

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

W. EDWIN OGDEN
ALAN MICHAEL SELTZER
JEFFREY A. FRANKLIN
JOHN F. POVILAITIS
BRIGID M. GOOD
CARL J. ENGLEMAN, JR.

SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102-2025

TELEPHONE: (717) 236-7714
FACSIMILE: (717) 236-7816
WWW.RYANRUSSELL.COM

SAMUEL B. RUSSELL (RETIRED)
HAROLD J. RYAN (1972)
JOHN S. MCCONAGHY (1981)

READING OFFICE

SUITE 301
1100 BERKSHIRE BOULEVARD
READING, PENNSYLVANIA
19610-1221
TELEPHONE: (610) 372-4761
FACSIMILE: (610) 372-4177

January 24, 2003

VIA UPS OVERNIGHT DELIVERY

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

ORIGINAL

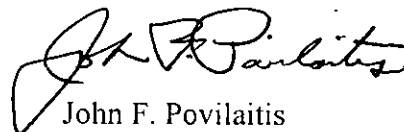
DOCUMENT

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

Dear Secretary McNulty:

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

Very truly yours,


John F. Povilaitis

Counsel for
Covad Communications Company

JFP/cc
Enclosures

Certificate of Service

Administrative Law Judge Chestnut

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JAN 24 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DIECA Communications, Inc. t/a Covad
Communications Company

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

Docket Nos.
A-310696F7000
A-310606F7001

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JAN 28 2003

PRE-HEARING REPLY BRIEF OF COVAD COMMUNICATIONS COMPANY

John F. Povilaitis
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
(717) 236-7714
(717) 236-7816 (fax)
JPovilaitis@RyanRussell.com

DOCUMENT

Eric J. Branfman
Philip J. Macres
Harisha J. Bastiampillai
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (telephone)
(202) 424-7645 (fax)
ejbranfman@swidlaw.com
pjmacres@swidlaw.com
hjbastiampillai@swidlaw.com

Anthony Hansel
Covad Communications Co.
600 14th Street, N.W.
Suite 750
Washington, D.C. 20005
(202) 220-0400
(202) 220-0401 (fax)
thansel@covad.com

Dated: January 24, 2003

Counsel for Covad Communications Company

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIECA Communications, Inc. t/a Covad
Communications Company

Petition for Arbitration of Interconnection Rates,
Terms and Conditions and Related Arrangements
with Verizon Pennsylvania Inc. and Verizon North
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Docket Nos.
A-310696F7000
A-310606F7001

PRE-HEARING REPLY BRIEF OF COVAD COMMUNICATIONS COMPANY

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

I. INTRODUCTION AND SUMMARY

Covad will address the issues in the same order and manner in which it addressed the issues in its Pre-Hearing Brief.¹ Before commencing its specific reply to the factual issues raised by Verizon in its Original Brief, Covad would like to address two overarching issues that seem to permeate Verizon's Original Brief. First, on many issues there is agreement between Verizon and Covad as to what Verizon should provide, but Verizon refuses to memorialize such agreement within the four corners of the interconnection agreement. Instead, Verizon expects Covad to take Verizon at its word and defer to its representations.

¹ Pursuant to the agreement between the parties, this Pre-Hearing Reply Brief is limited to a discussion of factual issues, and Covad is not submitting responsive legal arguments. Covad reserves its right to file a reply addressing these legal arguments at a later stage in this proceeding. Since this Pre-Hearing Reply Brief is focused on factual issues, the Joint Reply Declaration of Valerie Evans and Michael Clancy, attached hereto as Reply Exhibit 1, mirrors the content of this Pre-Hearing Reply Brief.

Contrary to Verizon's suggestion, detailed contract language is, however, needed to prevent future disputes between Covad and Verizon. It has been Covad's experience that Verizon attempts to limit its obligations to Covad, not to the extent required by the Act, but only as specifically stated in the Agreement or a tariff. This is plainly a legal snare, designed to put Covad at risk of losing substantive rights if it has failed to include express language in the Agreement regarding its entitlements. Verizon should not be permitted to avoid its ongoing legal obligations under the Act through selective inclusion and exclusion of contract language. For instance, as noted in regard to Issues 19, 24, and 25, Covad's experience involving "no facilities"—when Verizon unilaterally announced on July 24, 2001 that it would change its practice of provisioning DS1 and DS3 UNE loops and IOF, claiming that its new practice, which has caused Covad to lose significant revenues, was supported by law—clearly demonstrates that the risk of backsliding is real, and that the need for express contractual provisions describing Verizon's duties in this regard is significant.

The Commission should therefore find, in areas where the parties agree, that incorporation into the interconnection agreement of specific contractual language to reflect this understanding is reasonable and that it simply serves to ensure that Verizon will not prevent Covad from partaking of the commitments Verizon has made in the negotiation and arbitration process. The Commission should adopt Covad's proposed language, thus providing Covad the assurances that it reasonably requires.

The second issue is that Verizon attempts to deny efforts by Covad to customize its interconnection agreement to meet Covad's business needs and the needs of Covad's customers. Covad is the only carrier in the marketplace that focuses primarily on providing advanced broadband and DSL services and, thus, has unique business needs. Covad needs an

interconnection agreement that will support the services it needs to provide to its customers. As will be noted below, Verizon repeatedly asserts that resolution of issues should be deferred to other fora. Any attempt of Covad to seek contract language tailored to Covad's particular business, and customer, needs is met with a retort that such action will undermine the Commission's policy of "uniform treatment for all industry participants."² Verizon's position undermines a lot more, however. It renders the Section 252 negotiation and arbitration process a virtual nullity and attempts to homogenize all of Verizon's competitors in the marketplace. As the New York Commission has noted, interconnection agreements "are tailored to meet the particular needs of the competitive carrier."³

Covad has a right to seek an agreement that adequately reflects Covad's needs. If, for instance, a shorter provisioning interval for line shared-loops is vital to Covad's interests, and it can demonstrate that a shorter interval is feasible and reasonable, then it should be entitled to such an interval. Customized agreements promote competition by allowing competitors to differentiate their product. Covad's customers will be very interested in obtaining DSL service as quickly as possible, and a shorter provisioning interval will promote this end. Individual carriers need to be allowed to use the interconnection agreement process as a way to address issues of great import to their operations. Verizon's policy of deference to the findings of other fora would render hollow its duty of good faith negotiation under Section 252(a)(1) since in its view much of the substance of the parties interconnection agreement has already been pre-determined, or will be determined by the needs of carriers other than Covad or Verizon. Verizon's position also runs counter to the philosophy behind the Act's specification that the

² Verizon Original Brief at 2.

promulgation of a Statement of Generally Available Terms does “not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under Section 251.”⁴ Parties are clearly encouraged to negotiate and arbitrate for contract terms tailored to their particular interests even if these terms differ from those established in more generic proceedings.

II ARGUMENT

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

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

Verizon suggests the need for backbilling is related to the fact that carrier-to-carrier billing is a complicated and evolving process.⁵ Verizon contends that it is often required to provide a new unbundled network element before the rates are set for the UNE and before Verizon has implemented processes to bill for the UNE.⁶ Verizon, in fact, uses the “billing for a new UNE” rationale in an attempt to justify the egregious example of backbilling that Covad described in its Pre-Hearing Brief.⁷

The facts clearly contradict Verizon’s claim that this backbilling was due to the complexity of billing for new UNEs as opposed to Verizon’s own poor billing practices. As Covad noted in its Pre-Hearing Brief, line sharing charges for \$1.1 million first appeared in

³ *Petition of AT&T Communications of New York, Inc. for Arbitration of an Interconnection Agreement with New York Telephone Company, Case 96-C-0723, Order Approving AT&T Best and Final Offer, 1999 WL 33563862 (1999).*

⁴ 47 U.S.C. § 252(f)(5).

⁵ Verizon’s Opening Brief, Declaration of Warren Geller at ¶ 4.

⁶ Verizon’s Opening Brief, Declaration of Warren Geller at ¶ 4.

⁷ Covad’s Pre-Hearing Brief at 16-17.

Covad's September 2001 billing cycle and included charges relating back to as far as July 2000.⁸ The FCC, however, required ILECs to provide line sharing in December 1999.⁹ By agreement Covad and Verizon adopted in an Amendment 1 to its interconnection agreement line sharing rates in May 2000. Thus, there is no excuse for Verizon to start billing these charges well over a year later. Moreover, there is no excuse for Verizon's failure to designate the charges as new charges, instead placing them in the first bill in which they appeared under "Balance Due Information." There is also no excuse for these line sharing charges to appear on a high capacity access/transport bill and for the charges to be all included on a New York bill when they covered multiple jurisdictions, including Pennsylvania. There is also no justification for the lack of detail provided as to the charges and Verizon's failure to identify the circuits being billed. Verizon can proffer no exculpatory argument for the fact that, by its own admission, the backbill was at least 30% inaccurate.¹⁰ In short, the "billing for a new UNE" rationale fails to provide any justification for Verizon's backbilling practice. The FCC noted that it was "troubled by the manner in which Verizon chose initially to bill for this aggregate charge."¹¹ This example in a nutshell demonstrates why Verizon's ability to backbill should be limited. A one-year period provides more than sufficient time for Verizon to bill for a new UNE or for any other charges.¹²

⁸ Covad's Pre-Hearing Brief at 16; *see* Reply Exhibit 1 at Issues 2 & 9.

⁹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999).

¹⁰ Covad's Pre-Hearing Brief at 17; *see* Reply Exhibit 1 at Issues 2 & 9.

¹¹ *Joint Application by Verizon Virginia, Inc., et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, FCC 02-297, ¶ 50 (Oct. 30, 2002) ("*Virginia 271 Order*").

¹² Reply Exhibit 1 at Issues 2 & 9.

Verizon's justification for backbilling is further discredited by an argument it raises in regard to Issue 5, in which it contends that a 30 day response time for billing disputes would be unreasonable because if the dispute related to charges that are 60 days or older Verizon would need to access archived data. Verizon argues that:

Because Verizon begins to archive data necessary to investigate billing disputes – which includes not only the billing data itself, but also the information pertaining to the service orders the CLEC has submitted – after 60 days, claims related to older billing disputes are more difficult to handle than claims related to current bills.¹³

This assertion further supports limitations on Verizon's backbilling, because by Verizon's own admission older billing charges are more difficult to review and reconcile than new ones. It also suggests that if Verizon feels that a 60 day period is appropriate to begin archiving billing data, it is able to bill for those charges in a timely manner before the 60 day period ends.¹⁴

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

There appears to be little disagreement over the propriety of Covad's request to have Verizon utilize Covad's tracking number in referencing disputes. Verizon states that it is in the process of implementing a new Wholesale Claims and Inquiry Tracking ("WCIT") system which will contain the ability to track a dispute using Covad's claim number as well as Verizon's claim number.¹⁵ In the interim, Verizon states that it "will identify CLECs' billing disputes regarding UNE and resale products in correspondence using both a Verizon- and a CLEC-assigned claim number"¹⁶ Verizon's interim commitment should not be limited to UNE and resale

¹³ Verizon's Opening Brief, Declaration of Warren Geller at ¶ 6.

¹⁴ Reply Exhibit 1 at Issues 2 & 9.

¹⁵ Verizon's Opening Brief at 8.

¹⁶ Verizon's Opening Brief at 8. Verizon suggests that there is inconsistency in regard to the relief Covad is seeking in regard to Issue 3. Verizon's Opening Brief at 8, n. 10. To

products. Covad's claim number should be provided in regard to disputes pertaining to all the products Covad receives from Verizon including interconnection and collocation. If use of Covad's claim number is feasible for UNE and resale products it should be feasible for the other products Verizon provides to Covad.¹⁷

The only area of disagreement appears to be whether the process for tracking billing claims is an operational matter that is, as Verizon suggests, better referenced in an alternative forum, rather than in an interconnection agreement.¹⁸ The suggestion that interconnection agreements do not address operational matters is ludicrous. Interconnection agreements are rife with discussions of operational processes including billing dispute resolution.¹⁹ In fact, Covad is simply seeking to insert additional language into Verizon's template language that already seeks to spell out the operational process in regard to billing dispute resolution.²⁰ In addition, since what Covad is seeking is, per Verizon's contention, already reflected in both its interim solution and the proposed WCIT system, Verizon will not need to customize its procedures for Covad on this issue.²¹

Covad demonstrated in its Pre-Hearing Brief the importance of the use of its claim number.²² Covad also demonstrated the numerous problems that arose as a result of Verizon's

eliminate any confusion, and to reiterate the position it took in its Pre-Hearing Brief, Covad would like to specify that it is seeking use of its own claim tracking number as well as Verizon's claim number.

¹⁷ Reply Exhibit 1 at Issue 3.

¹⁸ Verizon's Opening Brief at 8.

¹⁹ See, e.g., Covad Petition for Arbitration, Attachments E & F (UNE attachment) C, Sections 3.4 (correct?) *et seq.* addressing Verizon provisioning of xDSL-capable loops; see Reply Exhibit 1 at Issue 3.

²⁰ See Covad Petition for Arbitration attachment A&B at Section 9.3at 1(Covad Position).

²¹ See Verizon's Opening Brief at 8.

²² Covad's Pre-Hearing Brief at 29-32.

inconsistent use of Covad's claim number.²³ In particular, Covad noted that Verizon's failure to reference Covad's claim number when it issued credits on bills made it difficult, if not impossible, for Covad to relate the credit to the claim.²⁴ Covad needs an assurance in its interconnection agreement that all correspondence and other documents, including bills, pertaining to its claims will include Covad's claim number. If a credit on a bill does not specify the claim number there is no way for Covad to know which claim is being closed.²⁵ There is no breakdown of individual claims.

Finally, Verizon suggests that the FCC recently rejected Covad's challenges to Verizon's billing dispute resolution process in its *Virginia 271 Order*. The FCC never addressed the issue of Verizon's use of claim numbers. In addition, the FCC noted that there were a number of outstanding billing disputes before Verizon implemented a new internal task force to address the problem.²⁶ The FCC stated that Verizon had "a number of problems with its billing system in the past"²⁷ Based on this history, Covad is fully justified in seeking protection in its interconnection agreement in regard to billing dispute resolution.

²³ Covad's Pre-Hearing Brief at 29-30.

²⁴ Covad Pre-Hearing Brief at 30; see Reply Exhibit 1 at Issue 3.

²⁵ Reply Exhibit 1 at Issue 3.

²⁶ *Virginia 271 Order*, ¶ 49.

²⁷ *Virginia 271 Order*, ¶ 40.

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

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

There should not be much dispute as to the appropriate time period for Verizon to provide a position and explanation to Covad in regard to billing disputes. As Verizon itself notes, Verizon is currently required pursuant to metric BI-3-05 to resolve 95% of claims within 28 calendar days of acknowledgment.²⁸ Under metric BI-3-04, Verizon is required to acknowledge 95% of “valid/complete billing adjustment claims within two business days.”²⁹ Thus, it is clearly reasonable for Covad to ask Verizon to provide a position and explanation on its claim within 30 days.³⁰

Verizon contends, however, that Covad’s proposal does not track existing metrics because the metrics “do not require perfect performance, do require a CLEC’s dispute notice to contain sufficient information for Verizon to investigate the claim, and exclude billing disputes for services other than wholesale billing.”³¹ Covad has, however, demonstrated how it has been impacted by Verizon’s protracted billing dispute resolution. In Covad’s experience, it takes an average of 221 days to resolve a high capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to resolve a collocation claim in the Verizon East region.³²

²⁸ Verizon’s Opening Brief at 9-10.

²⁹ Verizon’s Opening Brief at 9-10.

³⁰ Reply Exhibit 1 at Issues 4 & 5.

³¹ Verizon’s Opening Brief at 10.

³² Covad’s Pre-Hearing Brief at 33-34; see Reply Exhibit 1 at Issues 4 & 5.

Covad still has 3 disputed billing claims with Verizon that have been open since the year 2001.³³ One of these disputes is Pennsylvania's sourced and amounts to \$83,000.00.³⁴ Clearly the metrics are not providing enough of an incentive for Verizon to respond to Covad's disputes in a timely manner. The 95% threshold will continue to allow Verizon to let some claims languish unresolved for months. Covad needs a better assurance of performance, particularly given the ineffectual nature of the metrics in curbing Verizon's tendency towards unduly dilatory responses to Covad's claims.

In regard to providing sufficient information, Verizon gives no indication in its brief that the amount of information provided by Covad is the cause of Verizon's delay in responding to Covad's claims. Requiring Verizon to provide a response within 30 days would ensure that if the information provided is insufficient that Verizon will promptly notify Covad of this fact. Finally, disputes should not be limited to wholesale billing. As this Commission well knows, CLECs often need to purchase facilities via Verizon's retail tariffs, and CLECs have experienced numerous problems due to Verizon's poor provisioning of such facilities.³⁵ Thus, Verizon should be required to respond within 30 days for these disputes as well. Covad has been informed by Verizon that the metrics do not apply to high capacity transport orders and collocation orders which is another reason why the metrics provide an insufficient remedy to Covad.³⁶ Verizon has proffered no basis for these exclusions.

³³ Covad's Pre-Hearing Brief at 34; *see* Reply Exhibit I at Issue 4 & 5.

³⁴ Reply Exhibit 1, Issues at 4 & 5.

³⁵ *Re Verizon New York Inc.*, New York Public Service Commission Case Nos. 00-C-2051 and 92-C-0665, Order Instituting Proceeding at 1 (November 24, 2000) ("*NY Special Access Proceeding*").

³⁶ *See* Covad's Pre-Hearing Brief at 36; *see* Reply Exhibit 1 at Issues 4 & 5.

Verizon also argues that Covad's proposal is unreasonable because it does not exclude billing disputes on charges that are over 60 days old. Verizon says it archives billing data after 45 days, thus making it more difficult to respond to claims regarding older charges.³⁷ As Verizon notes, however, the current New York measurements do not contain this exclusion either. This exclusion is found in the Rhode Island business rules, which Verizon is seeking to have the New York Commission implement.³⁸ Thus, in New York, Verizon has been required to respond to claims within 30 days even if the charges are over 60 days old. There is no reason why Verizon cannot continue to do the same in regard to Covad's claims. Furthermore, given Verizon's history of backbilling,³⁹ and Verizon's manual application of charges on bills,⁴⁰ it will take Covad some time to identify problems with the bills. Verizon controls the billing process. If it wants prompt submission of disputes, it should bill in a timely and easily auditable manner.⁴¹

The discussion regarding Issue 5, in Verizon's Opening Brief primarily focuses on legal and policy arguments regarding late payment charges to which no factual reply is necessary. Covad would, however, like to address one factual contention that Verizon raises. Verizon claims that the level of charges to CLECs that are "ultimately uncollectable" by Verizon is well above the level for Verizon's retail customers.⁴² Even assuming *arguendo* that such an assertion is true, it is hard to see what relevance that has to Covad's proposal to suspend late payment charges for disputed amounts. As Verizon admits, late payment charges are designed to ensure

³⁷ Verizon Exhibit 4, Warren Geller ¶ 11.

³⁸ Verizon's Opening Brief at 10-11. New York business rules currently only provide one exclusion to metrics BI-3-04 and BI-3-05 and that is for bill disputes that do not pertain to wholesale billing. Verizon's Opening Brief, Declaration of Beth Abesamis at ¶ 15.

³⁹ Covad's Pre-Hearing Brief at 16-17.

⁴⁰ Covad's Pre-Hearing Brief at 21-23.

⁴¹ Reply Exhibit 1 at Issues 4 & 5.

that customers pay promptly. If the amounts due fall into to the domain of “uncollectable” amounts, no amount of late charges will lead to payment of these amounts. Two, Verizon has given no indication that any delay in Covad’s payments to Verizon is due to anything but disputed amounts. The FCC itself noted that Verizon’s billing systems have been an issue in numerous recent section 271 proceedings, and the FCC noted that “we recognize that Verizon has had a number of problems with billing systems in the past”⁴³ Thus, logically, Verizon will have a large amount of unpaid charges due to disputes over those charges caused by Verizon’s poor billing and delay in addressing claims. The best way to ensure prompt payment for its services is for Verizon to cure the problems with its billing systems.⁴⁴

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

Verizon’s Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

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

Issue 34: In what interval should Verizon provision loops?

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

A. Issue 13 and 38: LSRs

⁴² Verizon’s Opening Brief, Declaration of Warren Geller at ¶ 14.

⁴³ *Virginia 271 Order*, ¶ 40.

⁴⁴ Reply Exhibit 1 at Issues 4 & 5.

Verizon PA's and Verizon North's entire argument on Issues 13 and 38 is based on its assertion that it should not be required to provide local service request confirmations ("LSRCs") in intervals shorter than those prescribed in the Pennsylvania Carrier-to-Carrier guidelines or Bell Atlantic/GTE Merger Order.⁴⁵ Covad would like to reiterate, as it did in its Pre-Hearing Brief,⁴⁶ that for LSRCs it is seeking the *same* intervals prescribed in the Pennsylvania Carrier-to-Carrier guidelines.⁴⁷ Since Covad, in its Pre-Hearing Brief, explained that the NYPSC has allowed performance standards in interconnection agreements to duplicate those in the Carrier-to-Carrier guidelines,⁴⁸ there should be no doubt that Covad is entitled to the relief it seeks in regard to Issue 13 and 38.

B. Issue 32: Manual Loop Qualification

In its Pre-Hearing Brief, Verizon explains that Covad's proposals are generally applicable to Verizon PA procedures and not Verizon North procedures.⁴⁹ Verizon PA explained that it does offer Extended Query as requested by Covad.⁵⁰ Hence, Covad's request that the contract refer to Extended Query simply reflects this fact and is therefore appropriate.⁵¹ Moreover, because the Commission has decided that no charges can be assessed for loop qualification (which includes Extended Query), Covad's requested contract language that Extended Query be offered at no additional charge is legally justified.⁵²

⁴⁵ Verizon's Opening Brief at 15-18.

⁴⁶ Covad's Pre-Hearing Brief at 46-51 (Issues 13 and 38).

⁴⁷ See Reply Exhibit 1 at Issue 13 and 38.

⁴⁸ Covad's Pre-Hearing Brief at 46-51 (Issues 13 and 38).

⁴⁹ Verizon's Opening Brief at 20.

⁵⁰ See Verizon's Opening Brief at 20 n.16 (citing Exhibit 6, White Declaration ¶ 9).

⁵¹ See Reply Exhibit 1 at Issue 32.

⁵² See Reply Exhibit 1 at Issue 32.

As explained in Covad's Pre-Hearing Brief and for the reasons provided therein, Verizon, which includes both Verizon PA and Verizon North, should perform manual testing within one day and should do so at no cost. Moreover, contrary to Verizon's claims, Covad should not have to defer to a multilateral process to obtain specific terms it seeks in its interconnection agreement because 47 U.S.C. § 252 allows such issues to be addressed and resolved during this arbitration. Furthermore, Verizon North has not demonstrated that it cannot perform manual loop testing within one day and there is no evidence that specifically indicates otherwise.⁵³

Verizon states, however, that "Verizon North has no manual loop qualification process or 'extended query'" and explains that "[t]he 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 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." Verizon North further states that it will perform manual investigate loop qualification and will complete such investigations. Given that Verizon North does not offer Extended Query, Covad proposes that the following language be included in Section 3.13.5 of the Verizon North Agreement, which is consistent with its request,

If the Loop is not listed in the mechanized database described in Section 3.11.2 or the listing is defective, Covad may request a manual loop qualification at no additional charge prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. Verizon will complete a manual loop qualification request within one business day.⁵⁴

⁵³ See Reply Exhibit 1 at Issue 32.

⁵⁴ See Reply Exhibit 1 at Issue 32.

Issue 34: Loop Provisioning Intervals

With regard to provisioning intervals, Verizon does not acknowledge that years of provisioning experience should enable it to provide loops in the intervals requested.⁵⁵ Instead, Verizon argues that any modifications to any UNE provisioning intervals should be made on an industry-wide basis.⁵⁶ However, as stated numerous times in Covad's Pre-Hearing Brief, Covad should not have to defer UNE provisioning issues to a Carrier-to-Carrier working group where other carriers may have different operational priorities.⁵⁷ Moreover, as stated above, 47 U.S.C. § 252 allows such issues to be addressed and resolved during this arbitration. Significantly, the NYPSC determined in the AT&T Arbitration, as Covad emphasized in its Pre-Hearing Brief, that in some instances deviation from Carrier-to-Carrier guidelines in interconnection agreements is warranted.⁵⁸ Moreover, the relevant consideration is whether such Covad's requested time frames are feasible.⁵⁹ If they are, then Verizon will have no problem meeting the intervals for all carriers, including Covad. Covad demonstrated the feasibility of its proposed intervals,⁶⁰ and there is no reason for the Commission to not implement them.

⁵⁵ See Reply Exhibit 1 at Issue 34.

⁵⁶ Verizon's Opening Brief at 33.

⁵⁷ See Reply Exhibit 1 at Issue 34.

⁵⁸ Covad's Pre-Hearing Brief at 50.

⁵⁹ Reply Exhibit 1 at Issues 13 & 38

⁶⁰ Covad's Pre-Hearing Brief at 53-56 (Issue 33).

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

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

Verizon claims in its Opening Brief that Covad has proposed language that would require Verizon to “build facilities.”⁶¹ This is not the case. Covad recognizes that occasional loop orders may be placed to locations where Verizon does not currently have facilities. For example, orders in new office or residential developments are more likely to be returned lack of facilities (LOF) because Verizon may not have built out to the development. Moreover, Covad has never expected Verizon to engage in construction activities such as trenching streets and pulling cable as part of the UNE ordering process.

While Covad expects occasional lack of facilities (LOF) rejections from the Verizon UNE ordering process, Covad also expects that loops will be provisioned and conditioned for use as UNEs just as they would be if Verizon were using the loop to serve its own customers. The provisioning of DS1 UNE loops has always involved various types of equipment and/or conditioning necessary to make the loop ready to provide digital services. In fact, the Act and FCC rules and orders (as discussed in Covad’s Pre-Hearing Brief) require Verizon to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities.

Covad’s proposed contract language does not require construction of new facilities, and is a task that Verizon performs routinely for retail customers.⁶² For instance, Verizon provisions its DS1 Special Access circuits over fiber facilities, which require electronic equipment placed at

⁶¹ Verizon’s Opening Brief at 21, n. 23. Please note that Issue 19 relates to portions of the contract language that Covad proposed in sections 1.2, 16, 3.3.1 and 3.3.2 of the UNE attachment.

both ends of the fiber.⁶³ The equipment terminates to a shelf at the Central Office and at the customer's location.⁶⁴ If all the slots on the shelf were in use and a Verizon customer requested a DS1 loop, Verizon would add another shelf and provision the circuit at no additional charge to the customer.⁶⁵ The same is not true for a Covad order. If all the slots on the shelf of equipment are full, Verizon rejects Covad's order and will only provision the order if Covad orders it as a retail customer would. If Covad agrees to this outrageous requirement in order to satisfy its customer's request, it will now get the service but at much higher rates.⁶⁶ However, the next request for a DS1 circuit will be provisioned with no problem until all the slots on the newly installed shelf are filled.⁶⁷ This policy is completely outrageous and allows Verizon to play musical chairs when provisioning service to competitors. Also, in instances where a shelf is added to provision a line for a competitor, the competitor bears the brunt of costs for the shelf and all the lines that will get installed on that shelf, including Verizon's lines.⁶⁸

Verizon's outrageous policy is exacerbated by the fact that it allows competitors to convert the circuit back to a UNE after a 3 month "minimum service period."⁶⁹ Verizon, upon Covad's request, should be required to augment the DS1 equipment with additional equipment in order to provide the added DS1 capacity requested by Covad's customer at no additional charge,

⁶² See Reply Exhibit 1 at Issue 19.

⁶³ See Reply Exhibit 1 at Issue 19.

⁶⁴ See Reply Exhibit 1 at Issue 19.

⁶⁵ See Reply Exhibit 1 at Issue 19.

⁶⁶ See Reply Exhibit 1 at Issue 19.

⁶⁷ See Reply Exhibit 1 at Issue 19.

⁶⁸ See Reply Exhibit 1 at Issue 19.

⁶⁹ See Reply Exhibit 1 at Issue 19.

the same as what they do for their customer.⁷⁰ Covad's request for this contract language is based on the fact that Verizon has rejected a number of Covad orders for high capacity UNEs claiming that no facilities are available on the basis that the capacity on its facilities is exhausted.⁷¹ Notably, it is not that the capacity of the transmission facility is exhausted; but rather that the electronics are not configured for the particular level of capacity required to serve Covad alongside Verizon's existing customers.⁷²

Covad's request is based on what Verizon does for itself when its own customers make similar requests for services and what it offers to Covad on a retail rather than on a UNE basis.⁷³ Tellingly, Verizon explains that it does not treat CLEC orders for high capacity loops in parity with orders for its retail access customers.⁷⁴ Based on this, it is undisputed that Verizon regularly reconfigures or substitutes electronics on its fiber facilities in order to accommodate its own needs and the needs of its customers and its affiliates.⁷⁵ Because Verizon does not deny that it engages in this practice for itself, Verizon argues instead that it is constructing something new for its customer when it performs this task.⁷⁶ For example, it is well known that Verizon will typically construct more fiber to a location, put up a new multiplexer that may be the same size or may be bigger to add additional capacity to the location to serve the customer, all the while leaving the existing service in place so that the customer does not lose service.⁷⁷

⁷⁰ See Reply Exhibit 1 at Issue 19.

⁷¹ See Reply Exhibit 1 at Issue 19.

⁷² See Reply Exhibit 1 at Issue 19.

⁷³ See Reply Exhibit 1 at Issue 19.

⁷⁴ See Verizon's Opening Brief at 24

⁷⁵ See Reply Exhibit 1 at Issue 19.

⁷⁶ See Reply Exhibit 1 at Issue 19.

⁷⁷ See Reply Exhibit 1 at Issue 19.

Covad believes there is a clear distinction between constructing a new facility and modifying an existing one to improve its capacity. As Covad explained in its Pre-Hearing Brief, both the FCC and the Eighth Circuit have recognized this distinction and held that ILECs are required to modify existing facilities if necessary to provision UNEs and to comply with the nondiscrimination mandate.

Indeed, another ILEC, Pacific Bell, has agreed to perform this function for AT&T. In its Agreement with AT&T, Pacific Bell is obligated in the following manner:

7.2. TECHNICAL REQUIREMENTS

This Section sets forth the technical requirements for all Dedicated Transport. PACIFIC shall offer Dedicated Transport in all documented bandwidth interfaces used within PACIFIC's network including, but not limited to, DS1 and DS3 transport systems, SONET interfaces including OC-3, OC-12, and where PACIFIC has deployed fiber, OC-48 or higher served by a higher capacity system. PACIFIC is not required to construct new point-to-point facilities to meet AT&T's request for OC-48 or higher capacity transport. *However, where Pacific has deployed fiber between two points, Pacific shall provide the capacity requested by AT&T by upgrading the electronics.*⁷⁸

In addition to the above factual clarification, Verizon's reference to the BFR process is inapposite to Issue 19, and Verizon cannot use the BFR process as a means to evade its obligations to provide Covad access to UNEs that Verizon regularly provides to its retail customers.⁷⁹

Therefore, for these reasons and for the reasons set forth in Covad's Pre-Hearing Brief, Covad's proposed contract language that requires Verizon to provide UNEs and UNE Combinations on existing facilities in a nondiscriminatory fashion should be adopted.

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

⁷⁸ See Exhibit 2 (emphasis supplied).

⁷⁹ See Reply Exhibit 1 at Issue 19.

As an initial matter, Covad would like to clarify, as it did in its Pre-Hearing Brief, that it is not seeking a three hour appointment window, but is seeking the same morning or afternoon appointment windows that Verizon offers to its retail customers.⁸⁰ Thus, contrary to Verizon's contentions, there will be no issue of different windows for different CLECs.⁸¹ Verizon states, however, that four-hour appointment windows are available based on the available workforce and existing workload.⁸² Verizon, however, controls the scheduling process, particularly its workforce's vacation and overtime policies.⁸³ It is hard to imagine that a Verizon retail customer desiring a four-hour appointment window would not be provided one. Verizon should, therefore, be required to provide a morning or afternoon appointment window unless it can demonstrate that workforce considerations preclude use of such a window.⁸⁴

In addition, Verizon's description of obtaining appointment windows via the Service order Management Administrative Report Tracking System ("SMARTS") application describes a somewhat interactive process.⁸⁵ This may have been acceptable in the early stages of doing business with Verizon, but Covad has moved to completely mechanized platforms (*i.e.*, flow through) that are ill-suited to the iterative scheduling process described by Verizon's witness.⁸⁶ The process Verizon describes is a very interactive process, apparently requiring use of manual applications by the CLEC. Use of manual interfaces will impede the scalability of the ordering

⁸⁰ Covad's Pre-Hearing Brief at 76.

⁸¹ See Verizon's Opening Brief at 26-27.

⁸² Verizon's Opening Brief at 26.

⁸³ Reply Exhibit 1 at Issue 22.

⁸⁴ Reply Exhibit 1 at Issue 22.

⁸⁵ See Verizon's Opening Brief, Declaration of William Bragg and David Kelly at ¶¶ 12-13.

⁸⁶ Reply Exhibit 1 at Issue 22.

process and thus limit competition. To obtain appointment windows, Covad would have to sacrifice flow-through of its orders.⁸⁷

Verizon contends that Covad's proposed penalty for a Verizon miss of an appointment window seeks to modify existing performance standards and the Performance Assurance Plan.⁸⁸ Covad is not seeking to modify existing performance standards or the PAP, particularly as they relate to "no access" situations, *i.e.*, those situations where the CLEC customer is not present when the Verizon technician arrives. Instead, Covad is seeking to provide Verizon the same incentive to meet the appointment window as Covad has to ensure its customer is available. Currently Covad faces a tremendous incentive to ensure that its customer is present for the installation. Not only are "no access" situations excluded from performance metrics,⁸⁹ but Covad has to pay a penalty if its customer is not present.⁹⁰ Inclusion of an equivalent penalty on Verizon for failure to meet appointment windows would provide an equivalent incentive for Verizon to meet those appointments. Covad demonstrated how state commissions have a long history of applying penalties to utility companies that fail to meet appointment windows.⁹¹ The party that will ultimately benefit from such a penalty is the end user who hopefully will enjoy timely installation of its service.⁹²

⁸⁷ Reply Exhibit 1 at Issue 22.

⁸⁸ Verizon's Opening Brief at 27.

⁸⁹ Verizon's Opening Brief at 27.

⁹⁰ Covad's Pre-Hearing Brief at 77.

⁹¹ Covad's Pre-Hearing Brief at 77-81.

⁹² Reply Exhibit 1 at Issue 22.

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

In its Opening Brief, Verizon states that “[I]f 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.”⁹³ Verizon further submits that, “if necessary, Verizon will, based on its investigation, negotiate specific aspects of the Verizon technical documents to address areas of concern.”⁹⁴ In short, Verizon’s stance is that it wants to have the unilateral discretion on whether it will abide by industry standards.⁹⁵

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

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

With respect to the first issue raised here, Verizon incorrectly claims that “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 Covad is deploying on the loop.”⁹⁶ As indicated in Covad’s Pre-Hearing Brief, Covad is not arguing that it will not provide the requisite information when Verizon is legally entitled to it and Covad is willing to give Verizon such information pursuant to Applicable Law, i.e., FCC Rule 51.231(b);

⁹³ See Verizon’s Opening Brief, Exhibit 3, Clayton Declaration ¶ 4

⁹⁴ *Id.*

⁹⁵ See Reply Exhibit 1 at Issue 23.

⁹⁶ Verizon’s Opening Brief at 36.

however, Verizon has no authority to deny, limit, or otherwise restrict a UNE request based on this information. In short, Verizon cannot require that Covad order and deploy certain services over UNE loops based on Verizon's prefabricated selection of UNE loops. Moreover, Covad's future legal obligation to provide Verizon any information pursuant to FCC rule 51.231 will be short lived because industry has recommended that this rule be rescinded.⁹⁷

Verizon also submits that Verizon's possession of this information better enables end users to receive the services they order.⁹⁸ Otherwise said, Verizon needs this information to ensure that the CLEC customers receive the services they order from the CLEC.⁹⁹ Although Covad will provide the information as indicated above, Verizon's argument has no merit.¹⁰⁰ Verizon provides loop qualification tools to CLECs so that CLECs can verify whether the loop can handle certain advanced services.¹⁰¹ Verizon does not need to concern itself with CLECs relationship with its customer. The CLEC is accountable to its customer for service quality and the assurance of service quality. Covad can provide poor quality service to its own detriment, but not to the detriment of Verizon.¹⁰² Covad is responsible to its investors and its customers and does not need Verizon to try to play that role.¹⁰³

⁹⁷ See Covad's Pre-Hearing Brief, Exhibit 9, NRIC V FG3 Recommendation #7: Exchange of spectrum management information between loop owners, service providers and equipment vendors, at 2.

⁹⁸ See Verizon's Opening Brief at 27.

⁹⁹ See Reply Exhibit 1 at Issue 27.

¹⁰⁰ See Reply Exhibit 1 at Issue 27.

¹⁰¹ See Reply Exhibit 1 at Issue 27.

¹⁰² See Reply Exhibit 1 at Issue 27.

¹⁰³ See Reply Exhibit 1 at Issue 27.

With respect to the second issue raised here, Verizon states that Covad must follow the BFR process if it wants to deploy a new loop type or technology.¹⁰⁴ As explained in Covad's Opening Brief, Covad is not requesting new loop type but rather the ability to provide services, as the law allows, over loops that conform to industry standards.¹⁰⁵ Covad should not be relegated to the BFR process to obtain what it is immediately entitled to pursuant to law.¹⁰⁶ As Covad explained in its Pre-Hearing Brief, this process is an unreasonable requirement.¹⁰⁷ Indeed, Verizon's explanation that Covad would have to wait approximately 90 days before Verizon completes the process demonstrates this and is therefore entirely unacceptable.¹⁰⁸

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

In its Opening Brief, Verizon suggests that its cooperative testing process is clearly defined and understood by the industry. Nothing could be further from the truth – As a general matter, Verizon has not revealed specific procedures associated with the cooperative testing process to the industry.¹⁰⁹ Verizon proposes a general description of the procedures; however,

¹⁰⁴ See Verizon's Opening Brief at 37.

¹⁰⁵ See Covad's Pre-Hearing Brief at 90.

¹⁰⁶ See Covad's Pre-Hearing Brief at 90-91.

¹⁰⁷ See Covad's Pre-Hearing Brief at 90-91.

¹⁰⁸ See Verizon's Opening Brief, Exhibit 3, Declaration of Rosemarie Clayton, at ¶ 8.

¹⁰⁹ See Reply Exhibit 1 at Issue 30.

this is entirely insufficient.¹¹⁰ Furthermore, although the DSL collaborative has agreed to the process itself, Verizon has not articulated the specific procedures on paper that individuals outside of the collaborative may review, rely on, and follow.¹¹¹ Covad simply asks that the process be clearly spelled out in the Agreement. Furthermore, the cooperative testing procedures that Covad proposes are consistent with the process that Verizon currently follows and Covad's proposed language, as indicated in Covad's Pre-Hearing Brief, includes flexible terms that allows for future evolution of the procedures.¹¹²

Significantly, Verizon did not discuss in the DSL collaborative the use of the Interactive Voice Response ("IVR") system when performing cooperative testing; however, Verizon does use a similar system when it tests retail services.¹¹³ In fact, in his declaration, Mr. John White stated that 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."¹¹⁴ Mr. White further stated that "Similarly, a CLEC can install gateways that enable the provisioning of xDSL-capable loops or digital designed loops though an automated testing process, allowing Verizon to access the CLEC's testing process remotely and making the labor intensive cooperative testing process unnecessary."¹¹⁵ Relatedly, Covad's gateway is the IVR

¹¹⁰ See Reply Exhibit 1 at Issue 30.

¹¹¹ See Reply Exhibit 1 at Issue 30.

¹¹² See Covad's Pre-Hearing Brief at 99, 104-105.

¹¹³ See Reply Exhibit 1 at Issue 30.

¹¹⁴ See Verizon's Opening Brief, Exhibit 5, Declaration of John White, at ¶ 8.

¹¹⁵ See Verizon's Opening Brief, Exhibit 5, Declaration of John White, at ¶ 8.

and it operates in a similar manner to Verizon's MLT.¹¹⁶ Furthermore, Covad permits Verizon to access to its IVR so that Verizon can pre-test the loops using Covad's testing process, which thereby makes the cooperative testing process much more efficient.¹¹⁷ Hence, the refinement Covad proposes to specify in its proposed contract language is one that Verizon has already agreed to and follows.

This is supported by the fact that Verizon's John White recommends to alleviate the iterative requirement sometimes associated with cooperative testing - "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."¹¹⁸ Given this statement, there is complete agreement not only on what state of the art testing capability can be provided by a CLEC, which Covad provides, but on the need to document the practices used by the parties, since evidently there is a lack of awareness on Verizon's part as to the actual process used today.¹¹⁹

It is important to note that the IVR is used by Verizon technicians to sectionalize any loop trouble in the provisioning process, prior to making the cooperative test call, to minimize the duplication of effort.¹²⁰ Additionally, Verizon technicians use Covad's IVR to test and sectionalize loop troubles in the maintenance process.¹²¹ All Covad has requested is to publicly document the process. Verizon and Covad can, at any time, mutually agree to amend the process.

¹¹⁶ See Reply Exhibit 1 at Issue 30.

¹¹⁷ See Reply Exhibit 1 at Issue 30.

¹¹⁸ See Verizon's Opening Brief, Exhibit 5, Declaration of John White, at ¶ 7.

¹¹⁹ See Reply Exhibit 1 at Issue 30.

¹²⁰ See Reply Exhibit 1 at Issue 30.

To put this issue in historical perspective, it was Covad who was asking for the cooperative testing process during the Bell Atlantic (Verizon predecessor company) New York 271 proceeding because Bell Atlantic's operations management decided they could provide fully functioning loops that CLECs did not have to test to ensure they were properly functioning.¹²² Once Bell Atlantic began cooperatively testing loops, their loop delivery performance dramatically improved, saving enormous resources.¹²³ Covad has taken the lead in bringing this concept to the industry and continues to work with Verizon to refine the processes.¹²⁴ It would serve the industry and consumers to document the result of all those efforts.

Unlike other CLECs, Covad is unique and primarily offers advanced services over UNE loops and, as a result, cooperative testing is absolutely critical to its business and ensuring that its customers loops are properly provisioned.¹²⁵ Therefore, the cooperative testing process must be fully articulated out in the Agreement and cannot be left to the imagination of the parties.¹²⁶ For these reasons and the reasons set forth in Covad's Pre-Hearing Brief, Covad's proposed language that specifies the cooperative testing process should be included in the Agreement.

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

Verizon claims that "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

¹²¹ See Reply Exhibit 1 at Issue 30.

¹²² See Reply Exhibit 1 at Issue 30.

¹²³ See Reply Exhibit 1 at Issue 30.

¹²⁴ See Reply Exhibit 1 at Issue 30.

¹²⁵ See Reply Exhibit 1 at Issue 30.

¹²⁶ See Reply Exhibit 1 at Issue 30.

become dislodged or confused with other tags, assuming placement of a tag is physically possible.”¹²⁷ The Commission should reject Verizon’s straw man argument that Covad’s proposed language should not be adopted because tags may become dislodged or confused. In most circumstances, the tags placed on a loop by Verizon will be readily found by Covad technicians, which will allow them to handle service calls expeditiously and without having to having to call Verizon to find the loop (which would serve to prolong such calls).¹²⁸

As explained in Covad’s Pre-Hearing Brief, Verizon should not impose “treasure hunts” on Covad in order for Covad to determine where Verizon has provisioned the loop. Moreover, as discussed below, Verizon’s refusal to provide sufficient information to Covad to enable Covad to locate the circuit being provisioned demonstrates that the demarcation point information Verizon provides is entirely inadequate.

Verizon submits that, “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 loop point that Verizon has available.”¹²⁹ In making this statement, Verizon does not offer to provide, however, sufficient information to Covad to enable Covad to locate the circuit being provisioned.¹³⁰ Given the fact that Covad is paying for the UNE loop, Verizon’s refusal to provide such information to Covad makes no commercial sense and is unreasonable.¹³¹ Indeed,

¹²⁷ See Verizon’s Opening Brief at 32 and Exhibit 6, White Declaration ¶ 12 (elaborating).

¹²⁸ See Reply Exhibit 1 at Issue 31.

¹²⁹ See Verizon’s Opening Brief, Exhibit 6, White Declaration ¶ 11.

¹³⁰ See Reply Exhibit 1 at Issue 31.

¹³¹ See Reply Exhibit 1 at Issue 31.

after ordering the UNE loop, Covad should not be required to go on a fishing expedition (for instance the loop could be buried in mounds of wire) to search for the loop it is paying for.¹³² Verizon should be required to tell Covad where the loop is located at no charge.¹³³ Verizon tags loops for handing off to their business customers. Covad needs the same treatment. If Verizon cannot provide sufficient information to Covad to find the loop, Verizon should dispatch a technician to locate the loop and should not charge Covad for this effort (under these circumstances, Verizon cannot avoid dispatching a technician even though it was attempting to do so). Relatedly, Verizon would not attempt to charge its own retail customers for its inability to locate its own loops that are used to provision its services to its retail customers and therefore should not charge Covad either.¹³⁴ For these reasons, Covad's proposed language is abundantly reasonable and should be adopted.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary. For the reasons articulated in Covad's Pre-Hearing Brief, contract language should specify that Verizon PA and

¹³² See Reply Exhibit 1 at Issue 31.

¹³³ See Reply Exhibit 1 at Issue 31.

¹³⁴ See Reply Exhibit 1 at Issue 31.

Verizon North will provision collocation augmentations where new splitters are installed within forty-five (45) days.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

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

In its Opening Brief, Verizon asserts that it will provide fiber optic cross-connects to join dark fiber IOF strands at intermediate central offices.¹³⁵ Such cross-connects are required in order to implement the FCC's mandate in the *Virginia Arbitration Award* that Verizon must route dark fiber transport through two or more intermediate central offices for CLECs without

¹³⁵ Verizon's Opening Brief at 43.

requiring collocation at the intermediate central offices.¹³⁶ In order to implement this FCC mandate in the Parties' interconnection agreement, the Commission should adopt the following contract language for section 8.2.4 below as proposed by Covad:

Verizon shall perform all work necessary to install (1) a cross connect or fiber jumper from a Verizon Accessible Terminal to a Covad collocation arrangement or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office; *or (3) install a fiber cross connect or fiber jumper in order to connect two dark fiber IOF strands at intermediate central offices.*¹³⁷

This language is needed to address the scenario and not leave the matter open to Verizon's interpretation.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

Verizon's Opening Brief misrepresents Covad's position regarding issue 47. Verizon asserts that Covad seeks "information identifying all available dark fiber in Pennsylvania" and "nonexistent" maps that provide "a snapshot picture of all available dark fiber in Pennsylvania at any given time."¹³⁸

¹³⁶ *Virginia Arbitration Award* at ¶ 457 ("We reject Verizon's position that connecting fiber routes at central offices may not be required of Verizon . . . Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311.").

¹³⁷ The language in italics comprises the modification proposed by Covad. *See* Exhibit I at Issue 46.

¹³⁸ Verizon's Opening Brief at 45-46.

To the contrary, as set forth in its Pre-Hearing Brief, Covad merely seeks what federal law already requires.¹³⁹ Covad does not seek information that does not reside anywhere within Verizon's records, databases and other sources as alleged by Verizon in its Response and Opening Brief.¹⁴⁰ Further, Covad does not seek a "snapshot" of all dark fiber available across the entire state.¹⁴¹ Rather, as required by the FCC's decisions, Covad merely seeks parity access to the same up-to-date pre-ordering and ordering information regarding dark fiber UNEs that is available in Verizon's backoffice systems, databases and other internal records, including but not limited to data from the TIRKS database, fiber transport maps, baseline fiber test data from engineering records or inventory management, and field surveys.¹⁴² Verizon cannot, as it has done in the past, limit a CLEC's access to this information simply because it is inconvenient or contrary to Verizon's competitive interest to provide the information.¹⁴³

In Covad's Pre-Hearing Brief, Covad requested that the Commission unequivocally affirm that Verizon is required under federal and state law to afford CLECs nondiscriminatory, parity access to fiber maps, including any fiber transport maps for the entire specified dark fiber route, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber.¹⁴⁴ Further, in the context of Verizon's response to a specific Dark Fiber Inquiry, Covad requests that the Commission require Verizon to provide the same

¹³⁹ See Reply Exhibit 1 at Issue 47.

¹⁴⁰ See Reply Exhibit 1 at Issue 47.

¹⁴¹ See Reply Exhibit 1 at Issue 47.

¹⁴² Covad's Pre-Hearing Brief at Issue 47; *UNE Remand Order*, at ¶¶ 421, 425, 427.

¹⁴³ *UNE Remand Order*, at ¶¶ 421, 425, 427.

¹⁴⁴ Covad's Pre-Hearing Brief at Issue 47.

information that the New Hampshire¹⁴⁵ and Maine commissions have required Verizon to provide to CLECs. Verizon cannot argue that such detailed information does not exist because it has already provided such information to CTC Communications Corp. and other CLECs.¹⁴⁶ For example, the Maine Public Utilities Commission (“ME PUC”) has determined that if Verizon believes that dark fiber is unavailable, then within thirty (30) days, Verizon must provide the CLEC with “written documentation and a fiber map.”¹⁴⁷ The written documentation must, at a minimum include, the following detailed information:

- a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates;
- the total number of fiber sheaths and strands in between points on the requested routes;
- the number of strands currently in use or assigned to a pending service order;
- the number of strands in use by other carriers;
- the number of strands assigned to maintenance;
- the number of spare strands; and
- the number of defective strands.¹⁴⁸

¹⁴⁵ The New Hampshire Public Utilities Commission has required Verizon to provide the following information: “total number of fiber sheath and strands between points on the requested routes, number of strands currently in use and the transmission speed on each strand (e.g. OC-3, OC-48), the number of strands in use by other carriers, the number of strands reserved for Bell Atlantic’s use, the number of strands lit in each of the three preceding years, the estimated completion date of any construction jobs planned for the next two years or currently underway, and an offer of any alternate route with available dark fiber. In addition, for fibers currently in use, Bell Atlantic shall specify if the fiber is being used to provide non-revenue producing services such as emergency service restoration, maintenance and/or repair.” *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 8-9 (May 19, 1998) (emphasis added).

¹⁴⁶ See, *CTC Communications Corp. Request for Fast Track Arbitration of Verizon NH’s Denial of Dark Fiber Request*, DT 02-028, Recommended Decision of Arbitrator (2002).

¹⁴⁷ *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849, Letter of Dennis L. Keshl (March 1, 2002); Covad’s Initial Brief at Issue 47.

¹⁴⁸ See Reply Exhibit 1 at Issue 47.

Accordingly, in order to leave no doubt regarding its position, Covad hereby proposes the following contract language for section 8.2.5.1 of the UNE Attachment in lieu of its initial proposal for that section:

Verizon shall provide Covad nondiscriminatory and parity access to fiber maps, including any fiber transport maps showing a portion of and/or the entire dark direct and indirect dark fiber routes between any two points specified by the CLEC, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber. Further, within 30 days of Covad's request Verizon shall provide, at a minimum, the following information for any two points comprising a dark fiber route specified by Covad: a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates; the total number of fiber sheaths and strands in between points on the requested routes; the number of strands currently in use or assigned to a pending service order; the number of strands in use by other carriers; the number of strands assigned to maintenance; the number of spare strands; and the number of defective strands.¹⁴⁹

In sum, Covad requests that the Commission adopt its proposed language for section 8.2.5.1 of the UNE Attachment set forth in the paragraph above.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

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

Verizon's Opening Brief does not raise any new issues of fact. Covad relies on its factual submission as set forth in its Pre-Hearing Brief; no factual reply is necessary.

¹⁴⁹ See Reply Exhibit 1 at Issue 47.

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

Covad has raised a number of issues that relate to the billing problems it is experiencing with Verizon.¹⁵⁰ The primary reason these issues are being disputed is due to dilatory nature by which Verizon imposes its rates and charges Covad for services rendered.¹⁵¹ It is therefore evident that one of the major reasons there are billing problems between the parties stems from Verizon's failure to properly inform its own billing group of changes in rates, which are made through tariff changes, that serve to modify Appendix A of Verizon's interconnection agreements with CLECs.¹⁵² Notably, by informing its billing group of the changes in rates and how they impact Appendix A, Verizon would serve to correct many billing problems Covad faces with Verizon.¹⁵³ Moreover, as indicated in Covad's Pre-Hearing Brief, Verizon revises its Appendix A on an ongoing basis for interconnection negotiation purposes and should therefore provide Covad, along with its own billing organization, informational updates to Appendix A that include all new, changed, or proposed rates. Doing so would be mutually beneficial because less billing disputes would occur, Verizon would be paid more readily, and the parties would free up many of the resources needed to resolve billing disputes.¹⁵⁴

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

As explained in Covad's Pre-Hearing Brief, Covad only requires a 2-amp minimum configuration with one amp increments and Verizon currently provisions amperage in this

¹⁵⁰ See Issues 2-5, & 9.

¹⁵¹ See Reply Exhibit 1 at Issue 53.

¹⁵² See Reply Exhibit 1 at Issue 53.

¹⁵³ See Reply Exhibit 1 at Issue 53.

¹⁵⁴ See Reply Exhibit 1 at Issue 53.

manner. Because the tariff is silent with respect to this minimum configuration, Covad requests that the interconnection agreement clearly specify that Verizon will continue to provide this minimum configuration.¹⁵⁵ Covad should not be subject to an arbitrary change of the minimum configuration or minimum increments. Indeed, if Verizon did increase the minimum amperage, Covad would be forced to order more amps than it needs and incur costs for power that it does not use.¹⁵⁶ Moreover, because Covad must purchase redundant feeds, such an increase would serve to compound this problem and foist unwarranted costs on Covad.¹⁵⁷

Given that Verizon currently provisions amps in a manner that is consistent with Covad's proposal and its tariff is silent in this regard, Verizon's opposition to including specific language in the agreement regarding the minimum and incremental amps Covad is permitted to purchase makes no sense.¹⁵⁸ That is unless, of course, Verizon seeks to have the flexibility to make a unilateral change to the detriment of Covad during the term of the Agreement.¹⁵⁹ Such an outcome is highly inappropriate and Covad seeks to avoid this risk by having contract language that prevents Verizon from doing so.¹⁶⁰

¹⁵⁵ See Reply Exhibit 1 at Issue 56.

¹⁵⁶ See Reply Exhibit 1 at Issue 56.

¹⁵⁷ See Reply Exhibit 1 at Issue 56.

¹⁵⁸ See Reply Exhibit 1 at Issue 56.

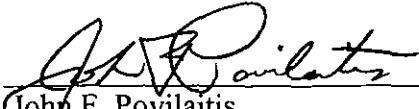
¹⁵⁹ See Reply Exhibit 1 at Issue 56.

¹⁶⁰ See Reply Exhibit 1 at Issue 56.

III CONCLUSION

For the foregoing reasons and for the reasons set forth in Covad's Pre-Hearing Brief, Covad respectfully requests that the Commission adopt Covad's requested contract language on the aforementioned issues.

Respectfully submitted,


John F. Povilaitis
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
(717) 236-7714
(717) 236-7816 (fax)
JPovilaitis@RyanRussell.com

Eric J. Branfman
Philip J. Macres
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (telephone)
(202) 424-7645 (fax)
ejbranfman@swidlaw.com
pjmacres@swidlaw.com
hjbastiampillai@swidlaw.com

Anthony Hansel
Covad Communications Co.
600 14th Street, N.W.
Suite 750
Washington, D.C. 20005
(202) 220-0400
(202) 220-0401 (fax)
thansel@covad.com

Dated: January 24, 2003

Counsel for Covad Communications Company

REPLY EXHIBIT 1

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIECA Communications, Inc. t/a Covad
Communications Company

*Petition for Arbitration of Interconnection Rates,
Terms and Conditions and Related Arrangements
with Verizon Pennsylvania Inc. and Verizon North
Inc. Pursuant to Section 252(b)
of the Communications Act of 1934*

Docket Nos.
A-310696F7000
A-310606F7001

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

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Valerie Evans and Michael Clancy, depose and state, respectively, that the following is true and correct to the best of our knowledge and belief:¹

1. My name is Valerie Evans, Vice President – Government and External Affairs for Covad. I act as a liaison between Covad's business personnel and Verizon. I am also responsible for participating in various federal and state regulatory proceedings, representing Covad.
2. Before joining Covad, I was employed by Verizon Communications for 13 years. After joining that company in 1985, I held various management positions including Assistant Manager of Central Office Operations and Manager of Installation, Maintenance and Dispatch Operations. In those positions, I oversaw the installation and maintenance of services to retail customers. Specifically, I

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

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

3. My name is Michael Clancy, Director of Government and External Affairs for Covad. Prior to my current position, I performed customer support and operations functions for Covad's New York Tri-State region. In particular, I was responsible for building out Covad's network in New York and all other operations activities.
4. Prior to coming to Covad, I was employed by Verizon's predecessor companies, in various Network Services, Special Services, and Engineering assignments, with increasing levels of responsibility, for over 27 years. My last assignment in Verizon New York was Director of Interoffice Facility Provisioning and Process Management for the Bell Atlantic 14-state footprint.
5. The purpose of this declaration is to reply Verizon's Opening Brief and statements made by Verizon in its supporting declarations regarding the issues set forth herein.

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

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

6. Verizon suggests the need for backbilling is related to the fact that carrier-to-carrier billing is a complicated and evolving process.² Verizon contends that it is often required to provide a new unbundled network element before the rates are set for the UNE and before Verizon has implemented processes to bill for the UNE.³ Verizon, in fact, uses the “billing for a new UNE” rationale in an attempt to justify the egregious example of backbilling that Covad described in its Pre-Hearing Brief.⁴
7. The facts clearly contradict Verizon’s claim that this backbilling was due to the complexity of billing for new UNEs as opposed to Verizon’s own poor billing practices. As Covad noted in its Pre-Hearing Brief, line sharing charges for \$1.1 million first appeared in Covad’s September 2001 billing cycle and included charges relating back to as far as July 2000.⁵ The FCC, however, required ILECs to provide line sharing in December 1999.⁶ This Commission set line sharing

² Verizon’s Opening Brief, Declaration of Warren Geller at ¶ 4.

³ Verizon’s Opening Brief, Declaration of Warren Geller at ¶ 4.

⁴ Covad’s Pre-Hearing Brief at 16-17.

⁵ Covad’s Pre-Hearing Brief at 16.

⁶ Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999).

rates in May 2000.⁷ Thus, there is no excuse for Verizon to start billing these charges well over a year later. Moreover, there is no excuse for Verizon's failure to designate the charges as new charges, instead placing them in the first bill in which they appeared under "Balance Due Information." There is also no excuse for these line sharing charges to appear on a high capacity access/transport bill and for the charges to be all included on a New York bill when they covered multiple jurisdictions. There is also no justification for the lack of detail provided as to the charges and Verizon's failure to identify the circuits being billed. Verizon can proffer no exculpatory argument for the fact that, by its own admission, the backbill was at least 30% inaccurate.⁸

8. In short, the "billing for a new UNE" rationale fails to provide any justification for Verizon's backbilling practice. The FCC noted that it was "troubled by the manner in which Verizon chose initially to bill for this aggregate charge."⁹ This example in a nutshell demonstrates why Verizon's ability to backbill should be limited. A one-year period provides more than sufficient time for Verizon to bill for a new UNE or for any other charges.
9. Verizon's justification for backbilling is further discredited by an argument it raises in regard to Issue 5, in which it contends that a 30 day response time for billing disputes would be unreasonable because if the dispute related to charges

⁷ *Re New York Telephone Company*, Case No. 98-C-1357, Opinion and Order Concerning Line Sharing Rates, Opinion 00-07 (May 26, 2000).

⁸ Covad's Pre-Hearing Brief at 17.

⁹ *Joint Application by Verizon Virginia, Inc., et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of*

that are 60 days or older Verizon would need to access archived data. Verizon argues that:

Because Verizon begins to archive data necessary to investigate billing disputes – which includes not only the billing data itself, but also the information pertaining to the service orders the CLEC has submitted – after 60 days, claims related to older billing disputes are more difficult to handle than claims related to current bills.¹⁰

10. This assertion further supports limitations on Verizon's backbilling, because by Verizon's own admission older billing charges are more difficult to review and reconcile than new ones. It also suggests that if Verizon feels that a 60 day period is appropriate to begin archiving billing data, it is able to bill for those charges in a timely manner before the 60 day period ends.

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

11. There appears to be little disagreement over the propriety of Covad's request to have Verizon utilize Covad's tracking number in referencing disputes. Verizon states that it is in the process of implementing a new Wholesale Claims and Inquiry Tracking ("WCIT") system which will contain the ability to track a dispute using Covad's claim number as well as Verizon's claim number.¹¹ In the interim, Verizon states that it "will identify CLECs' billing disputes regarding UNE and resale products in correspondence using both a Verizon- and a CLEC-

Virginia, WC Docket No. 02-214, Memorandum Opinion and Order, FCC 02-297, ¶ 50 (Oct. 30, 2002) ("*Virginia 271 Order*").

¹⁰ Verizon's Opening Brief, Declaration of Warren Geller at ¶ 11.

¹¹ Verizon's Opening Brief at 8.

assigned claim number for claims”¹² Verizon’s interim commitment should not be limited to UNE and resale products. Covad’s claim number should be provided in regard to disputes pertaining to all the products Covad receives from Verizon including interconnection and collocation. If use of Covad’s claim number is feasible for UNE and resale products it should be feasible for the other products Verizon provides to Covad.

12. The only area of disagreement appears to be whether the process for tracking billing claims is an operational matter that is, as Verizon suggests, better referenced in a forum such as a Billing Task Force as opposed to an interconnection agreement.¹³ The suggestion that interconnection agreements do not address operational matters is ludicrous. Interconnection agreements are rife with discussions of operational processes including billing dispute resolution.¹⁴ In fact, Covad is simply seeking to insert additional language into Verizon’s template language that already seeks to spell out the operational process in regard to billing dispute resolution.¹⁵ In addition, since what Covad is seeking is, per Verizon’s contention, already reflected in both its interim solution and the

¹² Verizon’s Opening Brief at 8. Verizon suggests that there is inconsistency in regard to the relief Covad is seeking in regard to Issue 3. Verizon’s Opening Brief at 8, n. 10. To eliminate any confusion, and to reiterate the position it took in its Pre-Hearing Brief, Covad would like to specify that it is seeking use of its own claim tracking number as well as Verizon’s claim number.

¹³ Verizon’s Opening Brief at 8-9.

¹⁴ See, e.g., Covad Petition for Arbitration, Attachment C, Sections 3.4 *et seq.* addressing Verizon provisioning of xDSL-capable loops.

¹⁵ See Covad Proposed Language Matrix at Issue 3 referencing Section 9.3 of the proposed Interconnection Agreement.

proposed WCIT system, Verizon will not need to customize its procedures for Covad on this issue.¹⁶

13. Covad demonstrated in its Pre-Hearing Brief the importance of the use of its claim number.¹⁷ Covad also demonstrated the numerous problems that arose as a result of Verizon's inconsistent use of Covad's claim number.¹⁸ In particular, Covad noted that Verizon's failure to reference Covad's claim number when it issued credits on bills made it difficult, if not impossible, for Covad to relate the credit to the claim.¹⁹ Covad needs an assurance in its interconnection agreement that all correspondence and other documents, including bills, pertaining to its claims will include Covad's claim number. If a credit on a bill does not specify the claim number there is no way for Covad to know which claim is being closed.
14. Finally, Verizon suggests that the FCC recently rejected Covad's challenges to Verizon's billing dispute resolution process in its *Virginia 271 Order*. The FCC never addressed the issue of Verizon's use of claim numbers. In addition, the FCC noted that there were a number of outstanding billing disputes before Verizon implemented a new internal task force to address the problem.²⁰ The FCC stated that Verizon had "a number of problems with its billing system in the

¹⁶ See Verizon's Opening Brief at 8.

¹⁷ Covad's Pre-Hearing Brief at 29-31.

¹⁸ Covad's Pre-Hearing Brief at 29-31.

¹⁹ Covad Pre-Hearing Brief at 30.

²⁰ *Virginia 271 Order*, ¶ 49.

past”²¹ Based on this history, Covad is fully justified in seeking protection in its interconnection agreement in regard to billing dispute resolution.

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

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

15. There should not be much dispute as to the appropriate time period for Verizon to provide a position and explanation to Covad in regard to billing disputes. As Verizon itself notes, Verizon is currently required pursuant to metric BI-3-05 to resolve 95% of claims within 28 calendar days of acknowledgment.²² Under metric BI-3-04, Verizon is required to acknowledge 95% of “valid/complete billing adjustment claims within two business days.”²³ Thus, it is clearly reasonable for Covad to ask Verizon to provide a position and explanation on its claim within 30 days.

16. Verizon contends, however, that Covad’s proposal does not track existing metrics because the metrics “do not require perfect performance, do require a CLEC’s dispute notice to contain sufficient information for Verizon to investigate the claim, and exclude billing disputes for services other than wholesale billing.”²⁴ Covad has, however, demonstrated how its has been impacted by Verizon’s

²¹ *Virginia 271 Order*, ¶ 40.

²² Verizon’s Opening Brief at 10.

²³ Verizon’s Opening Brief at 9-10.

²⁴ Verizon’s Opening Brief at 10.

protracted billing dispute resolution. In Covad's experience, it takes an average of 221 days to resolve a high capacity access/transport claim, 95 days to resolve a resale/UNE claim, and 76 days to resolve a collocation claim in the Verizon East region.²⁵ Covad still has 3 disputed billing claims with Verizon that have been open since the year 2001.²⁶ One of these disputes is Pennsylvania's sourced and amounts to \$83,000.00. Clearly the metrics are not providing enough of an incentive for Verizon to respond to Covad's disputes in a timely manner. The 95% threshold will continue to allow Verizon to let some claims languish unresolved for months. Covad needs a better assurance of performance, particularly given the ineffectual nature of the metrics in curbing Verizon's tendency towards unduly dilatory responses to Covad's claims.

17. In regard to providing sufficient information, Verizon gives no indication in its brief that the amount of information provided by Covad is the cause of Verizon's delay in responding to Covad's claims. Requiring Verizon to provide a response within 30 days would ensure that if the information provided is insufficient that Verizon will promptly notify Covad of this fact. Finally, disputes should not be limited to wholesale billing. As this Commission well knows, CLECs often need to purchase facilities via Verizon's retail tariffs, and CLECs have experienced numerous problems due to Verizon's poor provisioning of such facilities.²⁷ Thus, Verizon should be required to respond within 30 days for these disputes as well.

²⁵ Covad's Pre-Hearing Brief at 33-34.

²⁶ Covad's Pre-Hearing Brief at 34.

Covad has been informed by Verizon that the metrics do not apply to high-capacity transport orders and collocation orders which is another reason why the metrics provide an insufficient remedy to Covad.²⁸ Verizon has proffered no basis for these exclusions.

18. Verizon also argues that Covad's proposal is unreasonable because it does not exclude billing disputes on charges that are over 60 days old. Verizon says it archives billing data after 60 days, thus making it more difficult to respond to claims regarding older charges.²⁹ As Verizon notes, however, the current New York measurements do not contain this exclusion either. This exclusion is found in the Rhode Island business rules, which Verizon is seeking to have this Commission implement.³⁰ Thus, in New York, Verizon has been required to respond to claims within 30 days even if the charges are over 60 days old. There is no reason why Verizon cannot continue to do the same in regard to Covad's claims. Furthermore, given Verizon's history of backbilling,³¹ and Verizon's manual application of charges on bills,³² it will take Covad some time to identify

²⁷ *Re Verizon New York Inc.*, New York Public Service Commission Case Nos. 00-C-2051 and 92-C-0665, Order Instituting Proceeding at 1 (November 24, 2000) ("*NY Special Access Proceeding*").

²⁸ See Covad's Pre-Hearing Brief at 36.

²⁹ Verizon's Opening Brief at 11

³⁰ Verizon's Opening Brief at 11. New York business rules currently only provide one exclusion to metrics BI-3-04 and BI-3-05 and that is for bill disputes that do not pertain to wholesale billing. Verizon's Opening Brief, Declaration of Beth Abesamis at ¶ 5.

³¹ Covad's Pre-Hearing Brief at 16-17.

³² Covad's Pre-Hearing Brief at 21-22.

problems with the bills. Verizon controls the billing process. If it wants prompt submission of disputes, it should bill in a timely and easily auditable manner.

19. The discussion regarding Issue 5, in Verizon's Opening Brief primarily focuses on legal and policy arguments regarding late payment charges to which no factual reply is necessary. Covad would, however, like to address one factual contention that Verizon raises. Verizon claims that the level of charges to CLECs that are "ultimately uncollectable" by Verizon is well above the level for Verizon's retail customers.³³ Even assuming *arguendo* that such an assertion is true, it is hard to see what relevance that has to Covad's proposal to suspend late payment charges for disputed amounts. As Verizon admits, late payment charges are designed to ensure that customers pay promptly. If the amounts due fall into to the domain of "uncollectable" amounts, no amount of late charges will lead to payment of these amounts. Two, Verizon has given no indication that any delay in Covad's payments to Verizon is due to anything but disputed amounts. The FCC itself noted that Verizon's billing systems have been an issue in numerous recent section 271 proceedings, and the FCC noted that "we recognize that Verizon has had a number of problems with billing systems in the past"³⁴ Thus, logically, Verizon will have a large amount of unpaid charges due to disputes over those charges caused by Verizon's poor billing and delay in addressing claims. The best way to ensure prompt payment for its services is for Verizon to cure the problems with its billing systems.

³³ Verizon's Opening Brief, Declaration of Warren Geller at ¶ 14.

³⁴ *Virginia 271 Order*, ¶ 40.

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

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

Issue 34: In what interval should Verizon provision loops? (Covad Issue 33)

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

A. Issue 13 and 38: LSRs

Verizon PA's and Verizon North's argument on Issues 13 and 38 is based on its assertion that it should not be required to provide local service request confirmations ("LSRCs") in intervals shorter than those prescribed in the Pennsylvania Carrier-to-Carrier guidelines or Bell Atlantic/GTE Merger Order.³⁵ Covad would like to reiterate, as it did in its Pre-Hearing Brief,³⁶ that for LSRCs it is seeking the *same* intervals prescribed in the Pennsylvania Carrier-to-Carrier guidelines. Covad, in its Pre-Hearing Brief, explained that the NYPSC has allowed performance standards in interconnection agreements to duplicate those in the Carrier-to-Carrier guidelines,³⁷ there should be no doubt that Covad is entitled to the relief it seeks in regard to Issue 13 and 38.

Issue 32: Manual Loop Qualification

Verizon explains that Covad's proposals are generally applicable to Verizon PA procedures and not Verizon North procedures.³⁸ Verizon PA explained that it does offer

³⁵ Verizon's Opening Brief at 15-18.

³⁶ Covad's Pre-Hearing Brief at Issues 13 and 38.

³⁷ Covad's Pre-Hearing Brief at Issues 13 and 38.

³⁸ Verizon's Opening Brief at 20.

Extended Query as requested by Covad.³⁹ Covad's request that the contract refer to Extended Query simply reflects this fact and is therefore appropriate.

Verizon states, however, that "Verizon North has no manual loop qualification process or 'extended query'" and explains that "[t]he 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 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." Verizon North further states that it will perform manual investigate loop qualification and will complete such investigations. Given that Verizon North does not offer Extended Query, Covad proposes that the following language be included in Section 3.13.5 of the Verizon North Agreement, which is consistent with its request,

If the Loop is not listed in the mechanized database described in Section 3.11.2 or the listing is defective, Covad may request a manual loop qualification at no additional charge prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. Verizon will complete a manual loop qualification request within one business day.

Issue 34: Loop Provisioning Intervals

With regard to provisioning intervals, Verizon does not acknowledge that years of provisioning experience should enable it to provide loops in the intervals requested. Instead, Verizon argues that any modifications to any UNE provisioning intervals should be made on an industry-wide basis.⁴⁰ Covad should not have to defer UNE provisioning issues to a Carrier-to-Carrier working group where other carriers may

³⁹ See Verizon's Opening Brief at 20 n.16 (citing Exhibit 6, White Declaration ¶ 9).

⁴⁰ Verizon's Opening Brief at 33.

have different operational priorities. In some instances deviation from Carrier-to-Carrier guidelines in interconnection agreements is warranted.⁴¹ Moreover, the relevant consideration is whether such Covad's requested time frames are feasible. If they are, then Verizon will have no problem meeting the intervals for all carriers, including Covad. Covad has demonstrated the feasibility of its proposed intervals,⁴² and there is no reason for the Commission to not implement tem.

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

20. Verizon claims in its Opening Brief that Covad has proposed language that would require Verizon to "build facilities."⁴³ This is not the case. Covad recognizes that occasional loop orders may be placed to locations where Verizon does not currently have facilities. For example, orders in new office or residential developments are more likely to be returned legitimately LOF because Verizon may not have built out to the development. Moreover, Covad has never expected Verizon to engage in construction activities such as trenching streets and pulling cable as part of the UNE ordering process.
21. While Covad expects occasional LOF rejections from the Verizon UNE ordering process, Covad also expects that loops will be provisioned and conditioned for use as UNEs just as they would be if Verizon were using the loop to serve its own customers. The provisioning of DS1 UNE loops has always involved various

⁴¹ Covad's Pre-Hearing Brief at Issue 34.

⁴² Covad's Pre-Hearing Brief at Issue 34.

⁴³ Verizon's Opening Brief at 21 n.23. Please note that Issue 19 relates to portions

types of equipment and/or conditioning necessary to make the loop ready to provide digital services. In fact, the Act and FCC rules and orders (as discussed in Covad's Pre-Hearing Brief) require Verizon to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities.

22. Covad's proposed contract language does not require construction of new facilities, and is a task that Verizon performs routinely for retail customers. For instance, Verizon provisions its DS1 Special Access circuits over fiber facilities, which require electronic equipment placed at both ends of the fiber. The equipment terminates to a shelf at the Central Office and at the customer's location. If all the slots on the shelf were in use and a Verizon customer requested a DS1 loop, Verizon would add another shelf and provision the circuit at no additional charge to the customer. The same is not true for a Covad order. If all the slots on the shelf of equipment are full, Verizon rejects Covad's order and will only provision the order if Covad orders it as a retail customer would. If Covad agrees to this outrageous requirement in order to satisfy its customer's request, it will now get the service but at much higher rates. However, the next request for a DS1 circuit will be provisioned with no problem until all the slots on the newly installed shelf are filled. This policy is completely outrageous and allows Verizon to play musical chairs when provisioning service to competitors. Also, in instances where a shelf is added to provision a line for a competitor, the competitor bears the brunt of costs for the shelf and all the lines that will get

of contract language that Covad proposed in sections 1.2, 16, 3.3.1 and 3.3.2 of the UNE Attachment.

installed on that shelf, including Verizon's lines.

23. Verizon's outrageous policy is exacerbated by the fact that it allows competitors to convert the circuit back to a UNE after a 3 month "minimum service period." Verizon, upon Covad's request, should be required to augment the DSI equipment with additional equipment in order to provide the added DSI capacity requested by Covad's customer at no additional charge, the same as what they do for their customer. Covad's request for this contract language is based on the fact that Verizon has rejected a number of Covad orders for high capacity UNEs claiming that no facilities are available on the basis that the capacity on its facilities is exhausted. Notably, it is not that the capacity of the transmission facility is exhausted; but rather that the electronics are not configured for the particular level of capacity required to serve Covad alongside Verizon's existing customers.

24. Covad's request is based on what Verizon does for itself when its own customers make similar requests for services and what it offers to Covad on a retail rather than on a UNE basis. Tellingly, Verizon explains that it does not treat CLEC orders for high capacity loops in parity with orders for its retail access customers.⁴⁴ Based on this, it is undisputed that Verizon regularly reconfigures or substitutes electronics on its fiber facilities in order to accommodate its own needs and the needs of its customers and its affiliates. Because Verizon does not deny that it engages in this practice for itself, Verizon argues instead that it is *constructing something new for its customer when it performs this task. For*

⁴⁴ See Verizon's Opening Brief at 19.

example, it is well known that Verizon will typically construct more fiber to a location, put up a new multiplexer that may be the same size or may be bigger to add additional capacity to the location to serve the customer, all the while leaving the existing service in place so that the customer does not lose service.

25. Covad believes there is a clear distinction between constructing a new facility and modifying an existing one to improve its capacity. As Covad explained in its Pre-Hearing Brief, both the FCC and the Eighth Circuit have recognized this distinction and held that ILECs are required to modify existing facilities if necessary to provision UNEs and to comply with the nondiscrimination mandate.
26. Indeed, another ILEC, Pacific Bell, has agreed to perform this function for AT&T. In its Agreement with AT&T, Pacific Bell is obligated in the following manner:

7.2. TECHNICAL REQUIREMENTS

This Section sets forth the technical requirements for all Dedicated Transport.

PACIFIC shall offer Dedicated Transport in all documented bandwidth interfaces used within PACIFIC's network including, but not limited to, DS1 and DS3 transport systems, SONET interfaces including OC-3, OC-12, and where PACIFIC has deployed fiber, OC-48 or higher served by a higher capacity system. PACIFIC is not required to construct new point-to-point facilities to meet AT&T's request for OC-48 or higher capacity transport. *However, where Pacific has deployed fiber between two points, Pacific shall provide the capacity requested by AT&T by upgrading the electronics.*⁴⁵

27. In addition to the above factual clarification, Verizon's reference to the BFR process is inapposite to Issue 19, and Verizon cannot use the BFR process as a means to evade its obligations to provide Covad access to UNEs that Verizon

⁴⁵ See Exhibit 2 (emphasis supplied).

regularly provides to its retail customers.⁴⁶

28. Therefore, for these reasons and for the reasons set forth in Covad's Pre-Hearing Brief, Covad's proposed contract language that requires Verizon to provide UNEs and UNE Combinations on existing facilities in a nondiscriminatory fashion should be adopted.

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

29. As an initial matter, Covad would like to clarify, as it did in its Pre-Hearing Brief, that it is not seeking a three hour appointment window, but is seeking the same morning or afternoon appointment windows that Verizon offers to its retail customers.⁴⁷ Thus, contrary to Verizon's contentions, there will be no issue of different windows for different CLECs.⁴⁸ Verizon states, however, that four-hour appointment windows are available based on the available workforce and existing workload.⁴⁹ Verizon, however, controls the scheduling process, particularly its workforce's vacation and overtime policies. It is hard to imagine that a Verizon retail customer desiring a four-hour appointment window would not be provided one. Verizon should, therefore, be required to provide a morning or afternoon appointment window unless it can demonstrate that workforce considerations preclude use of such a window.
30. In addition, Verizon's description of obtaining appointment windows via the Service order Management Administrative Report Tracking System ("SMARTS")

⁴⁶ See Exhibit 1 at Issue 19.

⁴⁷ Covad's Pre-Hearing Brief at 76.

⁴⁸ See Verizon's Opening Brief at 26.

application describes a somewhat interactive process.⁵⁰ This may have been acceptable in the early stages of doing business with Verizon, but Covad has moved to completely mechanized platforms (*i.e.*, flow through) that are ill-suited to the iterative scheduling process described by Verizon's witness. The process Verizon describes is a very interactive process, apparently requiring use of manual applications by the CLEC. Use of manual interfaces will impede the scalability of the ordering process and thus limit competition. To obtain appointment windows, Covad would have to sacrifice flow-through of its orders.

31. Verizon contends that Covad's proposed penalty for a Verizon miss of an appointment window seeks to modify existing performance standards and the Performance Assurance Plan.⁵¹ Covad is not seeking to modify existing performance standards or the PAP, particularly as they relate to "no access" situations, *i.e.*, those situations where the CLEC customer is not present when the Verizon technician arrives. Instead, Covad is seeking to provide Verizon the same incentive to meet the appointment window as Covad has to ensure its customer is available. Currently Covad faces a tremendous incentive to ensure that its customer is present for the installation. Not only are "no access" situations excluded from performance metrics,⁵² but Covad has to pay a penalty if

⁴⁹ Verizon's Opening Brief at 26.

⁵⁰ See Verizon's Opening Brief, Declaration of William Bragg and David Kelly at ¶¶ 12-13.

⁵¹ Verizon's Opening Brief at 27.

⁵² Verizon's Opening Brief at 27.

its customer is not present.⁵³ Inclusion of an equivalent penalty on Verizon for failure to meet appointment windows would provide an equivalent incentive for Verizon to meet those appointments. Covad demonstrated how this Commission has a long history of applying penalties to utility companies that fail to meet appointment windows.⁵⁴ The party that will ultimately benefit from such a penalty is the end user who hopefully will enjoy timely installation of its service.

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

In its Opening Brief, Verizon states that “[I]f 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.”⁵⁵ Verizon further submits that, “if necessary, Verizon will, based on its investigation, negotiate specific aspects of the Verizon technical documents to address areas of concern.”⁵⁶ In short, Verizon’s stance is that it wants to have the unilateral discretion on whether it will abide by industry standards.

The FCC explicitly rejected giving ILECs discretion to dictate unilaterally what standards apply with respect to advanced services. For these reasons, the Commission should reject Verizon’s request to include its in-house standards in the definitions of ISDN, ADSL, and HDSL loops in the Agreement.

⁵³ Covad’s Pre-Hearing Brief at 77.

⁵⁴ Covad’s Pre-Hearing Brief at 77-81.

⁵⁵ See Verizon’s Opening Brief, Exhibit 3; Clayton Declaration ¶ 4

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

32. With respect to the first issue raised here, Verizon incorrectly claims that “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 Covad is deploying on the loop.”⁵⁷ As indicated in Covad’s Pre-Hearing Brief, Covad is not arguing that it will not provide the requisite information when Verizon is legally entitled to it and Covad is willing to give Verizon such information pursuant to Applicable Law, i.e., FCC Rule 51.231(b); however, Verizon has no authority to deny, limit, or otherwise restrict a UNE request based on this information. In short, Verizon cannot require that Covad order and deploy certain services over UNE loops based on Verizon’s prefabricated selection of UNE loops. Moreover, Covad’s future legal obligation to provide Verizon any information pursuant to FCC rule 51.231 will be short lived because industry has recommended that this rule be rescinded.⁵⁸
33. Verizon also submits that Verizon’s possession of this information better enables end users to receive the services they order. Otherwise said, Verizon needs this information to ensure that the CLEC customers receive the services they order from the CLEC. Although Covad will provide the information as indicated

⁵⁶ *Id.*

⁵⁷ Verizon’s Initial Brief at 36.

⁵⁸ See Covad’s Pre-Hearing Brief, Exhibit 9, NRIC V FG3 Recommendation #7: Exchange of spectrum management information between loop owners, service providers and equipment vendors, at 2.

above, Verizon's argument has no merit. Verizon provides loop qualification tools to CLECs so that CLECs can verify whether the loop can handle certain advanced services. Verizon does not need to concern itself with CLECs relationship with its customer. The CLEC is accountable to its customer for service quality and the assurance of service quality. Covad can provide poor quality service to its own detriment, but not to the detriment of Verizon. Covad is responsible to its investors and its customers and does not need Verizon to try to play that role.

34. With respect to the second issue raised here, Verizon states that Covad must follow the BFR process if it wants to deploy a new loop type or technology. As explained in Covad's Opening Brief, Covad is not requesting new loop type but rather the ability to provide services, as the law allows, over loops that conform to industry standards. Covad should not be relegated to the BFR process to obtain what it is immediately entitled to pursuant to law. As Covad explained in its Pre-Hearing Brief, this process is an unreasonable requirement.⁵⁹ Indeed, Verizon's explanation that Covad would have to wait approximately 90 days before Verizon completes the process demonstrates this and is therefore entirely unacceptable.⁶⁰

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

35. In its Opening Brief, Verizon suggests that its cooperative testing process is clearly defined and understood by the industry. Nothing could be further from the truth – As a general matter, Verizon has not revealed specific procedures

⁵⁹ See Covad's Pre-Hearing Brief at 90-91.

⁶⁰ See Verizon's Opening Brief, Exhibit 3, Declaration of Rosemarie Clayton, at ¶ 8.

associated with the cooperative testing process to the industry. Verizon proposes a general description of the procedures; however, this is entirely insufficient. Furthermore, although the DSL collaborative has agreed to the process itself, Verizon has not articulated the specific procedures on paper that individuals outside of the collaborative may review, rely on, and follow. Covad simply asks that the process be clearly spelled out in the Agreement. Furthermore, the cooperative testing procedures that Covad proposes are consistent with the process that Verizon currently follows and Covad's proposed language, as indicated in Covad's Pre-Hearing Brief, includes flexible terms that allows for future evolution of the procedures.⁶¹

36. Significantly, Verizon did not discuss in the DSL collaborative the use of the Interactive Voice Response ("IVR") system when performing cooperative testing; however, Verizon does use a similar system when it tests retail services. In fact, in his declaration, Mr. John White stated that 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."⁶² Mr. White further stated that "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

⁶¹ See Covad's Pre-Hearing Brief at 99, 104, 105.

⁶² See Verizon's Opening Brief, Exhibit 5, Declaration of John White, at ¶ 8.

testing process unnecessary."⁶³ Relatedly, Covad's gateway is the IVR and it operates in a similar manner to Verizon's MLT. Furthermore, Covad permits Verizon to access to its IVR so that Verizon can pre-test the loops using Covad's testing process, which thereby makes the cooperative testing process much more efficient. Hence, the refinement Covad proposes to specify in its proposed contract language is one that Verizon has already agreed to and follows.

37. This is supported by the fact that Verizon's John White recommends to alleviate the iterative requirement sometimes associated with cooperative testing - "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."⁶⁴ Given this statement, there is complete agreement not only on what state of the art testing capability can be provided by a CLEC, which Covad provides, but on the need to document the practices used by the parties, since evidently there is a lack of awareness on Verizon's part as to the actual process used today.

38. It is important to note that the IVR is used by Verizon technicians to sectionalize any loop trouble in the provisioning process, prior to making the cooperative test call, to minimize the duplication of effort. Additionally, Verizon technicians use Covad's IVR to test and sectionalize loop troubles in the maintenance process. All Covad has requested is to publicly document the process. Verizon and Covad can, at any time, mutually agree to amend the process.

⁶³ See Verizon's Opening Brief, Exhibit 5, Declaration of John White, at ¶ 8.

⁶⁴ See Verizon's Opening Brief, Exhibit 5, Declaration of John White, at ¶ 7.

39. To put this issue in historical perspective, it was Covad who was asking for the cooperative testing process during the Bell Atlantic (Verizon predecessor company) New York 271 proceeding because Bell Atlantic's operations management decided they could provide fully functioning loops that CLECs did not have to test to ensure they were properly functioning. Once Bell Atlantic began cooperatively testing loops, their loop delivery performance dramatically improved, saving enormous resources. Covad has taken the lead in bringing this concept to the industry and continues to work with Verizon to refine the processes. It would serve the industry and consumers to document the result of all those efforts.

40. Unlike other CLECs, Covad is unique and primarily offers advanced services over UNE loops and, as a result, cooperative testing is absolutely critical to its business and ensuring that its customers loops are properly provisioned. Therefore, the cooperative testing process must be fully articulated out in the Agreement and cannot be left to the imagination of the parties. For these reasons and the reasons set forth in Covad's Pre-Hearing Brief, Covad's proposed language that specifies the cooperative testing process should be included in the Agreement.

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

Verizon claims that "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.”⁶⁵ The Commission should reject Verizon’s straw man argument that Covad’s proposed language should not be adopted because tags may become dislodged or confused. In most circumstances, the tags placed on a loop by Verizon will be readily found by Covad technicians, which will allow them to handle service calls expeditiously and without having to call Verizon to find the loop (which would serve to prolong such calls).

As explained in Covad’s Pre-Hearing Brief, Verizon should not impose “treasure hunts” on Covad in order for Covad to determine where Verizon has provisioned the loop. Moreover, as discussed below, Verizon’s refusal to provide sufficient information to Covad to enable Covad to locate the circuit being provisioned demonstrates that the demarcation point information Verizon provides is entirely inadequate.

Verizon’s submits that, “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 loop point that Verizon has available.”⁶⁶ In making this statement, Verizon does not offer to provide, however, sufficient information to Covad to enable Covad to locate the circuit being provisioned. Given the fact that Covad is paying for the UNE loop, Verizon’s refusal to provide such information to Covad makes no commercial sense and is unreasonable. Indeed, after ordering the UNE loop, Covad should not be required to go on a fishing expedition (for instance the loop could be buried

⁶⁵ See Verizon’s Opening Brief at 32 and Exhibit 6, White Declaration ¶ 12 (elaborating).

⁶⁶ See Verizon’s Opening Brief, Exhibit 6, White Declaration ¶ 11.

in mounds of wire) to search for the loop for which it is paying. Verizon should be required to tell Covad where the loop is located at no charge. If Verizon cannot provide sufficient information to Covad to find the loop, Verizon should dispatch a technician to locate the loop and should not charge Covad for this effort (under these circumstances, Verizon cannot avoid dispatching a technician even though it was attempting to do so). Relatedly, Verizon would not attempt to charge its own retail customers for its inability to locate its own loops that are used to provision its services to its retail customers and therefore should not charge Covad either.

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

In its Opening Brief, Verizon asserts that it will provide fiber optic cross-connects to join dark fiber IOF strands at intermediate central offices.⁶⁷ Such cross-connects are required in order to implement the FCC's mandate in the *Virginia Arbitration Award* that Verizon must route dark fiber transport through two or more intermediate central offices for CLECs without requiring collocation at the intermediate central offices.⁶⁸ In order to implement this FCC mandate in the Parties' interconnection agreement, the Commission should adopt the following contract language for section 8.2.4 below as proposed by Covad:

⁶⁷ Verizon's Opening Brief at 43.

⁶⁸ *Virginia Arbitration Award* at ¶ 457 ("We reject Verizon's position that connecting fiber routes at central offices may not be required of Verizon . . . Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311.").

Verizon shall perform all work necessary to install (1) a cross connect or fiber jumper from a Verizon Accessible Terminal to a Covad collocation arrangement or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office; *or (3) install a fiber cross connect or fiber jumper in order to connect two dark fiber IOF strands at intermediate central offices.*⁶⁹

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

In its Opening Brief, Verizon asserts that it will provide fiber optic cross-connects to join dark fiber IOF strands at intermediate central offices.⁷⁰ Such cross-connects are required in order to implement the FCC's mandate in the *Virginia Arbitration Award* that Verizon must route dark fiber transport through two or more intermediate central offices for CLECs without requiring collocation at the intermediate central offices.⁷¹ In order to implement this FCC mandate in the Parties' interconnection agreement, the Commission should adopt the following contract language for section 8.2.4 below as proposed by Covad:

Verizon shall perform all work necessary to install (1) a cross connect or fiber jumper from a Verizon Accessible Terminal to a Covad collocation arrangement or (2) from a Verizon Accessible Terminal to Covad's demarcation point at a Customer's premise or Covad Central Office; *or (3)*

⁶⁹ The language in italics comprises the modification proposed by Covad. See Exhibit 1 at Issue 46.

⁷⁰ Verizon's Opening Brief at 43.

⁷¹ *Virginia Arbitration Award* at ¶ 457 ("We reject Verizon's position that connecting fiber routes at central offices may not be required of Verizon . . . Verizon's refusal to route dark fiber transport through intermediate central offices places an unreasonable restriction on the use of the fiber, and thus conflicts with [FCC] rules 51.307 and 51.311.").

*install a fiber cross connect or fiber jumper in order to connect two dark fiber IOF strands at intermediate central offices.*⁷²

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

Verizon's Opening Brief misrepresents Covad's position regarding issue 47. Verizon asserts that Covad seeks "information identifying all available dark fiber in Pennsylvania" and "nonexistent" maps that provide "a snapshot picture of all available dark fiber in Pennsylvania at any given time."⁷³

To the contrary, as set forth in its Pre-Hearing Brief, Covad merely seeks what federal law already requires. Covad does not seek information that does not reside anywhere within Verizon's records, databases and other sources as alleged by Verizon in its Response and Opening Brief. Further, Covad does not seek a "snapshot" of all dark fiber available across the entire state. Rather, Covad merely seeks parity access to the same up-to-date pre-ordering and ordering information regarding dark fiber UNEs that is available in Verizon's backoffice systems, databases and other internal records, including but not limited to data from the TIRKS database, fiber transport maps, baseline fiber test data from engineering records or inventory management, and field surveys.⁷⁴ Verizon cannot, as it has done in the past, limit a CLEC's access to this information simply because it is inconvenient or contrary to Verizon's competitive interest to provide the information.⁷⁵

⁷² The language in italics comprises the modification proposed by Covad. See Exhibit 1 at Issue 46.

⁷³ Verizon's Opening Brief at 45-46.

⁷⁴ Covad's Pre-Hearing Brief at Issue 47; *UNE Remand Order*, at ¶¶ 421, 425, 427.

⁷⁵ *UNE Remand Order*, at ¶¶ 421, 425, 427.

In Covad's Pre-Hearing Brief, Covad requested that the Commission unequivocally affirm that Verizon is required under federal and state law to afford CLECs nondiscriminatory, parity access to fiber maps, including any fiber transport maps for the entire specified dark fiber route, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber.⁷⁶ Further, in the context of Verizon's response to a specific Dark Fiber Inquiry, Covad requests that the Commission require Verizon to provide the same information that the New Hampshire⁷⁷ and Maine commissions have required Verizon to provide to CLECs. Verizon cannot argue that such detailed information does not exist because it is has already provided such information to CTC Communications Corp. and other CLECs.⁷⁸ For example, the Maine Public Utilities Commission ("ME PUC") has determined that if Verizon believes that dark fiber is unavailable, then within thirty (30) days, Verizon must provide the CLEC

⁷⁶ Covad's Pre-Hearing Brief at Issue 47.

⁷⁷ The New Hampshire Public Utilities Commission has required Verizon to provide the following information: "total number of fiber sheath and strands between points on the requested routes, number of strands currently in use and the transmission speed on each strand (e.g. OC-3, OC-48), the number of strands in use by other carriers, the number of strands reserved for Bell Atlantic's use, the number of strands lit in each of the three preceding years, the estimated completion date of any construction jobs planned for the next two years or currently underway, and an offer of any alternate route with available dark fiber. In addition, for fibers currently in use, Bell Atlantic shall specify if the fiber is being used to provide non-revenue producing services such as emergency service restoration, maintenance and/or repair." *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 8-9 (May 19, 1998) (emphasis added).

⁷⁸ See, *CTC Communications Corp. Request for Fast Track Arbitration of Verizon NH's Denial of Dark Fiber Request*, DT 02-028, Recommended Decision of Arbitrator (2002).

with "written documentation and a fiber map."⁷⁹ The written documentation must, at a minimum include, the following detailed information:

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

Accordingly, in order to leave no doubt regarding its position, Covad hereby proposes the following contract language for section 8.2.5.1 of the UNE Attachment in lieu of its initial proposal for that section:

Verizon shall provide Covad nondiscriminatory and parity access to fiber maps, including any fiber transport maps showing a portion of and/or the entire dark direct and indirect dark fiber routes between any two points specified by the CLEC, TIRKS data, field survey test data, baseline fiber test data from engineering records or inventory management, and other all other available data regarding the location, availability and characteristics of dark fiber. Further, within 30 days of Covad's request Verizon shall provide, at a minimum, the following information for any two points comprising a dark fiber route specified by Covad: a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates; the total number of fiber sheaths and strands in between points on the requested routes; the number of strands currently in use or assigned to a pending service order; the number of strands in use by other carriers; the number of strands assigned to maintenance; the number of spare strands; and the number of defective strands.

⁷⁹ *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849, Letter of Dennis L. Keshl (March 1, 2002); Covad's Initial Brief at Issue 47.

In sum, Covad requests that the Commission adopt its proposed language for section 8.2.5.1 of the UNE Attachment set forth in the paragraph above.

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

41. Covad has raised a number of issues that relate to the billing problems it is experiencing with Verizon.⁸⁰ The primary reason these issues are being disputed is due to dilatory nature by which Verizon imposes its rates and charges Covad for services rendered. It is therefore evident that one of the major reasons there are billing problems between the parties stems from Verizon's failure to properly inform its own billing group of changes in rates, which are made through tariff changes, that serve to modify Appendix A of Verizon's interconnection agreements with CLECs. Notably, by informing its billing group of the changes in rates and how they impact Appendix A, Verizon would serve to correct many of billing problems Covad faces with Verizon. Moreover, as indicated in Covad's Pre-Hearing Brief, Verizon revises its Appendix A on an ongoing basis for interconnection negotiation purposes and should therefore provide Covad, along with its own billing organization, informational updates to Appendix A that include all new, changed, or proposed rates. Doing so would be mutually beneficial because less billing disputes would occur, Verizon would be paid more readily, and the parties would free up many of the resources needed to resolve billing disputes.

⁸⁰ See Issues 2-5, & 9.

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

42. As explained in Covad's Pre-Hearing Brief, Covad only requires a 2 amp minimum configuration with one amp increments and Verizon currently provisions amperage in this manner. Because the tariff is silent with respect to this minimum configuration, Covad requests that the interconnection agreement clearly specify that Verizon will continue to provide this minimum configuration. Covad should not be subject to an arbitrary change of the minimum configuration or minimum increments. Indeed, if Verizon did increase the minimum amperage, Covad would be forced to order more amps than it needs and incur costs for power that it does not use. Moreover, because Covad must purchase redundant feeds, such an increase would serve to compound this problem and foist unwarranted costs on Covad.
43. Given that Verizon currently provisions amps in a manner that is consistent with Covad's proposal and its tariff is silent in this regard, Verizon's opposition to including specific language in the agreement regarding the minimum and incremental amps Covad is permitted to purchase makes no sense. That is unless, of course, Verizon seeks to have the flexibility to make a unilateral change to the detriment of Covad during the term of the Agreement. Such an outcome is highly inappropriate and Covad seeks to avoid this risk by having contract language that prevents Verizon from doing so.

This concludes our Reply Declaration.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSISON**

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

CERTIFICATE OF SERVICE

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

VIA UPS OVERNIGHT MAIL AND EMAIL

Aaron Panner
Kellogg, Huber, Hansen, Todd & Evans
PLLC
1615 M Street, NW, Suite 400
Washington, DC 20036
Phone: (202) 326-7900
Fax: (202) 326-7999
APanner@khhte.com

Anthony Hansel, Esquire
Covad Communications Company
600 14th Street, NW - Suite 750
Washington, DC 20005
Phone: (202) 220-0418
Fax: (202) 220-0401
THansel@Covad.com
(Counsel for Covad Communications)

Suzan DeBusk. Paiva, Esquire
Verizon Pennsylvania Inc.
1717 Arch Street, 32nd NW
Philadelphia, PA 19103
Phone: (215) 963-6001
Fax: (215) 563-2658
Suzan.d.Paiva@verizon.com
(Counsel for Verizon Pennsylvania, Inc.)


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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated: January 24, 2003



John F. Povilaitis
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
Phone: (717) 236-7714

Counsel for
Covad Communications Company