioning intervals, Verizon would be required to provision Covad’s loops in intervals shorter than those that this Commission has adopted for all CLECs. With respect to those products, therefore, Covad is asking this Commission to make an exception to its generally applicable rule for Covad’s benefit alone. Covad has offered no justification for such special treatment. For these reasons, Covad’s proposed language must be rejected.

Covad has also proposed changes to the section of the agreements that sets the provisioning interval for its orders for line-shared loops. With respect to both Verizon PA and Verizon North, Covad has proposed language that would require the provisioning of line-shared loops in three business days, the standard interval for such loops found in an applicable tariff, or the standard interval required by applicable law. *See* Covad Petition Attach. A at 22; *id.* Attach. B at 19. The agreed-upon language of the Verizon PA–Covad agreement, however, already states that Verizon PA shall provide “Covad with access to Line Sharing in accordance with . . . Applicable Law.” Verizon Response Attach. E at 68. Under the measurements that this Commission adopted in the *PMO II Order*, the applicable interval for line-shared loops — parity with Verizon’s retail broadband group *and* 95% within three days — provides Covad with the three-day interval it seeks. *See* Abesamis/Raynor Joint Decl. ¶ 26. Any changes to the interval for Verizon PA should be adopted on an industry-wide basis, pursuant to the provisions set forth

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<sup>27</sup> To the extent that these intervals are longer than either the interval that Verizon provides to itself or the Commission-adopted interval, this additional language has no effect.

in the *PMO II Order* for modifying the performance measurements, and not through bilateral arbitrations.<sup>28</sup>

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

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

In approving Verizon's section 271 application in Virginia, the FCC explicitly rejected Covad's claim that Verizon was obligated to provide so-called "line partitioning":

We disagree with Covad that Verizon is obligated to provide access to the high frequency portion of the loop when the customer's voice service is being provided by a reseller, and not by Verizon. Our rules do not require incumbent LECs to provide access to the high frequency portion of the loop when the incumbent LEC is not providing voice service over that loop. We disagree with Covad that Verizon is still considered the voice provider when a reseller is providing resold voice service to an end user customer. We agree, therefore, with Verizon that it is not required to provide access to the high frequency portion of the loop under these circumstances.

*Virginia 271 Order* ¶ 151 (footnote omitted). The FCC's conclusion in the *Virginia 271 Order* is part of a consistent line of precedent limiting an incumbent LEC's obligation to provide line sharing to cases where it is the voice provider on the loop. See, e.g., *Line Sharing Order*<sup>29</sup> ¶ 72;

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<sup>28</sup> With respect to Verizon North, the only difference between the parties' proposed language is whether one of the three options should be six business days rather than three business days. Verizon North does not object to a three-business-day interval for Covad's line-shared loop orders, as long as that interval commences only once any requested engineering and conditioning tasks have been completed and does not apply where a line and station transfer is performed (line and station transfers are the subject of Issue 35, which is to be briefed after the hearing).

<sup>29</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), vacated and remanded, *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), petition for cert. pending, *WorldCom, Inc. v. United States Telecom Ass'n*, No. 02-858 (U.S. filed Dec. 3, 2002).

*Texas 271 Order* ¶ 330. Covad's position is contrary to federal law and has already been rejected by the FCC; there is no basis to permit Covad to relitigate it here.

**E. Advanced Services**

Two of the open issues pertain to Covad's offering of advanced services to its customers. With respect to both issues, Covad's proposed language goes beyond its rights under federal law and should be rejected.

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

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

Verizon and Covad agree that the sections of the agreement at issue here should make reference to industry standards. The parties disagree, however, about whether those sections should also make reference to the Verizon technical documents that define loop characteristics specific to Verizon's network. Although Verizon revises its technical documents from time to time to remain current with industry standards, it is ultimately Verizon's documents — and not the industry standards — that define the loops that Verizon provides to both CLECs and to Verizon's retail customers. *See Clayton Decl.* ¶ 4 (Exh. 3 hereto). Because Covad is entitled to obtain unbundled access only to Verizon's existing network, the agreement should reference the Verizon technical documents as well as industry standards.

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

Under federal law, Covad is obligated to inform Verizon of the advanced services that it deploys over UNE loops that it obtains from Verizon; Covad should use the bona fide request process set forth in the agreement to order new advanced services loop types.

With respect to the first issue raised here, Verizon's proposed language states that "Covad and Verizon will follow Applicable Law governing spectrum management and provisioning of xDSL services." *E.g.*, Verizon Response Attach. A at 13. Covad, in contrast, has proposed changes to that language that do *not* follow current applicable law. Covad's proposed language would give it the right to deploy advanced services on loops that it obtains from Verizon without informing Verizon of the particular type of advanced service that Covad is deploying on the loop. Under the FCC's rules, however, Covad is obligated to provide this information to Verizon. Indeed, the FCC held that "competitive LECs must provide to incumbent LECs information on the type of technology that they seek to deploy" and must "notify[] the incumbent LEC of any proposed change in advanced services technology that the carrier uses on the loop." *Line Sharing Order* ¶ 204. CLECs must provide this information because ILECs, such as Verizon, are required "to disclose to [CLECs] information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops," as well as "information with respect to the rejection of the requesting carrier's provision of advanced services, together with the specific reason for the rejection." *Id.* Verizon also uses this information to ensure that the various services provided over loops in a binder group do not interfere with each other. *See* Clayton Decl. ¶ 5. This information also may be relevant in trouble-shooting and repairs, for which Verizon is held to performance standards. *See id.* ¶ 7; Abesamis/Raynor Joint Decl. ¶ 5. Verizon's possession of

this information better enables end users to receive the services that they order and, therefore, is in the public interest.

With respect to the second issue raised here, the interconnection agreement already contains a procedure for Covad to follow in the event it wants to deploy a new loop type or technology, namely, the BFR process. *See* Clayton Decl. ¶ 8. Verizon’s proposed language states that “a BFR should be submitted” if Covad wants to deploy over existing facilities an advanced services “loop type or technology that has not yet been developed.” *E.g.*, Verizon Response Attach. A at 13. Use of the BFR process also ensures that Verizon will know the particular advanced service that Covad has deployed over a loop.

Covad, however, has proposed adding language that would permit it to order such new loop types and technologies outside of the BFR process, by instead “compl[ying] with 47 C.F.R. § 51.230, to the extent that that rule remains Applicable Law.” *E.g.*, *id.* Covad’s proposal should be rejected. The only reason that Covad has provided for this proposal is to ensure that the agreement “capture[s] automatically the current and future state of the law.” *E.g.*, Covad Petition Attach. C at 11. But, as noted above, Verizon’s language already states that the parties “will follow Applicable Law governing spectrum management,” and the agreement contains a change-of-law clause, which would apply in the event that section 51.230 or other applicable law changes. *See* Verizon Response Attach. E at 3-4, 65. Accordingly, Covad’s language is, at best, redundant and should be rejected.

#### **F. Dark Fiber**

Covad raises a number of issues that pertain to Verizon’s provision of dark fiber, nearly all of which have already been resolved against Covad by the FCC or this Commission. As explained below, all of these issues should be resolved in Verizon’s favor.

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

Under federal law, Verizon's obligation to provide dark fiber is limited to fiber that is physically connected to its facilities and that is easily called into service.

This issue involves the definition of dark fiber in the interconnection agreement. Under federal law, which governs the resolution of this issue, dark fiber is defined as "unused loop capacity that *is physically connected to facilities* that the incumbent LEC currently uses to provide service; was installed to handle increased capacity and can be used by competitive LECs *without installation by the incumbent.*" *UNE Remand Order* ¶ 174 n.323 (emphases added). The FCC stated further that "dark fiber" is a "network element" within the meaning of 47 U.S.C. § 153(29) *only* if it is both "physically connected to the incumbent's network and is easily called into service." *Id.* ¶ 328; *see also id.* ¶ 325 (dark fiber must "connect[] two points within the incumbent LEC's network" to be fully installed and available as a UNE). The definition of dark fiber is thus consistent with the fact that, as described above, federal law does not require Verizon to construct new UNEs to provision a CLEC's order. *See, e.g., Virginia Arbitration Order* ¶ 468 ("Verizon is also correct that the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for . . . other carriers.").

Covad, however, seeks to have the definition of dark fiber in the agreement include dark fiber that is *not* physically connected to Verizon's network (which Covad refers to as "unterminated" dark fiber). Specifically, Covad seeks to strike language that states that dark fiber is not available as a UNE if it is not terminated on a Verizon Accessible Terminal or to a fiber patch panel. *See, e.g., Covad Petition Attach. A* at 27. But fiber that has not yet been

installed between two terminals (for example, between two end offices or between an end office and a customer premises) does not meet the FCC's definition of dark fiber because it is *not* physically connected to facilities used to provide service and *cannot* be used by *anyone* without installation by Verizon. *See* Shocket/White Joint Decl. ¶¶ 9-21 (Exh. 5 hereto). Fiber that does not extend from one terminal to another does not *connect* any point in the network to any other point in the network (and thus is physically incapable of carrying traffic). Such fiber, therefore, does not fall within the FCC's definition.

In addition, where additional construction is required to complete an end-to-end route and make fiber ready for use, that fiber is not "easily called into service" and, for that reason as well, does not meet the FCC's definition of dark fiber. Covad, however, asserts that terminating fiber at an accessible terminal is "an inherently simple and speedy task" and speculates that Verizon could "protect every strand of spare fiber in its network from use by a competitor by simply leaving the fiber unterminated until Verizon wants to use the facility." Covad Petition Attach. C at 18; *id.* Attach. D at 16-17. Covad is wrong on both counts. First, when fiber is not terminated to an accessible terminal at one end, additional construction work is required (for example, to splice the fiber through conduit back to a central office or remote terminal at the other end) before the fiber can be used by anyone, including Verizon. *See* Shocket/White Joint Decl. ¶¶ 18-20. This additional construction work is neither speedy nor simple, as Covad asserts, *see id.*, nor is it work that federal law requires Verizon to perform to provision a UNE order. Second, Verizon does not construct new fiber optic facilities to the point where the *only* remaining work item required to make them available and attached end-to-end to Verizon's network is to terminate the fibers onto fiber distributing frame connections at the customer premises. *See id.* ¶¶ 19-20. It is Verizon's standard practice in Pennsylvania that, when Verizon runs a fiber optic

cable to terminate in a building or remote terminal, all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. *See id.* ¶ 20. In other words, Verizon does not fully construct fiber optic cable routes between two terminal locations and simply leave fibers “dangling” near the terminals. If fibers are not terminated to an accessible terminal, then the entire cable is still under construction. *See id.* For these reasons, such fiber is not yet a network element that Verizon is required to provide to CLECs on an unbundled basis.

Consistent with federal law and the FCC’s definition of dark fiber, this Commission has already held that Verizon should not be required to perform construction activities to provision dark fiber UNEs to CLECs, or to accelerate its construction schedule to complete construction of new fiber facilities to accommodate a CLEC’s request for dark fiber. *See* Opinion and Order, *Petition of Yipes Transmission, Inc. for Arbitration Pursuant to Section 252(b) of Telecommunications Act of 1996 to Establish an Interconnection Agreement With Verizon Pennsylvania, Inc.*, Docket No. A-310964 (Pa. PUC entered Oct. 12, 2001) (“*Yipes Arbitration Order*”). Moreover, Verizon’s proposed contract language fully reflects the terms of Verizon PA’s tariff. Verizon PA’s tariff defines “Unbundled Dark Fiber” as “unlit *continuous* fiber optic strands.” PA PUC Tariff No. 216, § 3.B.1.k.1 (emphasis added). Furthermore, the tariff provides that “[a] strand is not considered continuous if splicing is required to provide fiber continuity between locations.” *Id.* Clearly, partially constructed, unterminated fiber does not meet this definition in Verizon PA’s Commission-approved tariff, which applies to all CLECs operating in Verizon PA’s territory.

For all these reasons, Covad’s proposed contract language should be rejected.



43. **Should Covad be permitted to access dark fiber in any technically feasible configuration consistent with Applicable Law?**
45. **Should Verizon be obligated to offer Dark Fiber Loops that terminate in buildings other than central offices?**

While Verizon's proposed definitions of the dark fiber UNE track those the FCC has adopted, Covad's proposed changes to the definitions render those definitions both inconsistent with the FCC's regulations and confusing.

In its Petition, Covad claims that it should be able to access dark fiber at any technically feasible point, without limitation. Covad claims that Verizon's definition of the three dark fiber UNE products — Dark Fiber Loops, Dark Fiber Subloops, and Dark Fiber Interoffice Facilities ("IOF") — would diminish Covad's rights to dark fiber under applicable law.

Covad's argument, however, improperly expands the definition of the dark fiber UNE. "Dark fiber" is not a separate, stand-alone UNE under the FCC's rules. To the contrary, dark fiber is available to a CLEC *only* to the extent that it falls within the definition of specifically designated UNEs set forth in 47 C.F.R. § 51.319(a) and (d) — in particular, the loop network element, subloop network element, or interoffice facilities. Verizon's proposed contract language allows Covad to obtain access to dark fiber loops, sub loops, and IOF, as those network elements are specifically defined by the FCC. That is all that applicable law requires. Covad's proposed § 8.1.5 of the UNE Attachment, which purports to expand Covad's right to dark fiber beyond the loop, subloop, or IOF network elements, is inconsistent with the FCC's rules implementing section 251(c)(3) of the Act.<sup>30</sup>

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<sup>30</sup> In particular, Covad purports to create new and different dark fiber UNEs — which have no counterpart in federal law — in its proposed § 8.1.5, which reads: "The description herein of three dark fiber products, specifically the Dark Fiber Loop, Dark Fiber Sub-loop, and Dark Fiber IOF products, does not limit Covad's rights to access dark fiber in other technically-feasible configurations consistent with Applicable Law." *E.g.*, Covad Petition Attach. A at 25.

In addition, Covad's proposed modification to the definition of dark fiber loops in § 8.1.1 of the UNE Attachment is inaccurate and confusing. Section 51.319(a)(1) of the FCC's rules defines the loop network element as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC." 47 C.F.R. § 51.319(a)(1). Verizon's proposed contract language in § 8.1.1 follows this definition, describing a dark fiber loop as unlit fiber optic strands "between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center [*i.e.*, a "central office"<sup>31</sup>], and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise." *E.g.*, Verizon Response Attach. A at 21. Covad, however, expands this definition to include unlit fiber optic strands at a "Verizon Wire Center or other Verizon premises in which Dark Fiber Loops terminate." *E.g.*, Covad Petition Attach. A at 24. In other words, Covad would define a dark fiber "loop" as any dark fiber that extends between a terminal located somewhere other than the central office (*i.e.*, a "remote terminal") and the customer premises. What Covad is describing, however, is not a "loop" at all, but a "subloop," which is already covered under § 8.1.2 of the UNE Attachment. In particular, § 8.1.2(b) defines a dark fiber subloop to include dark fiber strands "between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise." *E.g.*, Covad Petition Attach. F at

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<sup>31</sup> "Wire Center" is defined in § 2.115 of the Glossary Attachment as "[a] building or portion thereof which serves as a Routing Point for Switched Exchange Access Service. The Wire Center serves as the premises for one or more Central Offices." Furthermore, the definition of "Central Office" in § 2.20 of the Glossary Attachment states that "[s]ometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed." Thus, the definition of a "Verizon Wire Center" already includes any Verizon premises that houses a switch and thus acts as a "Central Office."

81. Therefore, Covad's proposed modification to Verizon's proposed contract language is unnecessary to provide Covad with access to dark fiber at accessible terminals outside a Verizon central office, and only serves to confuse the differences between a subloop and a loop under the FCC's rules.

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

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

Under federal law, Verizon is not required to splice fiber strands at a CLEC's request; however, Verizon will provide fiber optic cross-connects to join two terminated dark fiber IOF strands at intermediate central offices, subject to reasonable limitations.

Covad claims that the agreement should clarify that Verizon's obligation to provide UNE dark fiber includes the duty to provide any and all of the fibers on any route requested by Covad regardless of whether individual segments of fiber must be spliced or cross-connected to provide continuity end-to-end. Covad's description of this issue, however, improperly conflates two separate issues: (1) whether Verizon is required to splice fiber together to create new continuous routes for Covad, and (2) whether Verizon will cross-connect two existing, fully terminated dark fiber IOF strands for a CLEC at an intermediate central office without requiring Covad to collocate at the intermediate central office.

With respect to the first issue, Covad's claim that Verizon is required to splice fiber strands at the request of a CLEC was squarely rejected by the FCC's Wireline Competition Bureau. *See Virginia Arbitration Order* ¶¶ 451-453, 457 ("[w]e do not require Verizon to splice new [dark fiber] routes in the field"). *If fiber optic strands must be spliced together end-to-end*

to create a continuous, uninterrupted transmission path, that fiber route is not yet fully constructed and does not meet the definition of dark fiber. As explained above, the law is clear that Verizon is not required to construct new UNEs for a CLEC; nor is an ILEC required to splice new fiber routes for a CLEC.

With respect to the second issue, however, Verizon has developed new contract language, pursuant to which Verizon would provide fiber optic cross-connects to join two terminated dark fiber IOF strands at the intermediate central offices. This language allows Covad to order dark fiber on an indirect route basis, without having to collocate at intermediate central offices.

Reasonable limitations on this offering, however, are necessary. See Shocket/White Joint Decl. ¶¶ 27-29. Indeed, the FCC's Wireline Competition Bureau did not indicate that Verizon's obligation to cross-connect fiber at intermediate offices for a CLEC requires Verizon to provide fiber along indirect routes through an unlimited number of intermediate offices, especially when it would either result in inefficient use of scarce fiber cable resources or require the use of optical repeaters to carry light end-to-end (which necessarily requires collocation by the CLEC at an intermediate office along the route). *Virginia Arbitration Order* ¶ 457. As set forth above in Verizon's proposed new language, Verizon reserves the right to limit the number of intermediate central offices on an indirect route consistent with limitations in Verizon's network design and/or prevailing industry practices for optical transmission applications. Verizon will discuss with Covad any limitations on the number of intermediate offices along an indirect route to permit Covad to make any necessary collocation decisions.<sup>32</sup>

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<sup>32</sup> In particular, Verizon's proposed § 8.2.5 now states:

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

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

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

Verizon's obligation to provide information regarding its dark fiber inventory is limited to information that Verizon actually possesses. In its proposed § 8.2.5.1 of the UNE Attachment, however, Covad demands that Verizon provide "maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction." *E.g.*, Covad Petition Attach. A at 28. Verizon does not have such "maps" available for its own use, and thus cannot provide such nonexistent

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specified. Verizon will respond within fifteen (15) business days from receipt of the Covad Dark Fiber Inquiry Form, 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.

This proposed contract language sufficiently addresses Covad's concerns and incorporates the Wireline Competition Bureau's decision in the *Virginia Arbitration Order*.

“maps” for the cost of “reproduction” (there is nothing to “reproduce”). *See* Shocket/White Joint Decl. ¶ 30. Moreover, Verizon does not have the ability to generate such maps at all, at least not in any meaningful form. The availability of dark fiber at specific locations changes on a day-to-day basis depending on the needs of Verizon, CLECs, interexchange carriers, and other customers for lit fiber services, as well as ongoing construction activities. *Id.* at ¶ 31. In order to determine the availability of dark fiber, Verizon must review its records manually on a route-by-route basis. Therefore, Verizon cannot generate a snapshot picture of all available dark fiber in Pennsylvania at any given time. Instead, the most Verizon could do is create a map showing the dark fiber available at the time each line on the map was drawn. Such a map would become outdated during the process of creating it, and Covad could not assume that dark fiber shown as available on the map would be available when (and if) Covad later decides to place an order. *See id.* Therefore, requiring Verizon to provide Covad information identifying all available dark fiber in Pennsylvania not only would be unduly burdensome and costly for Verizon, but the information would be useless to Covad even before it was received. *See id.*

Nevertheless, Verizon will provide a fiber layout map to Covad, on a time and materials basis, that shows the streets within a Verizon Wire Center area where there are existing Verizon fiber cable sheaths.<sup>33</sup> These maps will inform Covad of the location of fiber routes on which

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<sup>33</sup> Verizon proposes to eliminate § 8.2.8 of the UNE Attachment and insert a new § 8.2.20, which states:

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

dark fiber might be available, thus permitting Covad to target its dark fiber inquiries accordingly. See Shocket/White Joint Decl. ¶ 32. In addition, as set forth above with respect to Issues 44 and 46, Verizon has proposed contract language providing that, if no direct dark fiber IOF route is available between the A and Z points requested by Covad, Verizon will search for reasonable indirect routes without requiring Covad to submit additional dark fiber inquiries.

Verizon will also perform field surveys at Covad's request (and on a time and materials basis) 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 tests.

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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 Fber 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.

Covad, in its proposed § 8.2.8.1 of the UNE Attachment, has attempted to specify the information that Verizon must provide in response to a field survey request.<sup>34</sup> Verizon does not track this information for itself in its own field surveys and, at this time, does not know whether it has the capability of providing the type of information requested by Covad. See Shocket/White Joint Decl. ¶ 33. “Parity” access to dark fiber information does not include access to information that Verizon does not track for itself. In any event, the type of detailed technical information requested by Covad in its proposed § 8.2.8.1 to the UNE Attachment is not the kind of operational activity that should be defined on an interconnection-agreement-by-interconnection-agreement basis. *Id.*

**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?**

Verizon’s proposal is an anti-warehousing measure that does not constrain Covad’s ability to use dark fiber and that the FCC has specifically found to be reasonable.

Despite the implication of Covad’s title for this issue, Verizon is not attempting to reserve for itself 75% of the strands on a given segment of dark fiber in Verizon’s network. Instead, in light of the fact that dark fiber is a scarce resource in Verizon’s network, this provision operates as an anti-warehousing measure and prevents one CLEC from occupying all available dark fiber in a particular area and, thereby, excluding entry by other carriers. See Shocket/White Joint Decl. ¶ 34.<sup>35</sup> Moreover, this provision does not in any way limit Covad’s

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<sup>34</sup> Covad’s proposed § 8.2.8.1 of the UNE Attachment provides that “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.” *E.g.*, Covad Petition Attach. A at 28.

<sup>35</sup> Although this provision makes it more likely that dark fiber will be available when Verizon must meet its obligations as a carrier of last resort, it is § 8.2.15.3 of the UNE



ability to provide service to its customers. Given the huge bandwidth that can be carried over even a single strand of fiber, 25% of a fiber facility is more than sufficient for any conceivable need that Covad has. *See id.* Furthermore, this limit would encourage Covad and other CLECs to utilize fiber more efficiently so as to maximize the resources available for all of the telecommunications companies operating in Pennsylvania. *See id.* Indeed, Verizon does not know of any examples of a CLEC requesting more than 25% of the fiber in a cable as dark fiber. *See id.* at ¶ 35.

Verizon's proposed limitation is also entirely consistent with the FCC's rules. In the *UNE Remand Order*, the FCC expressly found that a requirement, adopted by the Texas Public Utility Commission, that prevented CLECs "from leasing more than 25% of the dark fiber in a given segment of the network" was a "reasonable limitation[]" on CLECs' ability to obtain access to dark fiber. *UNE Remand Order* ¶ 352 & n.694 (finding that "the measures established by the Texas PUC address the incumbent LEC's legitimate concerns"). Verizon recognizes that, in a prior arbitration, an ALJ rejected a limitation on a CLEC's ability to obtain dark fiber that was substantially the same as Verizon's proposal here. *See Recommended Decision, 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, at 14-15 (Pa. PUC Aug. 20, 2001), *adopted, Yipes Arbitration Order* at 7-8. However, in that case, the ALJ did not address the FCC's explicit approval of the very limitation that Verizon proposed. In addition, the ALJ's decision focused entirely on the relationship of the

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Attachment — to which Covad has raised no objection here — that ensures that Verizon can meet those obligations.

limitation to Verizon's need to fulfill its obligations as a carrier of last resort,<sup>36</sup> and did not consider the impact on other CLECs if one CLEC utilizes a large portion of a fiber facility. For these reasons, Verizon respectfully submits that, under federal law, Verizon's position must be adopted here.

Finally, Covad's claimed concerns about the calculation of the 25% limit are both unexplained and unfounded. *See, e.g.*, Covad Petition Attach. C at 21. The calculation of the 25% cap is neither complex nor subject to interpretation. If a fiber route consists of a 24-strand cable, Covad may lease up to 6 fibers on that route ( $24 \times 0.25 = 6$ ). Similarly, if a fiber route consists of a 144-strand cable, Covad may lease up to 36 fiber strands on the route ( $144 \times 0.25 = 36$ ). *See* Shocket/White Joint Decl. ¶ 35. Up to these limits, dark fiber is available on a first-come, first-served basis. *See id.* Clearly, even in smaller cables, the 25% cap poses no threat to Covad's ability to provide service to its customers. *See id.*

#### **G. Other Issues — Pricing and Collocation**

The three final issues discussed below, like the issues discussed above, raise questions of law and policy, rather than questions of fact.

**38/ 39.<sup>37</sup> What interval should apply to collocation augmentation where a new splitter is to be installed?**

Collocation augment intervals should be established through Verizon's generally applicable tariff, and Covad should not be permitted to insulate itself from changes to that tariff that apply to all other CLECs.

In its Verizon North petition, Covad has proposed that an interval of no greater than 45 days apply to its collocation augment requests where a new splitter is to be installed. *See* Covad

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<sup>36</sup> As explained above, another provision of the agreement addresses Verizon's obligations in this regard.

<sup>37</sup> This issue is numbered 38 in Covad's Verizon PA petition and 39 in Covad's Verizon North petition.

Petition Attach. D at 15. Pursuant to its effective tariff, Verizon North already performs augmentation of physical and cageless collocation within 45 days of receiving a completed collocation application. *See* Verizon North's PA PUC Tariff No. 9, § 19.4.1. Under Verizon North's proposed language — which states that the interval in Verizon North's tariff shall apply, unless the tariff contains no interval, in which case a 76-day interval will apply — Covad will receive the 45-day interval that it seeks here. *See* Verizon Response Attach. B at 19-20. If this Commission were to approve an amendment to Verizon North's tariff, under Verizon North's proposed language, that new interval — whether it is longer or shorter than the existing interval — will apply to Covad's augment requests, just as it will apply to all other CLECs' requests. In contrast, Covad's proposal would apparently allow it to take advantage of any tariff amendment that shortens the applicable interval,<sup>38</sup> while ensuring that it is not subject to any longer interval that this Commission might approve in the future. Covad should not be permitted to play this heads-I-win, tails-you-lose game; the generally applicable interval that this Commission approves should apply to all CLECs, including Covad.

In its Verizon PA petition, Covad has proposed that an interval of no greater than 45 days will apply to Covad's "Line Sharing collocation augments." Covad Petition Attach. A at 22. Verizon PA does not oppose a 45-day interval for Line Sharing collocation augments, to the extent it is accompanied by the related detailed terms and conditions contained in Verizon New York's tariff. Indeed, Verizon PA notes that Covad has not raised this issue in its on-going arbitration with Verizon New York, where the 45-day interval and the related provisions under the New York tariff apply to such requests from Covad. However, for the reasons explained above, the interval for Covad's orders, as for all CLECs' orders, should be set by tariff, not in

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<sup>38</sup> Covad's proposed language does not state where the collocation interval is to be found, just that it shall be no longer than 45 days.

individual interconnection agreements. Verizon PA's proposed language — which Covad has not taken issue with here — states that Verizon PA shall provide collocation to Covad in accordance with the terms and conditions in that tariff. *See* Verizon Response Attach. E at 77.

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

Covad should not be permitted to impose on Verizon the costs of determining which Verizon tariff filings might be relevant to Covad.

There can be no dispute that Verizon already provides public notice to its customers, including wholesale customers, of its tariff filings. Covad, however, has proposed adding language to the agreement that would require Verizon to provide “advance actual written notice” to Covad of any tariff revisions that Verizon submits to this Commission or the FCC that “(1) establish new Charges; or (2) seek to change the Charges provided in Appendix A.” *E.g.*, Covad Petition Attach. A at 31. Thus, Covad seeks to impose on Verizon the costs of identifying provisions of any Verizon tariff filing that might be relevant to Covad. The premise of Covad's proposed language is that the tariff process is inadequate to protect its interests. In an arbitration between Verizon NY and AT&T, the New York PSC rejected this very claim, finding that the “tariff process permits ample opportunity for interested persons to participate and seek changes (or even the rejection) of proposed tariffs before they become effective.” *AT&T New York Order* at 4-5.

Covad also proposes that, when a tariff revision is approved, Verizon must “provide Covad with an updated Appendix A” to the Pricing Attachment “showing all such new or changed rates for informational purposes only.” *E.g.*, Covad Petition Attach. A at 31. Covad is just as able as Verizon to make informational updates to the parties' Pricing Appendix. Verizon should not be required to perform such administrative tasks on Covad's behalf.

**56. Should the Agreement specify the minimum amount of DC power and additional power increments Covad may order? [Verizon PA petition only]**

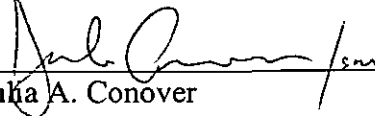
The terms and conditions for purchasing DC power for collocation arrangements should be established through Verizon's generally applicable tariff, and Covad should not be permitted to insulate itself from changes to that tariff that apply to all other CLECs.

Covad has proposed to add language to the agreement that would require Verizon to permit Covad "to purchase DC power arrangements that have a minimum of 2 amps (per A&B feed pair)" and "to purchase additional DC power in increments of 1 ampere." Covad Petition Attach. A at 30. Verizon PA's collocation tariff, which applies to all CLECs operating in its territory in Pennsylvania, does not contain a minimum amperage requirement — either per A and B feed pair or for additional increments of power — that CLECs must order to support the equipment necessary for interconnection or access to unbundled network elements. *See* Verizon PA's PA PUC Tariff No. 218, § B.8.h; 47 U.S.C. § 251(c)(6). Accordingly, Covad's proposed language, in fact, is an attempt to ensure that, if this Commission were to approve an amendment to the DC power provisions in Verizon's collocation tariff that imposed such minimum requirements, Covad could continue to order power in the amounts specified in its agreement, notwithstanding the fact that every other CLEC in Verizon PA's territory would be subject to the amended tariff provisions. In the event that Verizon PA proposed such an amendment to its tariff, this Commission's tariff process would provide Covad with more than ample opportunity to protect any rights that it has to order power in the amounts that it seeks. Indeed, there has been considerable litigation in Pennsylvania over Verizon PA's collocation tariffs. Covad's attempt to circumvent this Commission's tariffing processes should be rejected.

### III. CONCLUSION

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

Respectfully submitted,



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January 17, 2003



operations and maintenance functions. I was also responsible for training operations and maintenance technicians. Between 1981 and 1992, I held various positions of increasing responsibility in the following organizations: Business Office Operations, Asset-Inventory Management, Purchasing, and Capital Budgeting and Planning.

3. My name is Faye H. Raynor. I am employed by Verizon Communications Inc., as Director – Regulatory Support in the Wholesale Performance Assurance organization. In my current position, I represent Verizon in all state and federal proceedings related to the development of Operations Support Systems (“OSS”) CLEC Performance Measures and Standards for the former GTE operating territories.

4. I have been employed by Verizon (formerly GTE) since June 1971 and have held numerous positions dealing with demand analysis, forecasting, system development and management, product management, product sales and support, and quality assurance. Between mid-1993 and 1997, I established service delivery process improvement activities through internal operational departments for AT&T and interexchange carriers (“IXCs”) in general. During that time I was the GTE focal point for IXC performance measures, supported ISO 9000 certification of special and switched service centers, and was instrumental in creating a single point of contact (“SPOC”) for trouble reporting. In early 1998, I was assigned to the project of developing, for GTE, CLEC performance measurements in support of the Telecommunications Act of 1996. In September 2000, I was named to my current position at Verizon.

## II. Purpose

5. The purpose of our declaration is to discuss those aspects of Issues 4, 13, 22, 32, 34, and 38 [Verizon North petition only] in these arbitrations between DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) and Verizon Pennsylvania Inc.



(“Verizon PA”) and Verizon North Inc. (“Verizon North”), collectively “Verizon,” which pertain to the performance measurements that apply to Verizon PA and Verizon North.

**III. Performance Measurements – Verizon PA**

6. In December 2002, the Commission approved for Verizon PA the use of the May 2002 version of the New York performance measurements. *See* Final Opinion and Order on Performance Measures and Remedies for Wholesale Performance for Verizon Pennsylvania Inc. (PMO II), *Performance Measures Remedies*, Docket No. M-00011468 (Pa. PUC entered Dec. 10, 2002) (“*PMO II Order*”). The New York guidelines were the result of collaborative efforts, conducted under the auspices of the New York Public Service Commission (“New York PSC”), in the New York Carrier Working Group. That group consists of Verizon and interested CLECs — including Covad, which has been an active participant. Through this collaborative process, the New York PSC has adopted performance measurements that apply to Verizon’s interactions with all CLECs in New York, which enables Verizon to process CLEC transactions on a uniform basis, rather than having to attempt to adhere to different performance standards for each of the CLECs operating in the state.

7. Prior to the adoption of the New York measurements for use in Verizon PA’s territory in Pennsylvania, Verizon PA reported its performance under a set of measurements that this Commission had adopted, which were based on an earlier version of the New York measurements, but with additional measurements developed by this Commission and the CLECs operating in Verizon PA’s territory. Those guidelines, like the New York guidelines recently adopted in the *PMO II Order*, define measurements and performance standards for the following categories: Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, Network Performance, Billing, and Operator Services.

8. The guidelines that this Commission adopted for Verizon PA in the *PMO II Order* are used not only in New York, but throughout the former Bell Atlantic jurisdictions. Accordingly, in approving 11 Verizon applications for long-distance authority under 47 U.S.C. § 271, the Federal Communications Commission (“FCC”) has reviewed performance measurements that were based in large part on — or were identical to — the measurements that this Commission has recently adopted.

9. The same is true of the Performance Assurance Plan (“PAP”) that this Commission adopted in the *PMO II Order*, which is substantially the same as the PAP in use in New York. That PAP was initially developed through a collaborative process, with input from the Commission staff, interested CLECs, and the Department of Justice. The PAP contains those performance measurements deemed most important to competition. It also focuses on performance that is within Verizon’s control and avoids some of the redundancy that exists in the measurements in the *Carrier-to-Carrier Guidelines*.

10. As with the *Carrier-to-Carrier Guidelines*, the PAP that this Commission adopted in the *PMO II Order* is used not only in New York, but also in nearly all of the former Bell Atlantic jurisdictions. Indeed, in approving eight other Verizon applications for long-distance authority under section 271, the FCC reviewed PAPs that were based in large part — or were identical to — the PAP that this Commission has adopted.

#### **IV. Performance Measurements – Verizon North**

11. Verizon North reports its performance in Pennsylvania under a set of measurements established as a condition of the FCC’s approval of the Bell Atlantic-GTE merger. These measurements were based on those adopted by the California Public Utilities Commission (“PUC”), through collaborative processes, for reporting Verizon California’s performance.

Those measurements have been updated from time-to-time to reflect changes to the measurements approved by the California PUC. A current version of the business rules for these measurements can be found at [http://128.11.40.241/perf\\_meas\\_ug/fcc.htm](http://128.11.40.241/perf_meas_ug/fcc.htm).

12. The merger guidelines, similar to the guidelines recently adopted in the *PMO II Order*, define measurements and performance standards for the following categories: Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, Network Performance, and Billing.

13. In addition, as a condition for the FCC's approval of the Bell Atlantic-GTE merger, Verizon North is also subject to a performance assurance plan, under which it must make remedy payments when it misses the performance standards established in the merger measurements.

V. **Interim Bill Dispute Resolution Measurements**

14. The New York measurements that this Commission adopted in the *PMO II Order* for reporting Verizon PA's performance include two billing measurements developed by the New York Carrier Working Group and designed to measure Verizon PA's responsiveness to CLECs' wholesale billing disputes. The first of these, known as BI-3-04, measures Verizon PA's performance in acknowledging CLECs' billing disputes, and has a standard of 95% of "valid/complete billing adjustment claims" acknowledged within two business days. A billing dispute is "valid," for purposes of the measurement, if it pertains to wholesale billing, rather than, for example, to charges for directories or credits for performance remedies. A billing dispute is "complete" if the CLEC has followed the business rules for filling in the billing dispute form. The second measurement, known as BI-3-05, measures Verizon PA's performance in resolving those claims, and has a standard of 95% of claims resolved within 28 calendar days after acknowledgement.

15. The New York PSC established these measurements on an interim basis, subject to further study by the New York Carrier Working Group. Because they are interim measurements, the current business rules BI-3-04 and BI-3-05 contain only a single exclusion — for billing disputes that do not pertain to wholesale billing, such as disputes related to charges for directories and credits for performance remedies. Thus, BI-3-04 and BI-3-05 will capture Verizon's performance on all wholesale billing disputes, which provides the data necessary to enable the New York Carrier Working Group to study the potential utility of the measurements.

16. The Carrier Working Group is currently discussing BI-3-04 and BI-3-05. Verizon has proposed that the final version of these measurements in New York mirror the version adopted in Rhode Island, New Hampshire, Vermont, and Maine, and reviewed by the FCC in approving Verizon's section 271 application in each of those states. These measurements are slated for inclusion in the New York PAP as part of the further revisions to the PAP currently under consideration, which are discussed above, but will remain "under development" until final business rules for the measurements are adopted. If, and when, these changes are made to the New York measurements and the New York PAP, Verizon PA will submit them to this Commission as proposed changes to the measurements and PAP adopted in the *PMO II Order*, pursuant to the procedures set forth in that order.

17. In those other states, the business rules for BI-3-04 and BI-3-05 are more developed than the interim New York version. They contain additional exclusions and business rules that tailor the measurements in order to enhance their accuracy. For example, the measurements in those other states exclude billing disputes that are submitted more than 60 calendar days after the date of the bill containing the disputed charge. Older billing disputes — in Rhode Island, disputes related to billing periods before December 1, 2001 — are also

excluded. Those measurements also define what it means for Verizon to acknowledge and to resolve billing disputes — neither term is defined in the interim New York rules. Attachment 1 to this declaration contains the Rhode Island business rules for these measurements.

**VI. LSRC Measurements**

18. The guidelines that this Commission adopted for Verizon PA in the *PMO II Order*, like the merger guidelines under which Verizon North reports its performance, contain a number of measurements, known as the “OR-1” measurements, that report on the timeliness with which Verizon returns local service request confirmations (“LSRCs”). The measurements set forth timeliness standards for Verizon’s return of LSRCs, as well as rules that govern Verizon’s reporting of its performance for these measurements. The PAP adopted in the *PMO II Order*, like the merger PAP, includes a number of the OR-1 measurements, which means that Verizon can be required to make remedy payments to CLECs if it fails to meet the timeliness standards established in these measurements.

19. The measurements adopted in the *PMO II Order* specify the following performance standards for Verizon PA’s return of LSRCs on a CLEC’s stand-alone UNE loop orders:

<b>Electronically Prequalified Orders</b>	
Orders that flow through	95% within 2 hours
Orders that do not flow through and do not require a facility check	95% within 24 hours
Orders that do not flow through and require a facility check	95% within 72 hours
<b>Orders Requiring Manual Prequalification</b>	95% within 72 hours

20. Although the business rules for OR-1 in the New York measurements have been revised to implement a number of consensus recommendations of the New York Carrier Working Group, neither Covad nor any other carrier participating in that group — or in the

Pennsylvania Carrier Working Group — has requested that the intervals included in these standards be shortened.

21. The merger measurements contain similar standards for Verizon North's return of LSRCs:

<b>Fully Electronic/Flow Through</b>	95% within 2 hours
<b>Orders That Do Not Flow Through</b>	
UNE non-designed < 10 lines	95% within 24 hours
UNE designed < 10 lines	95% within 48 hours
UNE non-designed or designed >= 10 lines	95% within 72 hours

22. For both Verizon PA and Verizon North, these timeliness measurements exclude weekend and holiday hours.

#### **VII. Missed Appointments**

23. Verizon PA and Verizon North report their performance in meeting provisioning appointments for CLEC orders under a number of measurements, known as the "PR-4" measurements. Specifically, there are a number of measurements that report on Verizon's performance in provisioning so-called dispatch orders, which require the dispatch of a Verizon technician to the end-user customer's premises to complete the order.

24. These measurements, as well as others designed to measure whether it is Verizon's fault that a provisioning appointment was missed, exclude instances where a Verizon technician misses an appointment because he cannot obtain access to a CLEC's end-user customer's premises. In addition, the Verizon PA measurements exclude instances where Verizon PA could not complete a 2-wire digital loop, xDSL loop, line sharing, or line splitting order on time because the facilities necessary to provision those orders did not exist.

25. The PAP adopted in the *PMO II Order* includes the missed-appointment measurements for new UNE loops, 2-wire digital, xDSL, line sharing, and special services

(which includes DS-1 loops). Similar missed-appointment measurements — including for xDSL-capable loops (whether stand-alone, line sharing, or line *splitting*) — are included in the merger PAP. Accordingly, in the event that Verizon’s performance on these measurements is below the applicable benchmark or fails to meet the established parity standard, Verizon must make remedy payments.

**VIII. Line-Shared Loops**

26. Under the performance measurements adopted in the *PMO II Order*, Verizon PA’s performance in provisioning line-shared loops is subject to a “dual” standard: 95% within three business days *and* parity with Verizon’s retail broadband group. Thus, Verizon can miss this standard if it provisions 90% of CLECs’ *line sharing orders* within three business days, even if that is better than the performance Verizon provides to its retail broadband group. Similarly, Verizon can miss this standard if it provisions 99% of CLECs’ *line sharing orders* within three business days, if that performance is slightly worse than the performance it provides to its retail broadband group.

**IX. Loop Qualification**

27. The measurements adopted in the *PMO II Order* include a measurement that reports Verizon PA’s performance in responding to CLECs’ pre-ordering requests for manual loop qualification information, known as “PO-8-01.” This measurement has a standard of 95% returned within 48 hours, excluding holiday and weekend hours.

28. This concludes our declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

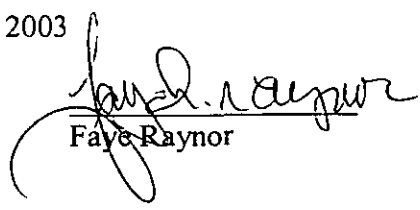
Executed on January 17, 2003

Beth Abesamis  
Beth Abesamis



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 16, 2003

  
Faye Raynor

**Function:****BI-3 Billing Accuracy****Definition:**

These sub-metrics measure the promptness with which Verizon acknowledges and resolves CLEC billing adjustment claims processed in the Verizon Bill Claim Center. These sub-metrics include CLEC claims with respect to BOS BDTs where the BOS BDT is the bill of record. **Note:** If a CLEC has some accounts for which the bill of record is the BOS BDT, and others for which the bill of record is another format, only the CLEC claims related to the BOS BDT bill of record are reflected in the BI-3 sub-metrics. These sub-metrics apply to CLEC claims that are submitted within 60 calendar days of the bill date and that are related to bill periods beginning on or after December 1, 2001.

- Business hours for receipt of billing claims are Monday through Friday, 8:00 am to 5:00 PM Eastern Time, excluding Verizon Holidays;
- CLEC claims for billing errors received outside these business hours shall be considered received at 8:00 am Eastern Time on the first business day thereafter.
- Day of receipt shall be considered Day "0" for computing acknowledgement performance.
- Day of acknowledgement of a billing claim shall be considered Day "0" for computing resolution performance. If the 28th calendar day falls on a weekend or Verizon Holiday, resolution will be considered timely if returned on the next business day.
- Claims must be submitted by e-mail to [Billing.Tisoc@Verizon.com](mailto:Billing.Tisoc@Verizon.com) using the Verizon Wholesale Billing and Collections Claim form, included in Appendix Q, or another format jointly agreed upon between Verizon and the CLEC. All requested information must be provided, whichever format is used.
- Claims that are the subject of this metric are those with the following reason codes listed on the Reasons Code List contained in Appendix Q: 3PB (disputed usage from an Interexchange Carrier on the Verizon bill), DA (directory advertising), LIST (incorrect billing for listings), LPC (late payment charges), NRC (non-recurring charges), NRES (non-resellable products/services), RATES (customer claim that rates on the bill are incorrect), RC (recurring charges), RSD (resale discount), TAX (taxes incorrectly billed to account), or USG (usage rates), as described on the attached form.
- Acknowledgement means the transmission of a claim number or transmission of a message informing the CLEC that the claim cannot be processed (for example, if additional detail or information is needed) by e-mail to the e-mail address from which the CLEC sent the claim.
- A claim is considered "resolved" when Verizon transmits an e-mail to the e-mail address from which the CLEC sent the claim and that either 1) denies the claim and provides a reason; or 2) grants the claim and informs the CLEC that a credit will be provided; or 3) denies the claim in part and grants the claim in part. A claim will be considered "granted" and, therefore, "resolved" whether or not the e-mail provides the specific amount of the credit to be issued.
- If, after a claim has been acknowledged, Verizon determines that additional information is needed to complete its investigation, Verizon will send the CLEC an e-mail requesting the additional information, and the time for resolution will be extended by the number of days between the e-mail request and the CLEC's response providing the additional information.
- For each master billing account number (BAN), each reason code submitted by a CLEC will count as a separate claim.

<b>BI-3 Exclusions:</b>		
<ul style="list-style-type: none"> <li>• CLEC claims for incentive regulation credits, credits for performance remedies, out of service, and special promotional credits.</li> <li>• CLEC claims that involve service order inquiries or account structure, or that are matters of contract or tariff interpretation. Service order inquiries include, but are not limited to, those on the attached form that request PON numbers. Account structure inquiries include, but are not limited to, those for independent bills, summary bill transfers, and unknown lines.</li> <li>• CLEC claims related to bill media or technical issues.</li> <li>• CLEC claims that are in fact for items enumerated above as excluded, however designated.</li> <li>• CLEC Aggregate excludes Verizon Affiliate data.</li> </ul>		
<b>Performance Standard:</b>		
<p>BI-3-04: 95% within two business days after receipt.            BI-3-05: 95% within 28 calendar days after acknowledgement. If the 28<sup>th</sup> calendar day falls on a weekend or Verizon holiday, resolution will be considered timely if transmitted on the next business day.</p>		
<b>Report Dimensions</b>		
Company: <ul style="list-style-type: none"> <li>• CLEC Aggregate</li> <li>• CLEC Specific</li> </ul>	Geography: <ul style="list-style-type: none"> <li>• Rhode Island</li> </ul>	
<b>Sub-Metrics</b>		
BI-3-01 through BI-3-03	Metrics not in use in Verizon North	
BI-3-04	<b>% CLEC Billing Claims Acknowledged Within Two Business Days</b>	
Calculation	<b>Numerator</b>	<b>Denominator</b>
	Number of billing adjustment claims acknowledged during the month that are acknowledged within two business days after receipt.	Total number of billing adjustment claims acknowledged during the month.
BI-3-05	<b>% CLEC Billing Claims Resolved Within 28 Calendar Days After Acknowledgement</b>	
Calculation	<b>Numerator</b>	<b>Denominator</b>
	Number of billing adjustment claims resolved during the month that are resolved within 28 calendar days after acknowledgement.	Total number of billing adjustment claims resolved during the month.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**JOINT DECLARATION OF WILLIAM F. BRAGG AND DAVID J. KELLY**

**I. Introduction**

1. My name is William F. Bragg. I am employed by Verizon Services Corporation as Director, CLEC Operations. My responsibilities include the provisioning of UNE Specials (DS1 and above), UNE digital loops, line-sharing products, and loop qualification. Since joining Verizon in 1980, I have held a variety of non-management and managerial positions in customer service, outside plant operations, network operations, outside plant engineering, and new technology. I have an undergraduate degree from Pace University in computer science, and an MBA from Long Island University.

2. My name is David J. Kelly. I am employed by Verizon Corporation as Director, CLEC Operations Northeast. My responsibilities include the provisioning of UNE digital loops, line splitting, and line-sharing products in the New York and New England region. I joined Verizon in 1978 and have held field and staff positions in customer service, network operations, cost accounting, and project management. I have an undergraduate degree from Tufts University and an MBA from Boston College.

**II. Purpose**

3. The purpose of our declaration is to discuss Issues 19, 22, 24, and 25 in these arbitrations between DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) and Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”), collectively “Verizon,” which pertain to Verizon’s provisioning of unbundled network elements (“UNEs”) and UNE combinations.

**III. Verizon’s Provisioning of UNEs to CLECs**

4. Verizon offers access to unbundled network elements in Pennsylvania using substantially the same processes and procedures that it uses in the other former Bell Atlantic jurisdictions. Verizon North follows substantially the same practices as well.

5. Consistent with federal law, Verizon does not construct network elements solely for the purpose of unbundling those elements. However, although it is not required to do so, Verizon does provide competitive local exchange carriers (“CLECs”) with additional opportunities for access to network elements beyond the mandated provisioning obligations. These are described in detail in a July 24, 2001 CLEC industry letter, which is Attachment 1 to this declaration.

6. In the event that Verizon lacks the facilities necessary to provide a requested network element, and there are no pending constructions jobs that would make the necessary facilities available, CLECs are not prevented from obtaining the facilities they desire. CLECs and all other access service customers can still obtain facilities through the special access provisions of Verizon’s tariffs. Pursuant to the terms of the tariffs, Verizon will build the necessary facilities for the customer. Requests from all of Verizon’s access service customers,

whether they are CLECs, interexchange carriers or retail end users, are handled under the same terms and conditions of these tariffs, precluding any claim of discrimination.

7. On May 30, 2002, Verizon notified CLECs throughout its region that, consistent with the Supreme Court's decision in *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646, 1686-87 (2002), Verizon's Bona Fide Request ("BFR") process could be used to request new UNEs and UNE combinations. A copy of the May 30, 2002 CLEC industry letter is Attachment 2 to this declaration. The BFR process is contained in an agreed-upon section of the parties' interconnection agreement. A detailed description of the process is also available in the Verizon Wholesale Customer Handbook on the Verizon website at [http://www22.verizon.com/wholesale/handbooks/section/0,,c-1-7-7\\_1,00.html](http://www22.verizon.com/wholesale/handbooks/section/0,,c-1-7-7_1,00.html).

#### **IV. Installation Appointment Windows**

8. Pursuant to the conditions in the FCC's *Bell Atlantic/GTE Merger Order*,<sup>1</sup> Verizon is in the process of converting the Verizon North areas to the operations support systems ("OSS") interfaces and business rules in use in the Verizon PA region of Pennsylvania, including with respect to installation appointment windows. This conversion, about which Verizon has provided substantial information to CLECs operating in Pennsylvania, is currently scheduled to occur in two phases and to be completed by May 2003. For this reason, we discuss only the Verizon PA processes with respect to installation appointment windows.

9. CLEC employees and Verizon retail representatives obtain the same pre-ordering information from the same underlying OSS. Verizon does not interact directly with a CLEC's end user. Instead, Verizon provides appointment availability information to the CLEC through its OSS, and the CLEC is responsible for passing that information on to its end-user customer

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<sup>1</sup> *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) ("*Bell Atlantic/GTE Merger Order*").

and for ensuring that the customer will be available during the appointed time if it is necessary for a Verizon technician to obtain access to the CLEC's customer's premises to complete the provisioning of the order.

10. Depending upon the type of service ordered, installation appointments for retail and wholesale service are available either in standard, minimum fixed intervals or based upon the demand volume and the work force available at the desired time of installation.

11. For retail and wholesale products that are offered on a standard interval basis, Verizon lists the standard, minimum fixed intervals in its Product Interval Guide.<sup>2</sup> For services that are provisioned based on a standard interval date, Verizon offers an all-day window on the installation day. While the appointments based on the standard intervals are offered on a business-day basis, CLECs may request that Verizon provide installation of these fixed interval products on a four-hour-window basis – either AM (8 a.m. to 12 p.m.) or PM (1 p.m. to 5 p.m.) – in the manner described below. Verizon will attempt to accommodate this request; however, it cannot guarantee that it can do so.

12. For retail products and UNEs that do not have standard, fixed provisioning intervals, Verizon's Work Force Administration ("WFA") system provides installation due date availability based on the demand volume in a geographic region and the work force available. The WFA system is available to both Verizon retail negotiators and CLEC employees using one of the wholesale pre-order interfaces that Verizon offers. Data from the WFA system feed the Service order Management Administrative Report Tracking System ("SMARTS") application, which is used to track service orders that require the dispatch of a technician. When Verizon or a

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<sup>2</sup> Verizon PA's Product Interval Guide is posted on Verizon's wholesale website at <http://128.11.40.241/cast/wholesale/resources/master.htm>. These same intervals will apply to Verizon North orders once the conversion of the Verizon North region to the Verizon PA OSS and business rules is complete.

CLEC attempts to schedule an installation appointment, the SMARTS application will display the available installation due dates as a “green light” on the user’s interface screen.


13. Appointments through SMARTS are available on a first-come, first-served basis to CLEC customers and Verizon customers alike. Both retail representatives and CLECs can select the shortest available “green light” installation date shown in SMARTS, or a longer interval, as long as the desired installation date is available in SMARTS. CLECs ordering UNE products that select their installation date through the SMARTS application are given the opportunity to select the same four-hour windows described above – either AM (8 a.m. to 12 p.m.) or PM (1 p.m. to 5 p.m.) – during the pre-ordering process, in the same manner in which Verizon retail representatives can.

14. This concludes our declaration.



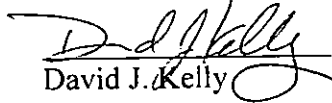
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1-16, 2003

  
William Bragg

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 16, 2002

  
David J. Kelly



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.



May 30, 2002

**Subject: Supreme Court Decision**

On May 13, 2002, the U.S. Supreme Court reinstated certain FCC rules regarding Unbundled Network Element (UNE) combinations that previously had been vacated by the 8<sup>th</sup> Circuit Court of Appeals. Consistent with this decision and effective with the issuance of a mandate from the Circuit Court of Appeals, Verizon will accept orders for Expanded Extended Loops (EELs) in all Verizon operating areas, subject to the availability of facilities, and in accordance with revised guidelines and procedures set forth in the Verizon Wholesale Customer Handbook. Requests for other combinations not offered by Verizon today will be processed through the existing Bona Fide Request (BFR) process. This process is detailed in the Verizon Wholesale Customer Handbook on the Verizon web site at [http://www22.verizon.com/wholesale/handbooks/section/0\\_c-1-7-7\\_1.00.html](http://www22.verizon.com/wholesale/handbooks/section/0_c-1-7-7_1.00.html).

For questions regarding this matter, please contact your Verizon Account Manager.



**II. Purpose**

3. The purpose of my declaration is to discuss Issues 23 and 27 in these arbitrations between DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) and Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”), collectively “Verizon,” which pertain to the offering of advanced services.

**III. Technical References**

4. Although Verizon revises its technical documents from time-to-time to remain current with industry standards, it is ultimately Verizon’s documents — and not the industry standards — that define the ISDN, ADSL, and HDSL loops in Verizon’s network and provide complete information about Verizon’s UNE loop products. Accordingly, interconnection agreements should also reference the Verizon technical documents that define loop characteristics specific to Verizon’s network. If a CLEC believes that the Verizon technical documents are in conflict with industry standards, Verizon has offered to research the standard and area of “conflict” identified by the CLEC. If necessary, Verizon will, based on its investigation, negotiate specific aspects of the Verizon technical documents to address areas of concern.

**IV. Deployment of Advanced Services**

5. Covad seeks the right to deploy advanced services on loops without notifying Verizon of the particular type of services it plans to deploy over the loop. However, information regarding the deployment of a particular type of advanced service or technology is essential and is used by Verizon in a number of different ways. For example, Verizon uses the information to ensure that the various services, such as Asymmetric DSL (“ADSL”) and T-1 lines, provided over loops in a binder group, do not interfere with each other. If loops carrying these two types

of technologies are placed within the same binder group, interference will occur. If Verizon knows that a CLEC is ordering the loop to deploy ADSL, it will not place this loop in the same binder as existing loops deploying T-1 technology. Without accurate information, Verizon's ability to prevent interference within binder groups would be impeded. This is especially true as new DSL and other data technologies are added to the network.

6. Further, due to the fact that different DSL technologies are subject to different loop length limitations, CLECs must order, by ordering code, the type of technology that they will be deploying to ensure that Verizon delivers a compatible copper loop. For example, ADSL as a general rule can work on loops up to 18,000 feet in length. HDSL, on the other hand, works on loops that are less than 12,000 feet. If a CLEC did not order DSL lines by loop type, Verizon could potentially deliver to the CLEC what it believes to be a compatible loop only to find out later that the DSL technology being provisioned to the end user will work only on a shorter loop.

7. Additionally, this information is valuable for troubleshooting and repair purposes. Without accurate loop information regarding the particular type of advanced service or technology, Verizon's ability to troubleshoot and make necessary repairs could be significantly delayed or hindered.

8. Covad also seeks the right to deploy services that do not fall under any loop type categories enumerated in the agreement. Addition of such language is unnecessary and would contravene an *established industry-wide process*. Currently, an agreed-upon portion of the interconnection agreement contains a procedure for a CLEC to follow in the event it wants to deploy a new loop type or technology, namely, the bona fide request ("BFR") process. Once a CLEC initiates the BFR process, a preliminary analysis is conducted, including an initial assessment of its technical feasibility, general product availability, and expected delivery date.



This preliminary analysis is normally completed within 30 days. A full evaluation of each request, including any product development activity and final pricing, is normally completed within approximately 90 calendar days after Verizon receives authorization from the CLEC to proceed. That process involves, among other things, a detailed assessment of the technical feasibility of the CLEC's request as well as joint product development activity between Verizon and the CLEC. Successful provisioning of new loop types requires coordination between Verizon and Covad that is provided for through the BFR process.

9. This concludes my declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 16, 2003

Rosemarie Clayton  
Rosemarie Clayton



**III. Backbilling**

4. Carrier-to-carrier billing is a complicated and evolving process. Among other things, such billing is subject to regulatory changes that may make it difficult for carriers to bill for services promptly and completely. Orders of this Commission or the Federal Communications Commission (“FCC”) can result, for example, in the imposition of new UNE obligations before rates have been established for the new UNE and before the billing processes have been developed and implemented. In these circumstances, the operational processes necessary to enable the provisioning of the new UNE can move faster than the rate-setting and billing systems work. Thus, even though Verizon cannot yet bill for this new UNE, it is expected to be ready to provision an order for that new UNE. Regulatory orders mandating the provision of a new UNE normally do not permit Verizon to defer provisioning orders for the new UNE until all the rate-setting and billing work is completed. As a result, Verizon may have no choice but to “backbill” the competitive local exchange carrier (“CLEC”), which normally has ordered the service with full knowledge that it will be billed for that service at a later date.

5. In opposing Verizon’s successful section 271 application in Virginia, Covad raised one instance of backbilling, which was largely the result of a regulatory change of the kind discussed above. When Verizon was required to implement line sharing, its first priority was to complete the OSS work necessary to enable CLECs to order line sharing and to enable line-shared loops to be provisioned. Consequently, Verizon informed CLECs that they would be billed later for their line sharing UNE orders. As a result, CLECs such as Covad were able to order and use line sharing to win customers — and collect fees from those customers — without paying anything to Verizon for the period prior to when Verizon billed CLECs for those orders.

6. When Verizon did bill Covad for line sharing, the bill was primarily for services rendered within one year of the bill date; the oldest charges on the bill were for services rendered 14 months earlier. Verizon also included all of the backbilled amount on Covad's New York bill, because the largest portion of the charges were for New York. Indeed, although Covad has complained about backbilling of \$1.1 million, that is a region-wide figure. When Covad raised billing disputes related to this backbilling, Verizon worked with Covad to resolve those claims, and they have since been resolved, with appropriate credits issued to Covad.

#### **IV. CLEC Billing Disputes**

##### **A. Tracking Disputes**

7. When a CLEC submits a billing dispute, Verizon currently assigns that dispute a unique claim number, which Verizon uses to identify the dispute in further communications with the CLEC. When the claim is resolved, Verizon sends the CLEC a letter identifying the claim number and informing the CLEC of the amount of any adjustment resulting from the claim and when the adjustment is expected to appear on the CLEC's bill. Verizon PA and Verizon North use the same billing dispute resolution process, which is the same process that Verizon uses throughout the former Bell Atlantic region.

8. Verizon is in the process of implementing the Wholesale Claims and Inquiry Tracking ("WCIT") system, which Verizon will use to identify billing disputes using the claim number that the CLEC assigns (assuming the CLEC enters one when submitting the claim). WCIT is a web-based claims input and tracking system that Verizon will use to receive and then track customer claims and inquiries. Verizon conducted a live demonstration of WCIT in New York, which Covad and other CLECs attended. Phase 1 of WCIT implementation, tracking in the CABS billing system (which is used to bill UNE products, among others), is complete, as is

part of Phase 2, tracking in the CRIS billing system (which is used to bill resale products, among others). The remaining part of Phase 2, as well as Phase 3, which will permit CLEC input into WCIT through an Internet browser, is scheduled for the third quarter of 2003. However, in the interim, and pursuant to a commitment that Verizon PA made during the section 271 process in Pennsylvania, Verizon PA has agreed to use a CLEC's claim number (assuming one is provided when the CLEC submits the billing dispute) for claims regarding UNE and resale products, in addition to the Verizon-assigned claim number, on all correspondence relating to the claim.

9. Enhancing the process for tracking billing disputes is best dealt with in industry-collaborative fora. For example, as a result of an industry collaborative in New York, Verizon has recently agreed that CLECs can submit a single claim if the same issue is present on multiple CLEC end-user accounts within the same billing account number. Previously, a CLEC had to file a separate claim for each end-user account included in a billing dispute. If the process for tracking billing disputes, instead, was contained in interconnection agreements, such modifications would be far more difficult, as they would require amendments of all of the various agreements.

**B. Acknowledging and Resolving Disputes**

10. As explained in the Joint Declaration of Beth A. Abesamis and Faye Raynor, this Commission has recently adopted interim performance measurements for Verizon PA that report the timeliness with which Verizon PA acknowledges and resolves CLECs' billing disputes. The interim standards for those measurements are 95% of disputes acknowledged within 2 business days and 95% of disputes resolved within 28 calendar days after acknowledgement.

11. Although Verizon will acknowledge and investigate all billing claims submitted, Verizon's ability to do so within the specified time frames depends in large part on the degree of

detail that a CLEC provides when it submits its dispute and whether the dispute pertains to recent bills. Because Verizon begins to archive the data necessary to investigate billing disputes — which includes not only the billing data itself, but also the information pertaining to the service orders that the CLEC has submitted — after 60 days, claims related to older billing disputes are more difficult to handle than claims related to current bills. Unless Verizon has relatively easy access to the data necessary to investigate a CLEC's claim, it may be unable to resolve it within 28 calendar days after acknowledgement of the CLEC's dispute. Additionally, if Verizon must seek additional information from a CLEC regarding its billing dispute, Verizon also may be unable to resolve that dispute within that time frame.

**C. Late Fees**

12. CLECs are not required to pay disputed amounts during the pendency of a billing dispute. While a billing dispute is being investigated, however, Verizon continues to charge late fees for the amount being disputed. In the event that a CLEC's billing dispute is resolved in the CLEC's favor, Verizon will issue a credit to the CLEC for the disputed amount, as well as for all late fees assessed on that amount from the time the amounts due were initially billed. In this arbitration, Covad has proposed that, where Verizon does not resolve a billing dispute that Covad submits within 30 days and the dispute is resolved in Verizon's favor, late fees should accrue for only 30 days.

13. The late-payment charges serve at least two purposes. First, they provide CLECs with an incentive to pay undisputed — or previously disputed — amounts promptly. Second, they compensate Verizon for the time value of money, the risk of ultimate non-payment, and the cost of collection efforts when CLECs do not pay such amounts promptly. Both purposes would

be undermined if, by submitting a dispute, Covad could ensure that it would face no more than 30 days worth of late-payment charges.

14. Further, the level of charges to CLECs that are ultimately uncollectible by Verizon is well above the level for Verizon's retail customers. Covad's proposal would provide it with an incentive to manipulate the dispute resolution process in order to avoid making prompt payment, for example, by submitting barebones claims in order to generate "disputes" that will necessarily take longer than 30 days to resolve simply to avoid payment.

15. Finally, it is commercially reasonable for late-payment charges to apply to the failure to pay any amounts due under the agreement, whether those amounts are charges for services or late-payment charges. Non-payment of charges — whether for undisputed charges or during the pendency of a dispute where the charges are ultimately determined to be valid — amounts to a forced loan from Verizon to its competitor. Imposition of late-payment charges on all outstanding balances — including previously accrued late fees — is simple compounding, which is the ordinary way in which interest charges accrue. Indeed, this Commission's regulations provide that a utility may charge late fees of up to 1.5% per month "on the full unpaid and overdue balance of the bill," which includes any unpaid, past-due late-payment charges. 52 Pa. Code § 56.22(a).

16. This concludes my declaration.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 17, 2003

Warren Geller  
Warren Geller



of wholesale digital services, with a focus on the technical support required for xDSL-capable loops.

5. I have been employed by Verizon or by its affiliates and predecessor companies since 1966. Before joining Verizon, I worked for a number of engineering and construction firms. During my first 12 years at Verizon, I was involved in every aspect of Outside Plant telephone engineering. From 1979 to 1994, I held managerial positions in Construction, Installation and Maintenance, and Engineering, in both line and staff capacities. Before joining the Wholesale Services organization in June 2000, I worked in the Bell Atlantic Technology organization as the Executive Director, Transport Technology Planning.

6. I have previously testified before this Commission, and previously participated in a Dark Fiber Collaborative conducted by the Commission Staff in 2001.

**I. Purpose**

7. We are providing this declaration in support of the positions of Verizon on Issues 42, 44, and 46 through 50 in these arbitrations between DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) and Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”), collectively “Verizon,” which pertain to certain disputed provisions in the UNE Attachment to the proposed Interconnection Agreement concerning Verizon’s provision of dark fiber as an unbundled network element.

**II. Access to Partially Constructed Fiber**

8. Issue 42 of Covad’s Petition concerns the definition of dark fiber in the Interconnection Agreement. It is our understanding that, under applicable law, fiber must be physically connected to Verizon’s network and easily called into service before it is a network element that Verizon must provide to CLECs on an unbundled basis. Covad, however, is

seeking access to what it calls “unterminated fiber” — that is, fiber that is not terminated at an accessible terminal in Verizon’s network.

9. As background, Verizon deploys fiber optic cables as a transmission medium in two separate and distinct areas of its network. The principal application for fiber optic cables is in Verizon’s interoffice facility (“IOF”) network, which connects Verizon’s central offices to one another. The second principal use of fiber is in Verizon’s loop network, where fiber is employed in an outside plant feeder route to connect a Verizon central office primarily to Digital Loop Carrier (“DLC”) sites (where remote electronics are placed).

10. In the loop feeder network, Verizon constructs sections of loop fiber optic cables in stages, which can occur over a number of years by extending or adding to existing fiber optic cables into new geographic areas to accommodate changing needs. Existing fiber optic cables are extended by placing new fiber optic cables<sup>1</sup> and splicing them permanently together using the construction technique called mass-fusion splicing. These fiber optic splice points are created as permanent connections where the fibers are welded together as part of the construction or building of Verizon’s loop feeder fiber optic network. The primary driving force behind the deployment and ongoing expansion of Verizon’s loop fiber cables has been the need to deploy Digital Loop Carrier systems to serve POTS growth in specific geographic areas. Fiber optic loop feeder cables provide cost effective transmission facilities for Digital Loop Carrier systems.

11. Unlike the deployment of fiber optic cables in Verizon’s loop feeder network, construction of fiber cables in Verizon’s interoffice facility network generally occurs over a shorter period of time, starting with fiber optic cable placements at the “A” central office end and working toward the “Z” central office end until continuous fibers are constructed between the

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<sup>1</sup> Fiber optic cables are either placed in underground conduit or on aerial pole lines, or they are buried in the ground.

Fiber Distribution Frame (FDF) in central office “A” and the Fiber Distribution Frame in central office “Z.” Typically, it takes Verizon approximately one year to construct an interoffice facility fiber optic cable span (from final funding approval to construction completion). However, if significant structure work also is involved, for example construction of pole lines or conduit construction, the time frame could range up to two years. During construction of fiber optic cables in Verizon’s interoffice facility network, the fiber cables also are permanently spliced together via mass-fusion splicing where, once again, the optical fibers are welded together.

12. Verizon places “ribbon” fiber optic cables because they are the most economical to construct and maintain. These cables are permanently spliced (*i.e.*, welded) together using mass-fusion splicing. Typically, a fiber optic cable sheath will contain one or more ribbons of glass fiber strands, with 12 glass fibers in each ribbon. Visually, this ribbon looks like 12 glass strands between two pieces of transparent adhesive tape. Before Verizon moved to use ribbon fiber optic cables, Verizon used some fiber cables known as “loose tube” fiber cables. With loose tube fiber cables, a cable sheath contained a number of individual fiber “buffer tubes,” which typically contained 12 individually coated or protected glass fiber strands.

13. In the context of this declaration, a terminated fiber optic strand is a strand that is connected to an accessible terminal at both ends. Accessible terminals typically include hardware such as Fiber Distribution Frames, fiber patch panels, and LGX equipment. These accessible terminals specifically are designed to permit rapid and repeated connection and disconnection of fiber optic strands, as well as provide a location for initial acceptance testing and subsequent repair testing activities. More specifically, a terminated interoffice fiber strand is a continuous strand that is connected to a central office Fiber Distribution Frame at both ends. In contrast, a terminated loop fiber strand is a continuous strand that is connected to a central office

Fiber Distribution Frame (at one end) and an accessible terminal (either at a Digital Loop Carrier field electronics site or at a customer premises) at the other end. Terminated fibers may be used by either Verizon or CLECs without any further construction activities. They have been tested (and accepted) as conforming to Verizon's engineering design at the time they were initially constructed (terminated on both ends). Terminated fibers are placed into service by Verizon by issuing internal optical orders, or CLEC service orders, and are activated (connected to their associated fiber optic electronics) by making fiber optic cross-connects.

14. In general, situations in which fiber strands have not been terminated on both ends (what some CLECs call "unterminated" fiber) occur when loop fiber strands still are under construction which, as noted earlier in this testimony, can take several years or more to complete. Verizon does not endorse the use of this term as it implies Verizon has intentionally left fiber in an "almost complete" state in an effort to "hide" it from CLECs. To the contrary, as described more fully below, fiber cables necessarily are constructed and extended over many years to accommodate growth and economical loop transport modernization opportunities. In our experience, CLECs have apparently applied the label "unterminated fiber" to at least three distinctly different network configurations.

15. The first configuration appears to involve a loop fiber strand that is only terminated at one end (in a Verizon central office). The other end of the strand would stop out in the loop fiber network (typically at a "branch" splice location), where the entire complement of individual fibers in a cable sheath would *not* be spliced to another fiber optic cable. This configuration describes the most frequent occurrence of "unterminated" fiber optic strands in Verizon's network. As discussed earlier, loop fiber optic cables are constructed and extended into new geographic areas in stages and in discrete sections, which can occur over several or

more years. For example, a 144-strand loop fiber cable might run three miles out in a westerly direction from a Verizon central office to a branch location in the feeder route. Future combined needs along this entire route justifies the placement of 144 fibers, but present needs might only require that 48 of the fiber strands (in the 144-strand cable) be spliced to a 48 strand fiber cable headed in a southerly direction. The remaining 96 “unterminated” strands, in this example, would be awaiting the future placement and construction of additional fiber cables (that may head in a northerly or westerly direction) at which point some (or all) of the 96 “unterminated” strands would be extended (eventually towards a loop fiber accessible terminal) by splicing them to new/additional fiber optic cables. Thus, the 96 fibers in this example are not “unterminated,” but are more accurately described as “under construction” because there is presently nothing on which to terminate these 96 fibers.

16. The second configuration referred to as unterminated fibers appears to involve a loop fiber strand that is only terminated at one end in the loop fiber feeder network (but not at the Verizon central office). This configuration occurs less frequently. The strand could be terminated at an accessible terminal at a Digital Loop Carrier remote terminal site, or at a customer premises, but something less than the full complement of fibers in the sheath would be spliced to the loop feeder fiber cable at the first splice (heading back toward the central office) coming out of the Digital Loop Carrier site. An example of this configuration would be a 24-strand fiber cable run into a Digital Loop Carrier Precast Concrete Hut, with all 24 fibers connected to a fiber patch panel in the hut, but with only 12 fiber strands spliced into the loop fiber feeder cable at the splice location where the 24-strand fiber cable intercepts the (larger) fiber feeder cable. These situations typically occur due to structure limitations (conduit and pole lines) entering the Digital Loop Carrier site, or a customer premises, that dictate selection of an

available larger sized cable since it may be difficult or impossible to come back later to augment the cable if more fibers are needed. If or when needed at some point in the future, Verizon could complete construction of the 12 “unterminated” fibers in this example by placing and splicing new/additional fiber cables back towards the central office, which then would also be spliced to the 12 “unterminated” fiber strands contained in the 24-strand fiber cable running into the Precast Concrete Hut.

17. Finally, the third configuration referred to as “unterminated” fibers appears to involve a loop fiber strand that is not terminated on either end. This configuration rarely occurs. An example would be a bridge crossing in the loop fiber feeder network, with limited conduit available going over the bridge. As noted in a previous example, limited or costly opportunities to return later to augment the size of the cable going over the bridge will dictate selection for initial placement of a larger fiber cable. Thus, Verizon might have a 72-strand loop fiber cable leading up to the bridge, and then a 144-strand fiber cable across the bridge, followed by another 72-strand loop fiber cable that continued further into the loop fiber feeder route beyond the bridge. On the bridge itself, 72 fibers would be terminated on both ends, but another 72 would not be spliced on either end.

18. In each of the three configurations described above, Verizon normally would have to engineer, place and splice additional loop fiber optic cables from the “unterminated” end(s) of the fiber optic cable to an accessible terminal(s), and then perform fiber strand acceptance testing as described above. It is not that the only construction remaining to terminate the fiber is simply to terminate fibers at one end at an accessible terminal, as Covad would have the Commission believe. Rather, Verizon would be required to perform additional splicing and placement of new fiber cables to extend the fibers from one accessible terminal to another.



19. As the foregoing demonstrates, Verizon does not construct new fiber optic facilities to the point where the *only* remaining work item required to make them available and attached end-to-end to Verizon's network is to terminate the fibers onto fiber distributing frame connections at the customer premises. Verizon's new fiber optic facilities are constructed in stages, over a number of years. This involves major construction activities such as: 1) obtaining easements, permits, and right-of-way, 2) constructing pole lines, manholes, and conduit, 3) placing multiple sections of new fiber cable, 4) burying fiber optic cables, 5) splicing fiber optic cables together, and 6) placing terminating equipment in central offices, huts, controlled environmental vaults, and customer premises. It is *not* simply a matter of terminating the fibers on terminating equipment at the customer premises.

20. In other words, Verizon does not fully construct fiber optic cable routes between two terminal locations and simply leave fibers "dangling" near the terminals. It is Verizon's standard practice in Pennsylvania that when Verizon runs a fiber optic cable to terminate in a building or remote terminal, all fibers in that cable will be terminated on a Verizon accessible terminal in the building or remote terminal. If fibers are not terminated to an accessible terminal, then the entire cable is still under construction.

21. Moreover, partially constructed fibers are not included in Verizon's assignable inventory of fiber. Therefore, they cannot be assigned to fill a CLEC dark fiber order, nor can they be assigned to a new Verizon lit fiber optic system.

### **III. Splicing Versus Cross-Connecting Fiber To Make It Continuous**

22. In Issue 44, Covad claims that the Agreement should clarify that Verizon's obligation to provide UNE dark fiber includes the duty to provide any and all of the fibers on any route requested by Covad regardless of whether individual segments of fiber must be spliced or

cross-connected to provide continuity end to end. In addition, in Issue 45, Covad claims that Verizon should 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.”

23. These issues, as characterized by Covad, raise two distinct questions that must be addressed separately: (1) whether Verizon should be required to splice fiber together to create new continuous routes for Covad, and (2) whether Verizon will cross-connect two existing, fully terminated dark fiber IOF strands for a CLEC at an intermediate central office without requiring Covad to collocate at the intermediate central office.

24. With respect to the first issue, the fiber optic strand must be continuous so that no splicing is required to create an uninterrupted path between two accessible terminals. If Verizon must perform splicing work (for example, a fiber optic strand does not run all the way between a central office and a particular customer premises, and thus it must be spliced to another piece of fiber at a splice point to make an uninterrupted path between the two points), the fiber is still under construction and not available as a UNE. There is a difference between splicing two strands of fiber together and cross-connecting them. As explained above with respect to Issues 42, splicing is performed as part of the initial construction of the network and involves welding the fibers together.<sup>2</sup> Cross-connecting fibers, on the other hand, involves placing an optical cross-connect jumper between two already fully spliced and *terminated* fiber optic strands. The

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<sup>2</sup> The Commission, in Docket No. A-310964, agreed with the Commission Staff’s conclusions, after a collaborative technical workshop, that accessing a dark fiber UNE directly at a splice points is not technically feasible. However, the Commission also ordered that Verizon may be required to build a new accessible terminal in the field adjacent to a splice point to provide access to dark fiber, at the requesting CLEC’s expense. The access would then occur at the accessible terminal, not at the splice point. *Report to the Pennsylvania Public Utility Commission Regarding the Technical Workshop on Access to Dark Fiber at Existing and New Splice Points*, Docket Nos. R-00005261, R-00005261C0001 (April 11, 2002). This issue is completely different than whether Verizon should be required to splice fiber end-to-end to construct new routes for a CLEC.

cross-connect can be connected and disconnected at the accessible terminal without disturbing the fibers or breaking a splice.

25. The second issue raised by Covad in Issues 44 and 46 concerns the latter situation: whether Verizon should combine two separate, terminated dark fiber UNEs for Covad by cross-connecting them at a central office to create a new fiber route — *i.e.*, whether Verizon will provide an indirect fiber route running through intermediate offices. Under Verizon's original proposal, Covad would have to order dark fiber on a route-direct basis and combine the two separate, terminated strands at its collocation arrangement. This is conceptually different than the question of whether fiber is "continuous" (*i.e.*, no splicing is required). Moreover, Verizon is willing to cross-connect fibers at intermediate central offices for Covad, although it will not splice fiber to create a new continuous route for Covad.

26. Verizon has proposed new contract language for § 8.2.5 of the Interconnection Agreement that would allow Covad to order dark fiber on an indirect route basis, without having to collocate at intermediate central offices.<sup>3</sup> If no direct dark fiber IOF route is available

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<sup>3</sup> Verizon's proposed § 8.2.5 now states:

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 Dark Fiber Inquiry Form, 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

between the A and Z points requested by Covad, Verizon will search for reasonable indirect routes without requiring Covad to submit additional dark fiber inquiries. This contract provision thus eliminates Covad's concerns expressed in Issue 45.

27. Reasonable limitations on this offering, however, are necessary. In particular, Verizon's proposed contract language reserves Verizon's right to limit the number of intermediate central offices on an indirect route consistent with limitations in Verizon's network design and/or prevailing industry practices for optical transmission applications. There are certain technical limitations on the number of intermediate offices through which a fiber route may go without collocation. For example, Verizon's past experience with the deployment of fiber optic cables and electronics indicates that optical repeaters generally are required when a fiber circuit exceeds 20 miles. If repeaters and/or regenerators are required every 20 miles or so along a fiber cable to provision high capacity services, it follows that some type of CLEC access point (e.g., collocation facility), at a location approximately 20 miles from the originating point of the equipment (and at each subsequent 20 mile increment) will be required.

28. There may be other technical limitations that come into play. Verizon does not have a specific network limitation or "prevailing industry practice" in mind that necessarily would be used to determine that an indirect route is unreasonable. This language is a protective measure in the event that a limitation on the number of intermediate central offices was necessary for reasons that Verizon has not yet encountered in connection with dark fiber inquiries received in Pennsylvania, but could encounter in the future as a result of an unforeseen or unanticipated network or technical problem or implementation of a new industry standard. For example, in the future, it is possible that, in Verizon's larger central offices, fiber optic

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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.

distributing frame congestion or fiber optic tie cable congestion temporarily could preclude Verizon from providing cross connections between specific pairs of fiber optic cables. The proposed language also is intended to provide Verizon with some flexibility to make judgments on an individual case basis, for instance, where a request for dark fiber would involve an inefficient use of scarce fiber resources. An example of an inefficient use of scarce fiber resources would be a request for a direct dark fiber circuit between two wire centers that are 20 miles apart, but where the only theoretically available indirect route between the two locations is 100 miles.

29. In actual practice, however, Verizon anticipates placing few, if any, limitations on indirect fiber routes. If Verizon does place such a limitation, Verizon will discuss this limitation with Covad in order to permit Covad to make any necessary collocation decisions. If Covad disagrees with the limitation applied, it may invoke the dispute resolution provisions of the Interconnection Agreement to resolve the disagreement.

#### **IV. Dark Fiber Information**

30. In its proposed § 8.2.5.1, Covad demands that Verizon provide “maps of routes that contain available Dark Fiber IOF by LATA for the cost of reproduction.” Verizon, however, does not maintain such “maps” for its own use, and thus cannot provide such nonexistent “maps” for the cost of “reproduction” (there is nothing to “reproduce”).

31. The availability of dark fiber at specific locations changes on a day-to-day basis based on the needs of Verizon, CLECs, IXCs, and other customers for lit fiber services, as well as on-going construction activities. Verizon must review its records manually on a route-by-route basis to determine the availability of dark fiber. Therefore, Verizon cannot generate a snapshot picture of all available dark fiber in Pennsylvania at any given time. Instead, the most

Verizon could do is create a map showing the dark fiber available at the time each line on the map was drawn. Such a map would become outdated during the process of creating it, and Covad could not assume that dark fiber shown as available on the map would be available when (and if) Covad later decides to place an order. Therefore, requiring Verizon to create blanket information to give to Covad identifying all available dark fiber in Pennsylvania would not only be unduly burdensome and costly for Verizon, but the information would be useless to Covad even before it was received.<sup>4</sup>

32. Verizon provides fiber information to CLECs in three different ways — dark fiber inquiries, wire center fiber maps, and field surveys. This variety of information satisfies CLEC needs for general network planning information; availability checks for specific spans/routes/locations; and the detailed engineering optical transmission design for the CLEC's fiber optic electronics. Wire center fiber maps provide street level information on Verizon's fiber routes within a wire center so that CLECs can determine the location of fiber routes in Verizon's network and, thus, where dark fiber might potentially be available. Dark fiber inquiries and field surveys, on the other hand, provide specific dark fiber availability between particular A and Z points on the maps at a given point in time. If a CLEC orders a field survey, Verizon will dispatch technicians to the specific location requested to verify the availability of dark fiber pairs and test the fiber's transmission capabilities. Although Verizon does not require field surveys before submitting an ASR for the fiber, such surveys are recommended, since Verizon cannot guarantee that fiber is available from inventory records alone. Using these 3

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<sup>4</sup> Like dark fiber, there is limited availability of other types of High Speed IOF and loop UNEs (e.g., DS3s, OC3s, and OC12s, which are analogous to Dark Fiber in many respects). And, like dark fiber, there is no blanket statewide list of all locations where such UNEs are available. In both cases, publishing such a list makes no sense from a practical perspective.

options, a CLEC is provided with street level information on the fiber routes within a wire center area and specific dark fiber availability between the A and Z points. The dark fiber inquiry is provided for a fixed price and is the required first step in ordering a dark fiber circuit. The field surveys and wire center fiber maps, on the other hand, are optional engineering services available on request for time and materials. These three methods combined are more than sufficient to permit Covad to determine dark fiber availability and mirror the process that Verizon uses to determine fiber availability for its own lit fiber services.

33. Covad, in its proposed § 8.2.8.1, has attempted to specify the type of information that Verizon PA must provide in response to a field survey request. Specifically, Covad's proposed § 8.2.8.1 provides that "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." Verizon PA does not track this information for itself in its own field surveys and, at this time, does not know whether it has the capability of providing this type of information. In any event, this is not the kind of operational activity that should be defined on an interconnection-agreement-by-interconnection-agreement basis, but should be consistent for all CLECs.

**V. 25% Limit on the Number of Fibers That Covad May Lease on a Single Route**

34. Dark fiber is a scarce resource in Verizon's network. Therefore, Verizon has proposed contract language in the Amendment that would limit Covad to 25 percent of available fiber, within any given segment of Verizon's network. This limit is a reasonable anti-warehousing provision that prevents one competitor from occupying all available fiber in a particular area and excluding entry by other carriers. This 25 percent limitation does not impose

any practical impediment to Covad's ability to provide service to its customers. Fiber has huge bandwidth (provided, of course, that it has not been rendered unusable by excessive splicing or has too much loss or other degradation). Therefore, limiting Covad to 25 percent of available fiber on any given segment of Verizon's network does not present a practical limit on the range of services that Covad can offer to its customers. In fact, such a limit would encourage Covad and other CLECs to utilize fiber more efficiently so as to maximize the resources available for all telecommunications companies in the Pennsylvania.

35. We do not understand Covad's concerns about the calculation of the 25-percent limit. *See, e.g.*, Covad Petition Attach. C at 21. The calculation of the 25% cap is easy and straightforward. If a fiber route consists of a 24-strand cable, Covad may lease up to 6 fibers on that route ( $24 \times 0.25 = 6$ ). Similarly, if a fiber route consists of a 144-strand cable, Covad may lease up to 36 fiber strands on the route ( $144 \times 0.25 = 36$ ). Up to these limits, fiber is available on a first-come, first-served basis. Clearly, even in smaller cables, the 25% cap poses no threat to Covad's ability to provide service to its customers. Although Verizon cannot verify that a CLEC has ever asked to lease more than 25 percent of the total fiber in a cable as dark fiber without extensive research, we personally know of no examples where this has occurred.

36. This concludes our declaration.



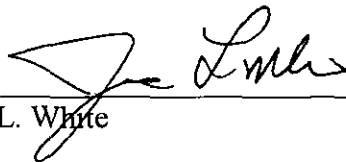
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 16, 2003

  
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Alice B. Shocket

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Jan 16, 2003

A handwritten signature in cursive script, appearing to read "John L. White", written over a horizontal line.

John L. White



Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”), collectively “Verizon,” which concern, respectively, the cooperative testing of loops, loop qualification of xDSL-capable loops, and loop demarcation information.

### **III. Cooperative Loop Testing**

4. Whenever a loop is provisioned or repaired, the loop is tested to verify continuity and to ensure that the loop meets Verizon’s technical specifications. Loop testing can be done either through a manual process, involving a Verizon and a competitive local exchange carrier (“CLEC”) technician, or through a more efficient, automated process. Verizon PA offers and applies the same testing procedures throughout the former Bell Atlantic jurisdictions.

5. The procedures for the manual testing of xDSL-capable loops were developed in a DSL collaborative proceeding, which commenced in New York in August 1999. Since then, Verizon, the New York Public Service Commission (“NYPSC”) Staff, and CLECs — including Covad, which has been an active party to this proceeding since its inception — have been negotiating and resolving numerous operational issues concerning the provision of high-speed data services. These issues include not only loop testing, but also loop qualification, loop provisioning and maintenance, xDSL loop conditioning, spectrum management, and line sharing. The procedures developed in this collaborative, including those for manual loop testing, have been put in effect in Verizon PA’s (and throughout the former Bell Atlantic) territory.

6. The manual process of loop testing is commonly referred to as cooperative loop testing, because it requires that both a Verizon PA technician and a CLEC technician jointly verify that the loop is properly installed and operational. While the cooperative loop testing process is normally associated with xDSL-capable and digital designed loops, this process also applies to analog loops. Due to the complexities of the cooperative loop testing process, CLECs

must specifically request that Verizon PA conduct a manual test when provisioning a loop. Verizon North, which was an affiliate of GTE at the time the manual testing process was established and agreed to in the New York DSL collaborative, does not employ the same manual testing process developed through that collaborative. Verizon North, however, will perform installation testing of xDSL loops at the request of a CLEC, on the same basis as Verizon North performs such testing on its retail orders.

7. Cooperative testing requires that, upon completion of the loop installation, a Verizon technician and a CLEC technician run a series of manual tests on the loop together. The Verizon technician must call the CLEC to get a CLEC technician to initiate the test query into the CLEC test equipment. Both technicians must remain on the call until the completion of the tests. Once both the Verizon technician and the CLEC technician agree that the loop tests show that the loop is operational, the CLEC accepts the loop and the provisioning order or maintenance activity is completed. In those cases where the loop is not acceptable, additional testing calls — from the field, the central office, and/or the Verizon dispatch center — may need to occur to complete the provisioning or maintenance activity.

8. The above process is significantly more complex than the automated testing process that Verizon uses for the provisioning of plain old telephone service (“POTS”). Verizon uses a Mechanized Loop Testing (“MLT”) process, whereby central office switching equipment enables any technician — whether that technician is in a dispatch center, a central office, or the field — to do a full test of a loop, independent of all other activities and personnel. Similarly, a CLEC can install gateways that enable the provisioning of xDSL-capable loops or digital designed loops through an automated testing process, allowing Verizon to access the CLEC’s testing process remotely and making the labor-intensive cooperative testing process unnecessary.

Indeed, Covad has recently implemented an Interactive Voice Response Unit, which enables such remote testing. When a Verizon technician can successfully test an xDSL loop provisioned to a Covad end user through this system, it would be wasteful and duplicative also to engage in a manual cooperative testing process.

**IV. Manual Loop Qualification**

9. Verizon PA offers CLECs access to loop qualification information in multiple ways. First, CLECs can submit an electronic loop pre-qualification request to Verizon's LiveWire database, which contains loop qualification (and other) information. LiveWire is the same mechanized database that Verizon's retail representatives use. If, for some reason, a CLEC is unable to pre-qualify a loop through LiveWire, that CLEC can request an on-demand, or manual, loop qualification, either by submitting a pre-order transaction known as an xDSL Loop Qualification – Extended Inquiry (“Extended Query”), or by indicating that a manual loop qualification is needed on its order for an xDSL loop. Verizon PA also offers CLECs a Loop Make-Up Inquiry, which provides CLECs with access to the limited loop make-up information contained in a back office inventory system known as Loop Facilities Assignment and Control System (“LFACS”). Finally, CLECs can also submit an Engineering Query (or Engineering Record Request), which is a request for a full loop make-up. These are the same four methods offered throughout the former Bell Atlantic jurisdictions.

10. Verizon North, however, provides CLECs with access to loop qualification information through different processes. Verizon North offers CLECs a single, mechanized loop qualification inquiry, which provides CLECs with information contained in Verizon North's Wholesale Internet Service Engine (“WISE”) database. This database, which is the same database accessed by Verizon North's retail representatives, contains all the loop qualification

information available in the LiveWire database used in the former Bell Atlantic footprint, as well as information normally available only through one or more of the other loop qualification transactions offered in those areas. In spite of providing this wealth of information via an automated process, Verizon North — on an exceptions basis, when a CLEC makes a specific request to its account manager — will manually investigate loop qualification information on particular loops. Verizon North provides this information in the same time and manner as it would provide this information to itself.

**V. Loop Demarcation Information**

11. When a Verizon technician is dispatched to provision a CLEC's loop order, Verizon provides the CLEC with specific demarcation point information or, where necessary, tags the loop to ensure that the CLEC can locate it. Where a dispatch is not required for loop provisioning, a CLEC can still request, at its expense, that a Verizon technician be dispatched to provide specific demarcation point information or, where beneficial, to tag the loop. If a CLEC does not make such a request, Verizon will give the CLEC all of the information regarding the demarcation point that Verizon has available. These practices are standard throughout Verizon PA's and Verizon North's service areas.

12. Where specific demarcation point information can be provided to Covad — for example, on a multi-dwelling unit, Verizon may know that the location of the demarcation point is on the west side of the building, in a utility closet, at terminal one, on frame 62, pair 73; or, in a single dwelling unit, that the demarcation point is on the side of the garage, in a casing next to the water meter, on binding post two — it is more efficient to provide Covad with information about the location of the loop that Verizon has provisioned than to tag the loop. Tags may, for example, become dislodged by humidity, wind, rain, or rodents. Further, tagging can often cause

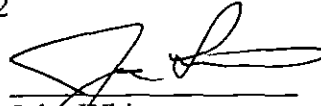
unnecessary confusion: in a telephone closet with more than 2,000 binding posts, tagging multiple loops for different carriers yields an abundance of tags, not clarity of information, which is better conveyed through communicating frame and pair numbers. Verizon does for CLECs exactly what Verizon does for its retail operations — it establishes an efficient process for determining the demarcation point of the loop to be provisioned.

13. This concludes my declaration.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 16, 2002

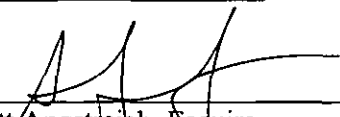
  
\_\_\_\_\_  
John White

CERTIFICATE OF SERVICE

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

Dated at Washington, DC, this 17<sup>th</sup> of January, 2003.

VIA EMAIL AND UPS OVERNIGHT DELIVERY



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