

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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 Petition of DIECA Communications, Inc., :
 t/a COVAD Communications Company : Docket No.
 For arbitration of interconnection :
 rates, terms, conditions and related : A-310696F7000
 arrangements with Verizon-Pennsylvania, :
 Inc. :
 :
 :
 Petition of DIECA Communications, Inc., :
 t/a COVAD Communications Company : Docket No.
 For arbitration of interconnection :
 rates, terms, conditions and related : A-310696F7001
 arrangements with Verizon North, Inc. :
 :
 :
 Initial hearing. :
 ----- X

Pages 49 through 261 Hearing Room No. 1
 13th Floor, State Office Building
 Broad and Spring Garden Streets
 Philadelphia, Pennsylvania

DOCUMENT FOLDER

Thursday, February 20, 2003

Met, pursuant to notice, at 9:20 a.m.

BEFORE:

MARLANE R. CHESTNUT, Administrative Law Judge

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Rosemarie Clayton
David Kelly

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E X H I B I T SNUMBERFOR IDENTIFICATIONIN EVIDENCE

(None.)

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MARLENE R. CHESTNUT: This
3 is the technical conference scheduled at Docket Numbers
4 A-310696F7000 and F7001.

5 For the record, let me state that I am
6 Administrative Law Judge Marlane R. Chestnut.

7 I would like the Counsel present to identify
8 themselves for the record. All you need do is state your
9 name and on whose behalf you are appearing.

10 Mr. Hansel.

11 MR. HANSEL: Tony Hansel appearing for COVAD
12 Communications.

13 JUDGE CHESTNUT: Thank you.

14 Mr. Panner.

15 MR. PANNER: Aaron Panner for Verizon.

16 JUDGE CHESTNUT: Mr. Angstreich.

17 MR. ANGSTREICH: Scott Angstreich also for Verizon.

18 JUDGE CHESTNUT: Ms. Hyer.

19 MS. HYER: Leigh Hyer also for Verizon.

20 JUDGE CHESTNUT: And Ms. Paiva.

21 MS. PAIVA: Suzan Paiva also for Verizon.

22 JUDGE CHESTNUT: Is there any Counsel present who
23 did not sign the appearance sheet?

24 (No audible response.)

25 JUDGE CHESTNUT: If not, let's talk about today's

1 hearing. I understand that all witnesses will be
2 presented simultaneously. Is that correct? Or are you
3 going to do it by party or what?

4 MR. PANNER: Your Honor, I think because of the way
5 the room is set up we will present the witnesses
6 basically as a panel where both parties will offer
7 witnesses. I think what we will do is we have a proposed
8 order of issues that would put first the issues where we
9 think we have the most to talk about after the New York
10 hearing, and in particular dark fiber, which wasn't an
11 issue in the New York hearing, and we have two witnesses
12 who we would like to present and COVAD also has two
13 witnesses.

14 If I may, the way that we had thought of proceeding
15 was to begin by having each side present a brief
16 statement of position and then with respect to the issues
17 that we have not discussed previously give the witnesses
18 an opportunity in essence to engage in a dialogue that
19 would give them an opportunity to flesh out some of the
20 factual issues. And then obviously if Your Honor has
21 questions they would be able to respond to those as well.
22 And Counsel is also going to participate in that but not
23 in a formal examination or cross-examination type of
24 format but a more informal dialogue format. If that is
25 acceptable to you.

1 JUDGE CHESTNUT: It is to some extent. I'm not
2 sure of this opening statement business. Is that
3 anything other than what you have in your briefs? I
4 prefer an update, not a repetition.

5 MR. PANNER: And some of those will be, Your Honor.
6 We will say that because indeed because the parties have
7 been talking part of the opening statement will be
8 designed to frame the issue to say here is where we think
9 we have a disagreement from the point of view of both
10 sides. So I think they are going to be very brief.

11 JUDGE CHESTNUT: Okay. Because I prefer that you
12 do that on an issue-specific basis. If you want to
13 discuss issue 13, give me your brief statement.

14 MR. PANNER: That is what we propose.

15 JUDGE CHESTNUT: And then on issue 37 -- are you
16 talking about doing that?

17 MR. PANNER: Yes. That is exactly what we propose.

18 JUDGE CHESTNUT: Okay. I'm a little surprised to
19 hear you, Mr. Panner, giving the description of how this
20 is to proceed. I would have thought it would be you,
21 Mr. Hansel, since you filed the petition originally.

22 MR. HANSEL: Well, we have had discussions. We
23 followed this procedure in New York, as Mr. Panner
24 discussed. We have been discussing the issues at hand
25 and the procedure throughout the process. One thing that

1 I would like to briefly discuss, for instance, is PARTS
2 and how we propose that proceeding in this arbitration as
3 well. So we have come to an agreement prior to coming
4 here today on how we would both proceed or like to
5 proceed in this particular case today.

6 JUDGE CHESTNUT: Okay. I have a few general
7 statements to make and we can go to anything procedural
8 before we start.

9 First off, the reason that I agreed to extend the
10 statutory guidelines or the statutory mandates, I should
11 say, for handling this type of case is because frankly I
12 was appalled at the number of open issues. And I don't
13 think that is any surprise since I have stressed that
14 repeatedly. Some party is not negotiating in good faith
15 when there are 50-some issues outstanding. Frankly it
16 was my hope that if I was not strict about adhering to
17 those timeframes that you would resolve issues.

18 MR. PANNER: We actually have resolved five
19 additional issues. And I think that we have narrowed
20 differences with respect to other issues. So I do think
21 that in fact the parties have made substantial progress.

22 I think some of the differences, Your Honor, really
23 do relate to issues of law where the parties have a
24 disagreement about what the legal requirements are that
25 will ultimately have to be resolved.

1 JUDGE CHESTNUT: I don't even consider that
2 legitimate, frankly. You are all experienced attorneys.
3 You know the state of the law -- you should know.
4 Obviously there is some room for disagreement, but not
5 much. You should be able to resolve that. If there are
6 legal issues you can address that by, you know, some kind
7 of provision.

8 We will see issue by issue, but I am going to tell
9 you I am not going to be hesitant to say there is no good
10 faith shown on somebody's part here. The fact that you
11 have five out of 50, that is not substantial progress.
12 If you told me 50 out of 55, that is substantial
13 progress.

14 MR. HANSEL: If I can clarify, since the beginning
15 of the arbitration we have resolved 18 of the issues.
16 What Mr. Panner was describing was since the technical
17 conference we had in New York we were able to get
18 together and resolve five additional ones. And I think
19 the hope would be since we have not discussed the dark
20 fiber issues in a technical conference that as a result
21 of this particular technical conference we would be able
22 to go back again on these particular issues and do
23 further negotiations.

24 JUDGE CHESTNUT: I am looking at our issues list.
25 Which issues are off the table now? Can you tell me what

1 number?

2 MR. ANGSTREICH: Your Honor, is that the issue list
3 that I sent you?

4 JUDGE CHESTNUT: Yes.

5 MR. ANGSTREICH: I believe that list already
6 reflects all of the issues that were resolved at the time
7 the parties filed their prehearing reply briefs.

8 JUDGE CHESTNUT: So no additional issues have been
9 resolved?

10 MR. ANGSTREICH: No. Since that time there were
11 the five issues that Mr. Panner mentioned.

12 JUDGE CHESTNUT: Okay. Which five issues?

13 MR. ANGSTREICH: Those were issues 14, 15 --

14 JUDGE CHESTNUT: Wait, wait. Fourteen is the
15 auditing rights.

16 MR. ANGSTREICH: Fifteen.

17 JUDGE CHESTNUT: Auditing also.

18 MR. ANGSTREICH: Number 18.

19 JUDGE CHESTNUT: Eighteen.

20 MR. ANGSTREICH: Number 29. And then number 56,
21 which appears only in the Verizon-Pennsylvania petition.

22 JUDGE CHESTNUT: Okay.

23 MR. ANGSTREICH: And I believe that the list you
24 have is not completely consecutive. So where there are
25 gaps in the list that reflects issues that were settled

1 as of the time --

2 JUDGE CHESTNUT: I figured that.

3 MR. CLANCY: In addition, Scott, 39 and 38 we only
4 need to make a statement on the record to update the
5 record and update Your Honor on the status.

6 JUDGE CHESTNUT: I'm sorry. A statement on the
7 record regarding what?

8 MR. CLANCY: For issues 38 and 39. There is only
9 an update statement that would update the record and
10 update you on what the status is on that. That would be
11 resolved for Pennsylvania.

12 MR. PANNER: I think what Mr. Clancy is referring
13 to is we are very close to resolution of that issue -- we
14 hope. The obstacle is not between the parties, I don't
15 think.

16 JUDGE CHESTNUT: All right. So I wrote on my table
17 here close.

18 MR. PANNER: I think that's fair, Your Honor.

19 JUDGE CHESTNUT: But I would really like to add a
20 big X.

21 MR. CLANCY: There will be a X for Pennsylvania.

22 JUDGE CHESTNUT: Okay. Good.

23 MR. CLANCY: But the larger issue is just the
24 update.

25 JUDGE CHESTNUT: Okay.

1 MR. HANSEL: May I ask one question?

2 JUDGE CHESTNUT: Sure.

3 MR. HANSEL: This is not the chart that you
4 provided to Judge Chestnut, is it?

5 MR. ANGSTREICH: No. She had asked for a list of
6 all the open issues.

7 MS. EVANS: So this one?

8 MR. ANGSTREICH: No. It's similar to the list that
9 we provided --

10 JUDGE CHESTNUT: It looks like this.

11 MR. HANSEL: Okay. And just one clarifying
12 question. Did you take the 18 that we are resolving off
13 the list?

14 MR. ANGSTREICH: Yes. I believe I copied you on
15 that.

16 MR. HANSEL: Because I have a list of issues that
17 we have resolved.

18 JUDGE CHESTNUT: I'm not interested in the issues
19 you have resolved. Actually I'm not interested in half
20 the unresolved issues either.

21 MR. PANNER: Well, they are fascinating, really.

22 JUDGE CHESTNUT: Generally there were a couple of
23 things I wanted to say.

24 In COVAD's prehearing brief at page four there was
25 a statement that I thought was very good. And it is at

1 the end of the paragraph, the second full paragraph. It
2 says, talking about the contract language, that it be
3 coherent, clear, invite stability and includes the
4 necessary specificity. I thought that was an excellent
5 statement and frankly I am going to try to be guided by
6 that. So if you have a tendency toward unclarity or
7 instability keep that in mind.

8 The other thing is that when I was reading these I
9 was struck by COVAD's argument that as a non-voice CLEC
10 it is in a different position than voice CLECs. As you
11 all know, my feeling that is we should not be arguing
12 over issues that have already been decided, that if there
13 is some precedent for some issue frankly that is what I
14 am going to rely on, if it appears in a contract or
15 someplace else. But if there is some reason why there
16 isn't a provision and it does not apply to COVAD let me
17 know. Because otherwise I will be recommending that it be
18 adopted as it was in AT&T.

19 Now, is there anything further before we get
20 started?

21 (No audible response.)

22 JUDGE CHESTNUT: Let me clarify. I received
23 Mr. Panner's e-mail about the witnesses. That will be
24 Valerie Evans and Michael Clancy for COVAD and John
25 White, William Bragg --

1 MR. PANNER: Mr. Bragg was not able to come, Your
2 Honor. His matters will be covered by other witnesses.

3 JUDGE CHESTNUT: Rosemary Clayton.

4 MS. CLAYTON: Here, Your Honor.

5 JUDGE CHESTNUT: Beth Abesamis.

6 MR. PANNER: She has not arrived yet, Your Honor,
7 but she is covering issues that come later in the
8 schedule.

9 JUDGE CHESTNUT: Okay.

10 David Kelly.

11 MR. KELLY: Here.

12 JUDGE CHESTNUT: Faye Raynor.

13 MR. ANGSTREICH: Unavailable due to family
14 emergency.

15 JUDGE CHESTNUT: So she won't be coming all?

16 MR. ANGSTREICH: She won't be coming at all.
17 Ms. Abesamis will cover her issues.

18 JUDGE CHESTNUT: And Warren Geller.

19 MR. ANGSTREICH: Mr. Geller is unavailable as well.
20 His issues, though, are ones that were discussed in New
21 York where the parties have agreed to present Your Honor
22 with the transcript from the technical conference there.

23 JUDGE CHESTNUT: Now, speaking of the transcript,
24 let's talk about what is going to go in the record.
25 Obviously the transcript produced today will be. My

1 feeling is in these kinds of arbitrations I usually put
2 everything in whether it is a pleading or not just so it
3 is all there.

4 Now, the list that I made -- and I did not include
5 your petition and response to the petition mainly because
6 I didn't have it right there, but if you want me to admit
7 that into the record I will.

8 MR. PANNER: Your Honor, it may be useful because
9 we may want to do cross-references in the briefs to the
10 agreement that was attached to the petition. I don't
11 think that that is anywhere else.

12 JUDGE CHESTNUT: Okay. I need a date for that,
13 then. So the petition was September 10?

14 MR. PANNER: Yes.

15 JUDGE CHESTNUT: And that would be your petition.
16 And is there one attachment, Mr. Hansel?

17 MR. HANSEL: I'm sorry?

18 JUDGE CHESTNUT: One attachment to your petition?
19 What was included?

20 MR. HANSEL: Actually, the petition had six
21 attachments.

22 JUDGE CHESTNUT: Okay. And Verizon's response was
23 October 7.

24 MR. PANNER: Yes, Your Honor. And that likewise
25 had six attachments.

1 JUDGE CHESTNUT: Okay. And on January 17 I have
2 COVAD's prehearing brief with exhibits 1 and 2 and
3 Verizon's opening brief with exhibits 1 through 6. I'm
4 not talking about the appendices, which are the
5 decisions. I am really talking just about the exhibits.

6 Is that correct? Am I missing something there?

7 MR. HANSEL: That's correct, Your Honor.

8 JUDGE CHESTNUT: Okay.

9 JUDGE CHESTNUT: And on January 24 are COVAD's
10 prehearing reply brief. That had one exhibit, Reply
11 Exhibit 1. And Verizon's reply brief had an appendix,
12 right?

13 MR. ANGSTREICH: We had no exhibits to our reply
14 brief, Your Honor.

15 JUDGE CHESTNUT: You had an appendix which
16 consisted of cases, is that right?

17 MR. ANGSTREICH: That's correct.

18 JUDGE CHESTNUT: Okay.

19 Now, is that an accurate listing of what people
20 have filed? Mr. Hansel and Mr. Panner?

21 MR. PANNER: It is, Your Honor.

22 MR. HANSEL: I believe so, Your Honor.

23 JUDGE CHESTNUT: What I will do is I will make this
24 up into a table and send it to you. And if you see any
25 changes or corrections, let me know. But at this point

1 that is what I consider will be included in the record
2 and in fact -- go ahead.

3 MR. PANNER: I was just going to say, Your Honor,
4 that the parties can prepare a stipulation for submitting
5 the transcript from the New York technical conferences as
6 well.

7 JUDGE CHESTNUT: Okay.

8 MR. HANSEL: That's fine, Your Honor.

9 JUDGE CHESTNUT: I mean, if you want to submit
10 something by agreement, that's fine, in addition to that
11 transcript that you think would be helpful here. But at
12 this point I assume you will move into the record those
13 documents that I just indicated. Is there any objection
14 to that?

15 MR. HANSEL: No objection, Your Honor.

16 JUDGE CHESTNUT: Then those documents that I listed
17 are admitted.

18 You don't have anything -- neither of you has
19 anything that hasn't been provided yet, do you?

20 MR. HANSEL: I believe John Povilaitis, Counsel for
21 COVAD, is working on a revised initial brief that just
22 has some numbering changes, I believe. I believe
23 everybody is aware of that.

24 JUDGE CHESTNUT: Okay. I see that just as a
25 substitution, not in addition to.

1 Are we ready to get started, then?

2 MR. HANSEL: If you don't mind.

3 JUDGE CHESTNUT: Sure.

4 MR. HANSEL: If we could kind of briefly discuss
5 where we are on PARTS and inform you on where the
6 parties' discussions have gone thus far.

7 JUDGE CHESTNUT: PARTS, that is the remote D plant,
8 isn't it?

9 MR. HANSEL: Yes.

10 JUDGE CHESTNUT: I didn't know that was still an
11 issue.

12 MR. HANSEL: It is still an issue in the
13 arbitration. But what happened is in New York it was
14 moved to a generic. In order to make this particular
15 arbitration run smoother the parties are still in
16 discussions and working out an agreement but the
17 arrangement at a high level would be to follow the
18 procedural timeline and the procedures that are occurring
19 in New York, use as much of the discovery in New York as
20 possible in Pennsylvania. And so I wanted to alert you
21 that there would be some subsequent filings and a request
22 for a hearing on the PARTS issues based on the proceeding
23 and timeline in New York.

24 JUDGE CHESTNUT: And what is the timeline in New
25 York?

1 MR. HANSEL: Initial testimony is due February 28
2 in New York at this time.

3 JUDGE CHESTNUT: And then what?

4 MR. HANSEL: It is still open for discussion about
5 the remaining timeline.

6 JUDGE CHESTNUT: What kind of procedure is
7 contemplated there? The parties file testimony and then
8 there is a technical conference? Or will there be briefs
9 before a technical conference? What is it?

10 MR. PANNER: I have a limited familiarity with the
11 proceeding, so you may be better to address it.

12 MR. HANSEL: At this point in New York it is
13 contemplated there would be initial testimony, reply
14 testimony and a technical conference and then briefs to
15 follow.

16 JUDGE CHESTNUT: Did anybody indicate some kind of
17 ending time for that?

18 MR. HANSEL: No, not at this time. The only date
19 that has been set is for initial testimony. And I
20 believe technical conference discussions are looking at a
21 timeframe of May for a technical conference. I can
22 update you as the dates become more solidified. But at
23 this point they are subject to discussions between the
24 parties and the Judge in that case.

25 JUDGE CHESTNUT: Well, obviously I am in favor of

1 anything that encourages parties not to duplicate their
2 efforts. So if you want to basically address PARTS in
3 the context of that New York proceeding, I which I guess
4 is what you are saying -- I mean, it doesn't sound like
5 you are agreeing to comply with whatever comes out of
6 that but that you will incorporate the record that is
7 produced there.

8 MR. HANSEL: Not necessarily. Since PARTS is one
9 of the bigger issues in this particular arbitration as
10 far as the amount of testimony that would be filed and
11 amount of work that would go into it, the idea was that
12 once something was filed in New York it would be modified
13 and made Pennsylvania-specific and a subsequent filing
14 would be made in Pennsylvania, not necessarily the same
15 filing because there are certainly Pennsylvania-specific
16 aspects that would need to be addressed as in New York
17 there are New York-specific aspects. But as you
18 mentioned, in order to ease the process because there is
19 so much work involved in that particular issue it was
20 kind of tabled to a separate timeline to follow New York.
21 And that was the purpose.

22 So we won't be relying on the record in New York.
23 We will be establishing a new record in Pennsylvania.
24 However, it will follow the timeline in New York
25 basically.

1 JUDGE CHESTNUT: See, I don't understand this.
2 Follow the timeline in New York? What you are telling me
3 is we are just going to defer consideration of the issue
4 here until it is addressed in New York?

5 MR. HANSEL: Well, certainly if Your Honor wishes
6 to defer the decision on that, from COVAD's perspective
7 it was basically putting the work involved in putting the
8 testimony together and I believe this was -- I won't
9 speak for Verizon, but the agreement on COVAD's part was
10 that rather than doing the issues -- there are a large
11 number of issues as you mentioned in this particular case
12 and rather than just lumping PARTS in with the issues
13 that we have in this case, since there are quite a
14 number, that PARTS would be on a separate timeline just
15 as a result of the workload that was involved with that
16 particular issue.

17 JUDGE CHESTNUT: How do you see this working here?
18 Obviously it is on a different track than the issues we
19 are going to address here.

20 MR. HANSEL: Yes.

21 JUDGE CHESTNUT: Do you want to bifurcate it? Do
22 you want us to hold the whole decision on this until the
23 PARTS thing is addressed in New York? Procedurally I am
24 just not sure how this plays here.

25 MR. PANNER: Your Honor, again, I am not sure that

1 the parties -- in Verizon's view there are a couple of
2 different points. First of all, in terms of simply
3 procedurally how should the issues be resolved, it seems
4 to me that Verizon would be in agreement to bifurcate the
5 procedure so that all the issues can go forward and then
6 the PARTS issue to the extent it remains would be
7 resolved separately so that it would not hold up the
8 whole proceeding.

9 MR. HANSEL: COVAD is fine with that process as
10 well, Your Honor.

11 MR. PANNER: The other issue goes to, you know,
12 sort of proceeding what we would foresee and I think from
13 Verizon's perspective there is some possibility that
14 depending on -- the New York procedure may well lead to a
15 resolution that the parties are able to live with in
16 Pennsylvania but the difficulty was that there could not
17 be an agreement in advance that that was going to be
18 true.

19 JUDGE CHESTNUT: I understand that.

20 MR. PANNER: That is why we do need to continue to
21 pursue the issue in Pennsylvania. And as Mr. Hansel
22 said, Verizon had agreed that we could simply continue to
23 submit materials to the record here and then, you know,
24 follow the New York procedure and then we would see what
25 needed to happen to resolve the issue at the end of the

1 day.

2 JUDGE CHESTNUT: All right. So what you want to do
3 is bifurcate the PARTS-related issues?

4 MR. HANSEL: Yes, Your Honor.

5 JUDGE CHESTNUT: And develop a new schedule for
6 those.

7 MR. HANSEL: Yes, Your Honor.

8 JUDGE CHESTNUT: That would involve the submission
9 of testimony, which probably would be your New York
10 testimony modified for Pennsylvania, I assume.

11 MR. HANSEL: Yes, Your Honor.

12 JUDGE CHESTNUT: And then the submission of briefs
13 on that issue and then a decision?

14 MR. PANNER: Yes. But, again, following the New
15 York procedure. And I guess there would be some question
16 as to whether there was any need for any kind of
17 additional hearing after the New York hearing took place
18 in May.

19 JUDGE CHESTNUT: Well, obviously I would hope we
20 wouldn't.

21 MR. PANNER: I would not as well, Your Honor.

22 JUDGE CHESTNUT: I would expect both parties to
23 take into account what happens in New York and not to
24 relitigate something that has been addressed.

25 What issues are we talking about here? Do you have

1 the numbers?

2 MR. PANNER: This is just a single issue, Your
3 Honor. It is issue 36 -- let me check that.

4 JUDGE CHESTNUT: Is that dark fiber?

5 MR. HANSEL: Your Honor, if I could clarify how I
6 expect things to play out.

7 JUDGE CHESTNUT: Sure.

8 MR. HANSEL: Again, COVAD is open to working some
9 type of arrangement with respect to the outcome in New
10 York and possibly importing that outcome into
11 Pennsylvania. That is our position now. Obviously, you
12 know, if that does not work out for whatever reason then
13 that's the case. In this particular moment, as
14 Mr. Panner suggested, there is some concern at this time
15 with respect to agreeing to that resolution.

16 But since PARTS is very state-specific I don't
17 foresee at this point unless we can come to an
18 arrangement that whatever happens in New York happens in
19 Pennsylvania that there won't be another technical
20 conference or hearing in Pennsylvania because there is a
21 chance that there may be Pennsylvania-specific
22 information that may need to play out.

23 JUDGE CHESTNUT: Wasn't there a Pennsylvania PARTS
24 collaborative? Or did they defer that to New York?

25 MR. WHITE: There was a PARTS collaborative.

1 JUDGE CHESTNUT: Do you where that is, Mr. White?

2 MR. WHITE: I don't recall.

3 MR. CLANCY: Actually that was not simply a PARTS
4 collaborative. That was an investigation of deployment
5 of remote DSLAMs which included PARTS as a part of it.

6 MR. WHITE: There were actually two separate ones.

7 JUDGE CHESTNUT: I assumed PARTS was the remote
8 DSLAM. But it involves other things?

9 MR. CLANCY: PARTS is more than just remote DSLAM.

10 MR. WHITE: There are two things. COVAD can
11 install equipment out of the remote, so we had a
12 collaborative talking about how they would do that, how
13 we would physically connect and give them the dark fiber.
14 So that was one discussion. And the other was a PARTS
15 discussion. But, really, I don't know of any outcome of
16 that.

17 JUDGE CHESTNUT: Is it still active on the PARTS
18 issue?

19 MR. WHITE: No.

20 MS. PAIVA: There were staff reports that came out
21 of both collaboratives. On the DSLAMs the Commission
22 entered an order adopting the staff report that said
23 there was nothing to do right now.

24 MS. EVANS: In both cases the timing was such that
25 it was kind of like a theoretical discussion.

1 JUDGE CHESTNUT: I understand, because of the
2 technology.

3 MS. EVANS: At that time Verizon had not actually
4 deployed the technology so it was just theoretical.
5 However, now things have progressed and Verizon is
6 actually deploying the technology. So now it becomes a
7 real discussion.

8 JUDGE CHESTNUT: I can tell you as a customer who
9 is interested in broadband service I really would like
10 you to get this resolved quickly. Every day you are
11 losing customers to cable modem. But anyway, that's my
12 personal thought.

13 So for PARTS we are agreed basically we are going
14 to bifurcate that from these other issues.

15 Now, think about at the end of today we are going
16 to talk about a schedule for submission of post-hearing
17 briefs and I assume my decision. So we can address it
18 then also.

19 Anything else, then, of a preliminary nature?

20 MR. HANSEL: No, Your Honor.

21 JUDGE CHESTNUT: Then I would like the witnesses
22 who are here to stand please and raise your right hands.
23 Whereupon,

24 VALERIE EVANS

25 MICHAEL CLANCY

1 JOHN WHITE

2 ROSEMARIE CLAYTON

3 BETH ABESAMIS

4 DAVID KELLY

5 ALICE SHOCKET

6 having been duly sworn, testified as follows:

7 JUDGE CHESTNUT: Do you folks want to set
8 yourselves up or make your statement? Or what do you
9 want to do here?

10 MR. ANGSTREICH: Your Honor, if I may, Ms. Abesamis
11 has arrived.

12 JUDGE CHESTNUT: Okay.

13 Are you Ms. Shocket?

14 WITNESS SHOCKET: Yes.

15 JUDGE CHESTNUT: And Mr. White?

16 WITNESS WHITE: Yes.

17 JUDGE CHESTNUT: And I assume Ms. Evans and
18 Mr. Clancy will address these issues also.

19 MR. HANSEL: Yes.

20 JUDGE CHESTNUT: Okay. Does somebody want to make
21 a statement?

22 WITNESS EVANS: Yes, Your Honor. As you can see by
23 the list there are actually eight issues, which seems
24 like a lot, and they are related to dark fiber.

25 The issue here is that COVAD has been unsuccessful

1 in obtaining dark fiber in any state at any point from
2 Verizon. We have not specifically submitted requests in
3 Pennsylvania because our experience when we tried to do
4 that elsewhere was we were unable to get access. So the
5 reason you see a lot of what I will call, you know, very
6 detailed questions about where can we connect, how do we
7 connect, how long to connect, what information do we get
8 when we put a request in, are getting at the root of the
9 fact that, again, up to this date COVAD has been
10 unsuccessful in getting access to dark fiber.

11 JUDGE CHESTNUT: In states other than Pennsylvania?

12 WITNESS EVANS: Correct. Yes, Your Honor.

13 JUDGE CHESTNUT: Okay.

14 WITNESS EVANS: The only thing I will just add to
15 that, the reason dark fiber is critical to a carrier such
16 as COVAD at this point is when we put our network in, as
17 did other carriers, the goal was just to get stuff in
18 there. You did it maybe in not the most efficient way
19 but you had to get your network out there because the
20 demand was growing. Now when you have an opportunity to
21 revisit your network and you want to do it more
22 efficiently, not only from a technical perspective but
23 also from a cost basis, dark fiber is the way to go. And
24 COVAD would like to get dark fiber from Verizon because
25 it's got a lot of it out there in more places than any --

1 JUDGE CHESTNUT: Could I interrupt for a second?
2 You said it's the way to go. Because it's there, right?
3 There and not being used? Is there a technical reason?

4 WITNESS EVANS: Well, technically it is more
5 efficient from the standpoint of a cost perspective. You
6 are able to connect your network because you do more of
7 the work.

8 JUDGE CHESTNUT: I'm sorry. Who is you?

9 WITNESS EVANS: The CLEC. Or in this case COVAD.

10 JUDGE CHESTNUT: Okay.

11 WITNESS EVANS: When COVAD purchases dark fiber
12 what it does is it pays for, if you will, the route from
13 A to B. But then they have to -- we have to put some
14 equipment on the other end. That is why you pay a lot
15 less than you would pay for in this case, say, Verizon to
16 do your transport. So from a cost basis it is much more
17 efficient, cost efficient, for you to go to dark fiber.
18 And as COVAD tries to be more efficient so that it can
19 deliver all of these great products and services and be
20 competitive, dark fiber is key to our strategy.

21 So again, I don't think I need to go into more
22 specificity because we are going to talk about each the
23 issue -- and Mike will have a comment -- but that is why
24 you see a lot of things get to -- the key is trying to
25 get access. And because we have been unsuccessful in

1 getting any of these issues resolved that is why we are
2 at this point.

3 Mike.

4 WITNESS CLANCY: The reason it is more efficient to
5 purchase dark fiber as Valerie restated is you are
6 purchasing a network element and not a service, number
7 one. Number two, as we interconnect our offices and
8 create an inter-office network using dark fiber we are
9 able to manage that inter-office network most efficiently
10 for our network demand. So as bandwidth increases,
11 bandwidth demands increase at particular nodes, we would
12 be able to manage that by increasing the bandwidth that
13 we use the fiber at. Essentially that is done with
14 electronics. So we would purchase electronics and do a
15 change-out on the network that we would design and build
16 essentially using the dark fiber as the transport element
17 that connects the offices together. So the efficiencies
18 that are gained are ease of upgrading the network or
19 increasing bandwidth on the network based on fiber that
20 is of some measured quality.

21 JUDGE CHESTNUT: Okay. Now, this fiber is already
22 there? It doesn't have to be installed, right?

23 WITNESS CLANCY: The fiber is in the ground.

24 JUDGE CHESTNUT: Isn't that why it is dark fiber,
25 as in unlit fiber, as in unused fiber?

1 WITNESS EVANS: That's correct.

2 JUDGE CHESTNUT: Are you finished, Mr. Clancy?

3 WITNESS CLANCY: Yes.

4 JUDGE CHESTNUT: Did you want to respond?

5 MS. HYER: I believe we do want to respond. I was
6 under the impression that we were going to go on an issue
7 by issue basis.

8 JUDGE CHESTNUT: I think this is just a general
9 statement.

10 MS. HYER: I will just briefly make a statement and
11 allow the witnesses to make a statement.

12 JUDGE CHESTNUT: Well, let's just clarify here that
13 your statement has no probative weight.

14 MS. HYER: Correct.

15 JUDGE CHESTNUT: Okay.

16 MS. HYER: The only thing I wanted to say in
17 response is that Verizon provides dark fiber in
18 accordance with applicable law and that is what we are
19 trying to get contract language to encompass, what the
20 applicable law is for providing dark fiber. And I will
21 allow the witnesses to respond to the factual statements
22 made by COVAD's witnesses.

23 JUDGE CHESTNUT: Let me ask Verizon a general
24 question. Is it your position that you don't have to
25 provide anything not required by law?

1 MS. HYER: I'm sorry?

2 JUDGE CHESTNUT: Is it your position that you don't
3 have to provide anything not required by law?

4 MS. HYER: Under the standards for interconnection,
5 I believe under section 251 and 252, Verizon's obligation
6 to provide or in negotiating contracts is that they can
7 voluntarily agree to go beyond the standards. However,
8 they are not required to go beyond the standards, beyond
9 applicable law.

10 JUDGE CHESTNUT: I don't see any evidence of any
11 voluntary giving other than what you are required to do.

12 MR. PANNER: With respect to what, Your Honor?

13 JUDGE CHESTNUT: I can't be more specific. I'm
14 sorry. My impression when I read your brief and your
15 reply brief was your position was we are not required so
16 we are not going to do it.

17 MR. PANNER: Well, in general, Your Honor, there
18 are instances where in fact we do make accommodations in
19 general terms. There are places where we make
20 accommodations that go beyond the strict requirements of
21 federal law. But as a general matter it is generally our
22 policy that we comply with our obligations under the law
23 and that where we are not obligated to do that -- it is a
24 little bit like if somebody said, you know, again under
25 the 1996 act regime as a general matter it is very

1 unfavorable the terms under which we are required to deal
2 in providing network elements. The rates are very, very
3 low. We are displaced --

4 JUDGE CHESTNUT: Mr. Panner, you are going way
5 beyond what I was asking, which is that obviously your
6 position is if you are not required to you are not going
7 to do it. Is that the case for all issues? Or is it
8 your position you look at it on an issue by issue basis?
9 Because I have not seen any voluntary movement on your
10 part. And I am not saying that is wrong. Don't get me
11 wrong.

12 MS. HYER: Your Honor, I think Mr. White can
13 address that as well, but from a legal perspective there
14 are many instances where we have gone beyond what is
15 strictly required under the act. That happens in many
16 circumstances. But there is a certain limit that you
17 have to reach that -- for instance, we don't to have to
18 be turned into a compulsory construction company for
19 CLECs. And that is very important for us.

20 JUDGE CHESTNUT: I don't think that is an issue, is
21 it? I mean, I know you tried to frame it that way but
22 that's not how I see it.

23 I didn't want to distract you here. I know you
24 have something you want to say. Why don't you go ahead
25 and finish your statement.

1 MS. HYER: Well, that was all I wanted to say, that
2 to a certain point we will voluntarily agree to do
3 certain things that we believe go beyond applicable law
4 but we don't feel we should be forced to do it in other
5 circumstances where we are not required under applicable
6 law to do it and to force us to do it is a very
7 economically damaging proposition.

8 JUDGE CHESTNUT: Okay.

9 WITNESS WHITE: I just have one comment. Over the
10 last couple of years I can start naming some of the
11 things that we have done on a voluntary basis. Line and
12 station transfers on loops. We have agreed to clear
13 defective pairs. We have added fields to loop qual and
14 change information in our databases to help the CLECs.
15 It was not for ourselves at all. So we have -- and I,
16 you know, never used the law except when it got into
17 things that were truly, you know, out of field that don't
18 fit into the UNE category. But we really do work to try
19 to get the services installed and do the accommodations
20 on them.

21 Even on dark fiber, you know, we have said that,
22 you know, if it is sitting there and it's not terminated
23 and we brought 24 fibers into the building but only
24 terminated 12, we are not the going to hide behind that.
25 We will terminate the other 12. So, you know, the law

1 doesn't say to do that. But we just thought that was
2 reasonable. So I don't know that that is the case.

3 But what we can't have is just chaos with everybody
4 wanting everything under the sun. We do try to have a
5 standard that we can implement throughout the footprint
6 that we can give an ubiquitous answer where we can do
7 volume business.

8 JUDGE CHESTNUT: Thank you, Mr. White.

9 MR. PANNER: Your Honor, if I could, I think the
10 point that we are trying to make is we certainly provide
11 dark fiber. There is no issue here as to whether dark
12 fiber is something to which we are required to provide
13 access. We are. And we do. The questions instead go to
14 issues that relate to, I think, three basic areas.

15 One goes to essentially the definition of what is
16 dark fiber for purposes of the FCC's rules. And there
17 are a couple of issues related to that.

18 JUDGE CHESTNUT: Hasn't that already been addressed
19 by the Commission? I seem to remember a prior
20 arbitration done by one of my colleagues that addressed
21 just about all these dark fiber issues. It was Judge
22 Weismandel, but I can't remember --

23 MS. HYER: It resolved some of the issues but COVAD
24 is looking to go beyond that.

25 JUDGE CHESTNUT: I thought some of the issues were

1 not resolved. They were continued --

2 MS. HYER: Into a technical conference. Just one
3 of the issues was, and that was an issue that was not
4 teed up by COVAD in this arbitration. And we can explain
5 why when we get to that issue but I don't want to jump
6 ahead.

7 JUDGE CHESTNUT: Well, I'm glad you said that,
8 Mr. Panner. There seems there is no question about
9 access to dark fiber.

10 MR. PANNER: That's right.

11 JUDGE CHESTNUT: Isn't it the terms and
12 circumstances relating to that?

13 MS. HYER: That is what we are trying to resolve
14 here.

15 JUDGE CHESTNUT: That seems to be something that --
16 the circumstances, though, are they purely technical?

17 WITNESS WHITE: When I read the words of what COVAD
18 was proposing I got to tell you, and listening to your
19 opening statement, they were not clear and concise. I
20 was confused when I started to read about what we would
21 connect to and from and Verizon premises. What we have
22 attempted to do is clearly define each of the fiber
23 products that we offer. In some cases I thought they
24 said the same thing we did but I couldn't follow it.

25 JUDGE CHESTNUT: Are you the person who is

1 negotiating this issue?

2 WITNESS WHITE: I am supporting the negotiators.

3 JUDGE CHESTNUT: Well, Mr. Clancy and Ms. Evans, I
4 hear Mr. White saying that there is some confusion about
5 terms.

6 WITNESS CLANCY: I think there are some issues that
7 are very clear. Like when Verizon says -- we ask for
8 dark fiber and Verizon says there isn't any. They don't
9 give us any detail. They just say it's not there. So
10 it's kind of like a guessing game. If I ask for dark
11 fiber from point A to point Z in their network and there
12 may be intervening central offices in that path they
13 don't tell me it's missing from here to here. It's just
14 not there. And a request is \$250 a pop.

15 WITNESS SHOCKET: In fact we have in our proposed
16 contract language that we will provide that information
17 to whoever is requesting it on the dark fiber inquiry.
18 It is in the language that we propose in the contract.
19 The CLEC can request dark fiber information from point A
20 to point Z and we will look for a direct route. If there
21 is no direct route we will look for an alternative route.
22 If there is no alternative route we will respond back
23 that there is no dark fiber available, show which routes
24 we looked at and where the blockages occurred.

25 JUDGE CHESTNUT: Wouldn't that information be

1 sufficient for you?

2 WITNESS EVANS: Well, let me just tell you --

3 WITNESS CLANCY: Is there dark fiber in reserve
4 that they are holding for some other purpose? I don't
5 know that.

6 WITNESS WHITE: The only reserve -- and it's not a
7 reserve -- is maintenance fibers and those maintenance
8 fibers are for any working fiber. They are our
9 maintenance fibers as well as our maintenance fibers.

10 JUDGE CHESTNUT: Is that 25 percent?

11 MS. HYER: No. And actually, Your Honor, that is
12 an issue that was resolved in the Yipes arbitration and
13 COVAD knows just as any other CLEC in Pennsylvania knows
14 that as a result of that arbitration how many fibers that
15 we reserve in a particular sheath for maintenance
16 purposes. It's a set formula. It is a minimum of two or
17 five percent of the number of fibers in the sheath
18 depending on the size of the sheath. So that number is a
19 known quantity based on the outcome of the Yipes
20 arbitration.

21 WITNESS EVANS: Your Honor, one of the things, just
22 to give you a real life experience of what we have been
23 going through, when COVAD first requested dark fiber our
24 perception of what we should get access to because of,
25 you know, legal obligations under the FCC is Verizon has

1 maps of where this dark fiber is deployed. That is how
2 they manage the network for themselves. We specifically
3 in a Virginia case asked could we have access to the
4 maps. Verizon does make information available from the
5 central office out to a customer's premise. If there is
6 dark fiber in that situation they will make that
7 available via a map type of system, if you will.

8 That is not what we need. We are trying to get
9 from one central office to another. Verizon has
10 repeatedly refused to give us that information. That
11 would allow us to then manage and plan and tell them
12 where we want to request services between different
13 central office locations.

14 So that is just a specific example of how, you
15 know, Verizon's perception of what they need to make
16 available to us is that, you know, it is their network,
17 they are going to control it and, you know, you have to
18 keep sending in requests to try to get your information.
19 And you paid for the request. It's not like you pay for
20 the request only if you get it. You pay for the
21 submission to get the inquiry done. So CLECs have to be
22 smart in terms of where they are going to ask for this
23 stuff. You can't just say give me all fiber maps or
24 routes in Pennsylvania from Harrisburg to Philadelphia.
25 You've got to be very clear when you make your inquiries.

1 JUDGE CHESTNUT: Is there anything wrong with that,
2 being clear when you make your inquiries?

3 WITNESS EVANS: No, absolutely. I definitely agree
4 that you want to be clear. But you would do it better
5 and smarter. You don't go out on a highway and say I
6 want to get from Harrisburg to Philadelphia. You have a
7 map of how you get there. We are requesting that map
8 information and then I can send them the specific query
9 that tells me where the dark fiber is available. So I
10 absolutely want to give them a clear request. I don't
11 have that information to tell me where the dark fiber is
12 located.

13 JUDGE CHESTNUT: Why can't you give them a map of
14 the dark fiber?

15 WITNESS WHITE: First of all, what I think is
16 confusing things is COVAD has not done it so they have
17 not seen what we provide, what we provide on an initial
18 request and what we provide for alternate routes.

19 JUDGE CHESTNUT: Is it different in Pennsylvania
20 than Virginia?

21 WITNESS WHITE: No.

22 And the other issue is what she is describing does
23 not exist. We don't have dark fiber maps. We may have
24 central offices that are connected by fiber but you have
25 to peel back to figure out what is working and what is

1 spare, what is available, and those aren't on the maps.
2 So, you know --

3 JUDGE CHESTNUT: You don't have an inventory of
4 dark fiber by location?

5 WITNESS WHITE: Yes, there are inventories. But
6 the inventories have to be -- it is an iterative process.
7 The engineer would look at, yes, I have to get from A to
8 B. He may look at a map. He may look at records
9 information. He will look at jobs in progress. We will
10 see what is on the inventory. Not everything that has
11 been built is on the inventory. He will do all those
12 things and then present back to COVAD this is what we
13 have. And it is a snapshot at a point in time.

14 JUDGE CHESTNUT: I would like to think that Verizon
15 is an efficient company. What you are describing does
16 not sound efficient to me for your own purposes.

17 WITNESS WHITE: You've got remember that this is
18 not provisioning. This is more like you have asked for a
19 house to be constructed. This is a large piece of
20 inventory. Where people build a dark fiber and put on
21 the electronics, they are building a huge backbone. This
22 isn't something that you would want to do just from a
23 quick records check. You would want to make sure that
24 you have got the fiber on the air and assigned.

25 JUDGE CHESTNUT: Isn't this an one time deal?

1 Don't you just want this map and then you can make your
2 own decision in terms of provisioning your customers?

3 WITNESS EVANS: Absolutely. We --

4 WITNESS CLANCY: Let me explain --

5 JUDGE CHESTNUT: Wait. Two people can't talk at
6 once.

7 Go ahead, Mr. Clancy.

8 WITNESS CLANCY: When I worked for the phone
9 company one of the jobs I had was to design special
10 circuits. Another job I had was to manage the
11 inter-office facility network. When we talk about dark
12 fiber I think it is good to talk about it in two
13 different flavors. There is inter-office dark fiber and
14 then there is dark fiber that is distributed out into the
15 loops, into the distribution network from a single
16 central office to serve individual locations out in that
17 central office district. Two different dark fibers.

18 JUDGE CHESTNUT: Okay. Stop right there.

19 Do you agree that there are two types, like
20 wholesale and retail?

21 WITNESS SHOCKET: It's not wholesale and retail.

22 JUDGE CHESTNUT: Well, that was poor terminology on
23 my part.

24 WITNESS CLANCY: Inter-office and feeder.

25 WITNESS SHOCKET: It's inter-office and loop.

1 JUDGE CHESTNUT: And we are talking about dark
2 fiber in both situations? Is that what you're talking
3 about?

4 WITNESS SHOCKET: Yes.

5 JUDGE CHESTNUT: Go ahead, Mr. Clancy.

6 WITNESS CLANCY: What I am going to discuss is just
7 fiber, not dark, just fiber.

8 When a fiber network is built the determination is
9 made that between these offices I need bandwidth, this
10 office and an adjacent central office. So an outside
11 plant engineer will build between those two offices and
12 then between another two offices and another two offices
13 based on network demand that is forecasted. CLECs
14 provide forecasts to Verizon, for example. Verizon does
15 their own internal forecast. Because one of the products
16 they do sell are fiber based networks for enterprises.
17 So they have to aggregate that demand and that would
18 bubble up into some kind of capital forecast that I have
19 to spend this money on fiber for the inter-office
20 network, just the glass. Then there is electronics that
21 go onto that.

22 Now, as time goes on the electronics become more
23 capable of handling more services or more capacity. So
24 the fiber becomes more valuable in terms of the network
25 capacity it can address as time goes on. So the

1 inter-office piece is built to connect two offices
2 together and in most cases that is terminated in the
3 central office in inventory.

4 Is that correct? Or is some of it, like, spare and
5 not terminated?

6 WITNESS SHOCKET: It is always terminated in the
7 central office.

8 WITNESS CLANCY: For IOF?

9 WITNESS SHOCKET: Right.

10 WITNESS CLANCY: Now, the outside plant fiber that
11 goes from a particular central office to other addresses
12 is built on a basis of demand. So Verizon will start to
13 build a strand based on maybe an enterprise network they
14 are building or something and that goes out into the
15 network, into the central office network, to a certain
16 address.

17 Along the way there may be other opportunities to
18 feed other business. So the engineer's job then is to
19 determine the eventual capacity that might be demanded on
20 that strand or that path going out from the central
21 office because it is going to pass a number of other
22 buildings. Like it might pass a state office building or
23 a federal office building on the way to Citibank's
24 location. Well, they may want to put enough capacity
25 into that build to feed those two office buildings

1 eventually because it gives the salesperson an
2 opportunity to upsell and they make more money on the
3 investment. So that dark fiber might lay in the ground
4 in a manhole adjacent to those buildings unterminated and
5 terminated at the last location.

6 JUDGE CHESTNUT: Okay. Thank you.

7 I would like to get back to talking about the
8 feasibility of providing information COVAD feels is
9 necessary for them to make decisions to provision its
10 customers. Now, I thought I heard Mr. White say it is
11 hard to get that information.

12 WITNESS WHITE: No. It's not a matter of the
13 degree of difficulty. It isn't done that frequently.
14 You are talking about an initial build. You want to go
15 to each central office, you want to do the plan. You sit
16 down and say, okay, we are going to hook them up. And we
17 will sit down in Pennsylvania and say, you know, this is
18 how we generally route things.

19 You know, each wire center, each of our wire
20 centers, is fed by fiber. So, you know, it is helpful
21 for them to know and we would, you know, sit down in a
22 planning session so that they will know, okay, this is
23 how we are going to route it back, it is going to route
24 hub on to Philadelphia. That makes sense. That is what
25 we are doing.

1 And then they would submit their request. They
2 want to get from a central office to Pennsylvania -- to
3 Philadelphia -- and we would attempt a route where we
4 have it. If we don't have any we would look for an
5 alternative route. We do the engineering. It is a layer
6 of engineering that we are doing for the CLEC on their
7 request.

8 JUDGE CHESTNUT: But isn't that what you want to do
9 yourself?

10 WITNESS EVANS: You are absolutely right, Your
11 Honor. And that is why if you look at the language we
12 have proposed in every case what we have tried to do is
13 codify what we feel John White is explaining as to what
14 they would do. So that is why we are kind of confused as
15 to why Verizon is having difficulty in terms of just
16 stating what the process is. That is what the RIA
17 language is trying to do. It is trying to clarify the
18 expectation of how dark fiber is going to be managed
19 between the two companies.

20 It sounds like John White is saying it is layers
21 and things like that. Well, if you look at some of the
22 language, we just want to know -- if it is between two
23 points in a LATA without regards to the number of dark
24 fiber, tell us that. You are sitting there saying we do
25 that, you will tell us that. Then why is it a problem

1 putting the language in to clarify that?

2 MS. HYER: Your Honor, I would like to jump in for
3 a second.

4 We have actually gone to a specific issue as
5 opposed to going to a broad overview. We have been
6 discussing what is teed up in the petition as issue 47.
7 I just wanted to state that for the record so that we
8 know which issue we are on.

9 JUDGE CHESTNUT: It seemed fundamental to me.

10 MS. HYER: And I think that is a good idea but I
11 just wanted to make sure for the record we know that we
12 are talking about issue 47 so that we can couch it in
13 those terms.

14 WITNESS WHITE: One more technical thing. When
15 COVAD is asking for something, if this is something that
16 we can do and provide to them and it is 20 times, 50
17 times, that is something that you want to do in a method
18 as close to what we do today. If we had thousands of
19 orders we would need to build electronic interfaces to
20 enhance the process and stuff like that. To create what
21 they are trying to do is go in and have them to engineer
22 on our systems would cost millions of dollars of
23 interfacing and security and everything else so they
24 can't see other customer records and those kind of
25 things. So since it is an one-time build, a very, very

1 low volume issue, you only need one pipe between each
2 central office, you do it one time, this isn't something
3 that needs to be further mechanized.

4 MR. PANNER: Mr. White, can I ask you a specific
5 question? Does Verizon have maps of dark fiber
6 available?

7 WITNESS WHITE: Not of dark fiber, no. We have
8 fiber. But we don't know what is dark from those. We
9 have to go into the inventory.

10 MR. PANNER: And does COVAD get those maps of the
11 fiber?

12 WITNESS WHITE: Well, the maps that we have -- I
13 don't about IOF. We haven't even had this before.
14 Normally if people want to go from Harrisburg to
15 Philadelphia they don't need a map. They know there is a
16 route.

17 WITNESS SHOCKET: The maps that we have available
18 would be the wire center fiber layout maps which present
19 a schematic of the actual fiber that would be in the
20 streets or area within a serving wire center. And we
21 would upon request prepare these. We have to prepare
22 them. They are not something that we have off the shelf
23 or on the shelf.

24 JUDGE CHESTNUT: Why don't you have them on the
25 shelf? There has to be other CLECs asking for this.

1 WITNESS WHITE: Well, once one CLEC requests it
2 they would be built. We don't redo it. We would just
3 make sure that every new job was put on it.

4 But that was not what they asked for. They asked
5 for inter-office maps.

6 WITNESS EVANS: That's right.

7 WITNESS SHOCKET: And the other thing about the
8 maps, the maps provide where the fiber is. It does not
9 say what is dark and available.

10 The reason it does not say that is because fiber
11 changes on a frequent basis. There are construction jobs
12 going on, new connections, use of maintenance spares. If
13 you have a snapshot in time you present it. It may not
14 be available, you know, within the next week. So it
15 doesn't have any real value if we say there is dark fiber
16 today and next week it might not be available.

17 The dark fiber inquiry process is a realtime
18 evaluation of our records to determine whether there is
19 actual fiber available. We do it on the loop plant and
20 we do it on the inter-office plant. Under the new terms
21 and conditions and the contracts, a CLEC, COVAD, can
22 present to us an A to Z route no matter how far that
23 route goes within a LATA and we will do the search to see
24 what dark fiber is available, you know, between those A
25 and Z points.

1 JUDGE CHESTNUT: But isn't the problem that there
2 are multiple paths from A to Z?

3 WITNESS SHOCKET: Yes, there could be.

4 JUDGE CHESTNUT: And isn't that your problem with
5 it? That Verizon may tell you the paths from A to Z but
6 that may not be --

7 WITNESS SHOCKET: It would be the most direct route
8 between A to Z.

9 JUDGE CHESTNUT: Isn't that the same as you would
10 do?

11 WITNESS CLANCY: Could I respond?

12 JUDGE CHESTNUT: Sure.

13 WITNESS CLANCY: Part of my response will probably
14 end up being questions, but most of our demand is going
15 to be inter-office. And maybe one in a thousand use
16 those maps that you are talking about, which distribute
17 into the central office district, which is distribution
18 fiber.

19 So if I ask for a fiber route from point A to point
20 Z and Verizon is driven to use the most efficient route
21 because that makes sense from their own capital expense
22 perspective, my assumption is they are going to use the
23 most efficient route. So they are going to use the most
24 simple path to get from A to Z first and then the next
25 most difficult until they exhaust every path they have.

1 That is my assumption.

2 JUDGE CHESTNUT: Is that correct, Mr. White?

3 WITNESS WHITE: That's correct.

4 WITNESS CLANCY: What I would like to see from
5 Verizon is, let's say they can't get from A to Z. So
6 rather than just tell me I can't get from A to Z, tell me
7 where you can get from and to, what is missing and where
8 you can get from and to on the other side because maybe I
9 can find another way to go to the power company or
10 somebody else to get that piece in between.

11 WITNESS WHITE: We do that.

12 MS. HYER: Our language said that.

13 WITNESS CLANCY: You give me a map that shows that,
14 like a drawing? I'm not talking about Powerpoint. Give
15 me something you draw with a pen.

16 WITNESS WHITE: It doesn't need to be -- I mean,
17 It's a name.

18 WITNESS SHOCKET: It spans.

19 MR. HANSEL: From an initial standpoint with
20 respect to 46 -- or 47 -- we are trying to get access to
21 their back office data. So we basically want to know
22 what the inventory is and from what I'm understanding
23 Verizon appears to be saying, well, it is really
24 complicated and it is too difficult for us to give that
25 to you. In a 271 proceeding in Virginia Verizon was on

1 the stand and in a dialogue between Cavalier and Verizon
2 Verizon basically said -- it basically came out that
3 hand-drawn diagrams were being given to Cavalier
4 basically providing what we are asking for here.

5 JUDGE CHESTNUT: Hand-drawn?

6 MR. HANSEL: Hand-drawn. And after the Maine
7 commission ordered that hand-drawn diagram should be
8 provided for this type of request --

9 WITNESS WHITE: We are mixing apples and oranges.

10 MR. HANSEL: I will get to that.

11 WITNESS WHITE: We are mixing apples and oranges
12 here. We talked about the loop and you need to know if
13 the fiber goes by this building type of thing. So we
14 have drawings for Philadelphia. That is not what you
15 were asking. You were asking for IOF. And the IOF you
16 don't need a map. You just need two names of two cities.

17 MR. HANSEL: You are right. I will get to the
18 that. I am talking about the oranges now. You guys did
19 apples and oranges in your discussions right there and I
20 will get to that.

21 So as an initial matter, with respect to accessing
22 the back office information, we want a map to the extent
23 we need one. And based on Virginia -- and I will be
24 happy to pull the transcript -- Verizon said we will
25 provide a hand-drawn map. When we asked for that they

1 told us they would provide that to us as well and we
2 haven't been able to get it.

3 JUDGE CHESTNUT: Is that true?

4 WITNESS EVANS: The request was to Don Albert, just
5 so we are clear.

6 WITNESS WHITE: And I was present.

7 WITNESS SHOCKET: In Virginia?

8 WITNESS WHITE: Yes.

9 WITNESS SHOCKET: My understanding of what was said
10 in Virginia was under certain circumstances we would work
11 with a CLEC specifically if they were doing a large
12 network build and we would sit down with them and provide
13 information about office routes, inter-office routes,
14 either on a hand-drawn map or some other way, not
15 necessarily a map but it could be some other information
16 provided on a segment by segment basis. And we would do
17 that type of work for any CLEC that was doing a large
18 network build on a project basis. And we will do that.
19 If COVAD comes to us and says we've got a project, we
20 want to do a large network build, we will sit down and we
21 will provide the information to you.

22 WITNESS WHITE: Just to be clera, I take exception
23 to hand-drawn. I mean, there are two points of data.
24 You go from one central office to another central office
25 and if you want me to do a stick diagram, yes, they are

1 connected. That is a map? You don't need to see the
2 scale but, yes, those are connected.

3 JUDGE CHESTNUT: Well, you used that term.

4 MR. HANSEL: That was a term that was used by
5 Verizon on the stand.

6 WITNESS WHITE: That was regarding the loop.

7 WITNESS EVANS: We asked specifically because we
8 were there at that hearing and one of the witnesses as
9 well asked specifically for IOF.

10 WITNESS SHOCKET: Under the same circumstances that
11 we provided it to Cavalier we will provide it to you.

12 MR. HANSEL: Now, to get to the third --

13 WITNESS CLANCY: Wait a minute.

14 What is the process for doing that? Because, you
15 know, we have had people in three states try to do
16 exactly what you are saying, build a network which would
17 be considered a large project, multiple pieces of
18 fiber --

19 MR. PANNER: Mr. Clancy, when was this? What
20 states are you talking about?

21 WITNESS CLANCY: New York, New Jersey, Maryland.

22 MR. PANNER: And what timeframe?

23 WITNESS CLANCY: In the past year.

24 WITNESS SHOCKET: According to our records you
25 haven't asked for anything in dark fiber since 2001.

1 Nothing was done in 2002.

2 WITNESS EVANS: That is probably right.

3 WITNESS CLANCY: Well, the build was done then.

4 MR. ANGSTREICH: And to clarify, procedures have
5 changed substantially since 2001, is that correct?

6 WITNESS SHOCKET: Yes.

7 WITNESS CLANCY: Wait. Procedures have changed
8 substantially?

9 MS. HYER: So your experience back in 2001 is not
10 relevant to what the current standards are that
11 Ms. Shocket and Mr. White are actually trying to discuss
12 with you. So your past experiences don't necessarily
13 reflect what would occur today, which is what they are
14 trying to tell you.

15 WITNESS SHOCKET: And specifically the language in
16 the contract has changed to reflect current conditions.
17 The contract language or the tariff language in the
18 specific states that you were looking to do dark fiber
19 was very clear on where the fiber would be provided and
20 there was no inter-office capability in those states at
21 the time that you requested it.

22 MS. HYER: Intermediate office.

23 WITNESS SHOCKET: Yes. I'm sorry.

24 And your requests, according to my records, there
25 are 29 requests. Twenty of those requests were turned

1 down not because there was no fiber but because your
2 request involved intermediate office IOF routes and that
3 time of service was not available in those states during
4 that time.

5 MR. PANNER: Is it available now?

6 WITNESS SHOCKET: It is available now in every
7 state in Verizon either under tariff or in an
8 interconnection agreement.

9 MR. HANSEL: If I can clarify, I think this is
10 where we are getting to the other point that I was going
11 to make. That is Verizon's initial position opening was
12 that they will provide dark fiber pursuant to applicable
13 law. Well, it is obvious that COVAD and other CLECs have
14 a different view on what applicable law is and Verizon is
15 going to take their view and not move off of it. And to
16 the extent they do, they are going to claim it is
17 voluntary.

18 WITNESS SHOCKET: I disagree with that. In those
19 states where the requests were made, we had tariffs, we
20 had interconnection agreements that stated what the terms
21 and conditions for dark fiber were. Our terms and
22 conditions have changed and we have so noted in the
23 interconnection agreement and we will provide those
24 services to any CLEC who wants them.

25 MR. HANSEL: And I think what we are referring to

1 was a change that has occurred in the last month or so.

2 WITNESS SHOCKET: That is not so.

3 MR. HANSEL: Pursuant to the FCC's Virginia
4 arbitration order. That is the one you are talking
5 about? Intermediate maps?

6 WITNESS SHOCKET: Intermediate office routing. The
7 order came out in July, I believe, and we agreed to do
8 the changes, the dark fiber changes, from the FCC's
9 arbitration in Virginia sometime in September. The
10 language was crafted and made available to CLECs, I
11 believe in November. But had you wanted it earlier after
12 that order came out you could have gotten it earlier.

13 MS. HYER: And it has been proposed to you. That
14 is the language that is on the table.

15 WITNESS WHITE: It is included in our language.

16 MR. HANSEL: I guess two points. One, we have been
17 arbitrating this for a while. I agree that new language
18 was sent to us. Whether it was a month ago or two months
19 ago, it was really new and it was actually prior to
20 filing this petition. So to that point, part of that
21 language basically gives Verizon the ability not to
22 provide those maps if in its view the route that we have
23 requested traverses too many intermediate central
24 offices. Is that the case?

25 WITNESS SHOCKET: There is language in the

1 interconnection agreement that limits the span or the
2 distance or the number of offices on an IOF route --
3 permits us to limit the number of offices on an IOF route
4 if we feel that we can't provide it. And we will come
5 back to you and tell you why we can't provide it.

6 And there may be reasons why it can't be provided.
7 It could be a matter of the route is just so circuitous
8 that it is totally inefficient and it would use up
9 facilities that were slotted for capacity growth in areas
10 outside of where you were looking to serve. It could be
11 that there may be some technical reasons in a particular
12 central office where it's overcapacity on connection
13 arrangements for fiber and we would not be able to do it
14 at that time.

15 But also if you build a route that is really
16 inefficient and is long most likely you are going to need
17 regeneration equipment on it. And if you need the
18 regeneration equipment and you don't put it in and we
19 build the circuit for you, we are going to have
20 maintenance reports from you that we can't care for
21 because the circuit is just plain too long. But we will
22 come back and tell you if we think it is inefficient and
23 discuss it -- not inefficient but not possible to do it
24 -- and we will discuss it.

25 We don't say that we will limit it by a specific

1 number of offices. We are saying it will be reasonable,
2 that if there is a limitation we will come back and
3 discuss it with you. And if you feel that the reasons
4 that we are saying the fiber is not available is
5 unreasonable then you always have the opportunity to go
6 before the Commission on a dispute resolution.

7 WITNESS CLANCY: So let me just clarify. What Tony
8 just read, what Mr. Hansel just read, to me does not say
9 what you just said. What it says is Verizon will come
10 back and say it's not available.

11 WITNESS SHOCKET: No, it doesn't.

12 WITNESS CLANCY: Excuse me. So you are going to go
13 for the most efficient route first because it makes sense
14 both for Verizon and for COVAD that you do that. But
15 then if it is unavailable and you keep going and you get
16 to a point where you have like 15 central offices
17 involved and you feel that regeneration is required what
18 I heard you just say is you would come back to the CLEC,
19 whatever CLEC is making the request, and have a
20 conversation with them detailing your concerns that says
21 -- and this would essentially be a technical conversation
22 between optical engineers saying we are going this far so
23 the attenuation on this route is X and you are not going
24 to be able to shoot your signal that far so what are you
25 going to do. In which case I might opt, since in COVAD's

1 case we will be putting it up to connect our offices
2 together, I might just decide to put a piece of
3 regeneration equipment in an intermediate CO.

4 WITNESS SHOCKET: Right.

5 WITNESS CLANCY: But that is not what that language
6 says.

7 MS. HYER: Yes, it does.

8 MR. ANGSTREICH: Which languages are you looking
9 at?

10 WITNESS CLANCY: What Tony just read.

11 MS. HYER: Ms. Shocket can read you the language
12 that illustrates how this would work.

13 MR. HANSEL: If I may make another clarifying
14 point, up to this point we have never been able to get
15 dark fiber through intermediate offices, nor have we been
16 able to get maps. The FCC then requires you to do it.
17 You will do it subject to this limitation that basically
18 is unilaterally imposed. This language isn't a
19 commission order language or FCC order language. This is
20 language you came up with and you have basically itemized
21 ten reasons why we should not be able to get it -- I'm
22 sure you have more. But the point is, again, we are just
23 being limited to the access that we should have to dark
24 fiber. And I am sure they can come up with a hundred
25 reasons why we shouldn't get it.

1 MR. PANNER: Your Honor, it strikes me that that is
2 sort of argument. But the point is we are trying to get
3 to the facts and what Ms. Shocket has done is explained
4 what Verizon is doing and what we are offering to do. I
5 don't hear them saying that is not okay.

6 WITNESS EVANS: It's not enough is what we are
7 saying. It's great but it's not enough.

8 MR. PANNER: What are you lacking?

9 WITNESS EVANS: In the instance that Mike was just
10 highlighting, what I heard Ms. Shocket say is, one, if
11 she thinks that we are putting in an inefficient network
12 based on Verizon's standards they are not going to give
13 it to me. Because she said that there might be capacity
14 out there is that reserved for other purposes and that
15 she is not going to make it available to me because she
16 doesn't think that is an efficient way for me to design
17 my network. I'm willing to pay for it, whatever it
18 costs. But she says that there may be other reasons that
19 they don't want to give me access to that fiber.

20 WITNESS SHOCKET: That's not the case. The
21 inefficient routing would be something to the extent if
22 you are looking to go from point A to point Z and it is
23 25 miles, and if the only route we could find is 100
24 miles --

25 WITNESS EVANS: And I want to pay you for it.

1 WITNESS SHOCKET: Well, the problem is you pay on
2 an A to Z route. You can't pay -- it is just on the A to
3 Z route. That is the way the systems in Verizon would
4 bill you, based on the airline mileage from A to Z. We
5 don't have at this point in time a way to bill you for
6 each segment of cumulative mileage for each segment along
7 the route. So we would not be able to recover our costs
8 if we built a circuit from A to Z that was three times
9 longer or four times longer than the actual A to Z route.

10 WITNESS WHITE: And after it was built you would
11 cancel it because it wouldn't work.

12 WITNESS EVANS: Well, hold on a second.

13 WITNESS SHOCKET: And then the other thing I wanted
14 to say is that we have provided routes in other states
15 that have been what we consider excessively long even
16 after we spoke with the CLEC and told them that we don't
17 think this is going to work. In fact, we provided one in
18 New Hampshire that was, I don't know, 60 miles long.
19 They had constant maintenance problems on it and it ended
20 up that the CLEC finally agreed that it was not going to
21 work and they collocated in another spot.

22 JUDGE CHESTNUT: Excuse me. But isn't that a risk
23 that CLEC should take?

24 WITNESS SHOCKET: Yes. What I'm trying to say is
25 that we didn't deny this circuit. We just commented to

1 the CLEC that, you know, here is the circuit --

2 JUDGE CHESTNUT: Right. But I just heard you say
3 there is no way for you to cover your costs if you
4 provide an excessively long route.

5 WITNESS SHOCKET: This was an efficient route
6 between the A to Z routes. It go didn't go in a
7 circuitous way. But, you know, it was a long route. It
8 reasonably reflected the mileage between those points.

9 On a dark fiber inquiry, if there is fiber
10 available we will tell you where the fiber is. We just
11 did one in Maine that was close to 200 miles long. We
12 tell you where the fiber is. We don't reject it outright
13 and say, oh, this is too long, we are not going to tell
14 you about it. And we have done some in Massachusetts
15 that have been long.

16 What we wanted to do in this language was to give
17 some protection to Verizon that enabled us to say to a
18 CLEC, you know, we can't provision this route for these
19 reasons and we would provide that information to you
20 based on the particular circumstances we find on the dark
21 fiber inquiry.

22 WITNESS EVANS: So I guess, Your Honor, at this
23 point, because I think we can go on with dark fiber
24 forever, is it of any value for us to take a look at --
25 because what seems to me to be the issue at hand is that

1 they think their language is great and gives us
2 everything we want, and obviously we don't. That is why
3 we are here. It seems like we need to get a better
4 understand of why in some cases -- like in one section
5 COVAD has added the words "or more" and Verizon has a
6 problem with that.

7 WITNESS SHOCKET: We have accepted that.

8 WITNESS EVANS: Well, I'm using that as an example.

9 MR. ANGSTREICH: Ms. Evans, are you looking at the
10 original language matrix?

11 WITNESS EVANS: I am. I'm sorry.

12 MR. ANGSTREICH: I would refer your attention to
13 the e-mail attached to Exhibit 11 to your opening brief.

14 WITNESS EVANS: Okay.

15 MR. ANGSTREICH: Where Mr. Hartman, who is one of
16 the Verizon attorneys negotiating this contract, provided
17 a detailed set of the language, language also repeated in
18 Verizon's opening brief on the 17th of January.

19 WITNESS EVANS: Okay.

20 JUDGE CHESTNUT: You know, we have had a discussion
21 on this and I thank you for mentioning some kind of
22 closure here. It seems to me that what you ought to be
23 doing is talking to each other. Because it sounds to me
24 like there was, at least initially, some miscommunication
25 in terms of what Verizon does and is willing to do. Now,

1 whether or not that is suitable for your purposes is a
2 different issue. And then a further issue is, assuming
3 you agree, can you come up with some language that
4 incorporates both your understandings.

5 MR. PANNER: I think it is certainly right that is
6 one of the reasons these technical discussions are
7 helpful, because people do come in feeling like, you
8 know, we had an experience in 2001 that was unacceptable
9 and we don't want that to happen again. And our side is,
10 well, things have changed since 2001 and here is what we
11 are offering.

12 If I could suggest, I think we have covered a great
13 deal of what is contained in all of these issues but just
14 for the clarity of the record and to make sure that we
15 cover any questions that Your Honor may have, could we go
16 through issue by issue briefly with just a quick summary
17 and then if there are specific questions or additional
18 points we can handle those? Because I think particularly
19 with respect to 47, 43, 45, 44, 46, we've gotten at some
20 of what is going on there. We may be able to go through
21 quite quickly and that way we will make sure we cover
22 everything.

23 JUDGE CHESTNUT: I do have a question. This list
24 of issues that you gave me, who developed it?

25 MR. PANNER: We proposed it and sent it.

1 JUDGE CHESTNUT: Is that consensual?

2 MR. HANSEL: Yes, Your Honor.

3 JUDGE CHESTNUT: It reflects both parties'
4 agreement on the statement of the issues?

5 MR. ANGSTREICH: Actually it's a copy of the
6 statement of the issues from COVAD's petition.

7 JUDGE CHESTNUT: I thought it looked familiar.

8 MR. PANNER: In other words, we didn't try to come
9 up with -- some commissions do that. They come up with
10 language that both sides agree accurately describes the
11 issues. We have just used COVAD's description.

12 WITNESS CLANCY: Can I just ask one more question
13 along the path we were on?

14 JUDGE CHESTNUT: Sure.

15 WITNESS CLANCY: And I don't know if you are also
16 the retail product manager for fiber.

17 WITNESS SHOCKET: No. Dark fiber retail product.

18 WITNESS CLANCY: Let me ask a services question.
19 And John, maybe you can help out.

20 If I work for Goldman Sachs rather than COVAD and I
21 came to Verizon and said I want to build a private
22 network. It is a fiber-based network and let's say
23 initially I wanted to do it as dark fiber. You would
24 approach me with the same rules that you approach COVAD
25 with?

1 WITNESS WHITE: We don't have any dark fiber retail
2 product. We would not offer it. We would say no.

3 WITNESS CLANCY: Okay. So you no longer would
4 offer, like, ESCON services?

5 WITNESS WHITE: We do fiber-based services, but not
6 dark fiber. We put the electronics on the fiber.

7 WITNESS CLANCY: So if I came to you with an ESCON
8 proposal you would want to own the electronics and put
9 that on?

10 WITNESS WHITE: Right.

11 WITNESS CLANCY: Okay. Now, if I said I want to go
12 from point A to point Z you would go through the same
13 routine. You would look for the simplest path, the most
14 efficient path.

15 WITNESS WHITE: Right.

16 WITNESS CLANCY: And then you get up to a gazillion
17 COs and 200 miles. In that case would you still build it
18 because you are putting regeneration on it?

19 WITNESS WHITE: If we had a choice between putting
20 regens -- see, you can go almost 30 miles without a
21 regen.

22 WITNESS CLANCY: Depending on the fiber.

23 WITNESS WHITE: Depending on the fiber and
24 depending on how many connections. I mean, if you do a
25 lot of cross-connections you are going to lose a lot of

1 dB loss in each cross-connection. Every connector you
2 add you are adding a half a dB. If you get to 15 dB you
3 are out of business.

4 But if you could build it, I can't think of a loop
5 that I have ever worked on with a regen. We have
6 equipment in a central office that is within 30 miles of
7 the customer so we don't have to regen the distance. We
8 are collocated in every CO -- that is redundant, right?
9 Repeatedly.

10 WITNESS CLANCY: So you would follow the same
11 procedure for retail service and maybe the big difference
12 is that you have the ability to regenerate that signal if
13 you have to?

14 WITNESS WHITE: In all honesty, Mike, in my 37
15 years I have never seen a regen, I have never designed
16 one and I have never worked on one.

17 WITNESS CLANCY: Well, an add-drop multiplexer --

18 WITNESS WHITE: That's not a regen.

19 WITNESS CLANCY: I know. But it does regenerate
20 the signal.

21 WITNESS WHITE: It deMUXes and reMUXes.

22 WITNESS CLANCY: And increases the signal.

23 WITNESS WHITE: Right.

24 WITNESS CLANCY: So you might build a big network
25 because you are are treating the signal if you have to?

1 WITNESS WHITE: Yes.

2 WITNESS EVANS: Just one other thing I would like
3 to add. What it sounds like -- and I appreciate the
4 historical review in terms of how Verizon got to the
5 language that it has. What it sounds like is that based
6 on the arbitration decision Verizon went back and
7 revisited their dark fiber policies or language and put
8 that in there. COVAD's view is that that is the floor,
9 not the ceiling. I think Verizon thinks that that is the
10 ceiling and that is all you're willing to offer. And I
11 think that is why we need to look at specific language.
12 So it's great that you think you have done a lot, but we
13 are saying, yes, that's the floor and we need to look
14 higher.

15 MR. PANNER: I think that is what is referred to as
16 the one-way ratchet, Your Honor.

17 JUDGE CHESTNUT: Okay. Did you want to do an
18 issue-specific statement?

19 MR. ANGSTREICH: Could we? I think we can do that
20 quickly and then it will have some clarity.

21 JUDGE CHESTNUT: We will start with 42.

22 MS. HYER: I will give Verizon's position and allow
23 the witnesses to discuss this and then turn it over to
24 COVAD.

25 Essentially in issue 42 COVAD is seeking access to

1 fiber that has been, you know, partially installed into
2 the network but has not been fully installed and
3 terminated at accessible terminals. And as the witnesses
4 describe, that includes fiber that doesn't go anywhere
5 and has not been spliced all the way through. So what
6 COVAD is looking to do is to have Verizon terminate those
7 fibers for it, including splicing the fiber end to end.

8 It is Verizon's position that that is not dark
9 fiber under the FCC's definition and in fact the FCC's
10 wireline competition bureau agreed with Verizon in the
11 recent arbitration in Virginia and actually agreed with
12 Verizon's characterization that dark fiber that has to be
13 spliced is not an UNE and said very specifically that
14 Verizon is not required to splice dark fiber. It is
15 construction of the UNE and it's not required to splice
16 dark fiber in the field.

17 JUDGE CHESTNUT: Mr. Hansel, do you agree with
18 that?

19 MR. HANSEL: Well, I would refer back to your
20 initial comment, which is that the Yipes arbitration in
21 Pennsylvania -- and several state commissions have
22 addressed this issue as well -- in Pennsylvania the
23 Commission basically ruled against Verizon on this issue.

24 MS. HYER: Your Honor, I would just like to
25 clarify. I was personally involved in the Yipes

1 arbitration. I do know that that issue was not decided
2 in that proceeding. In that proceeding the parties came
3 to agreed language but that did not include Verizon's
4 agreement to splice fiber end to end to complete a route
5 for Yipes. In fact, the Commission in deciding that
6 case, in deciding between competing language for the same
7 compromise proposal that we agreed to in principle,
8 reiterated that Verizon is not required to do new
9 construction for a CLEC or to accelerate its construction
10 schedule for a CLEC.

11 When the Commission deferred the access -- let me
12 make sure we are clear. There are two different issues
13 here. One is accessing an UNE at a splice point where
14 you are splicing a CLEC's fibers directly into Verizon's
15 fibers out in a manhole somewhere. That is another
16 issue. Then there is the splicing fiber end to end
17 complete construction between two terminals. That is the
18 issue in issue 42.

19 In that particular issue not only did the Yipes
20 proceeding not deal with that issue, but when they
21 referred the access of splice point issue to the
22 technical conference that occurred in the fall of 2001,
23 the staff of the Commission -- one of the CLECs that
24 participated, not Yipes, tried to raise that issue in the
25 technical conference and the staff of the Commission

1 expressly declined to make a recommendation on that issue
2 and therefore the Commission did not rule on that issue
3 as a result of the technical conference. So it is
4 actually incorrect that the Commission has ruled on this
5 particular issue in the Yipes proceeding or elsewhere.

6 JUDGE CHESTNUT: I have to tell you, it seems to me
7 just from a matter of business it would make sense for
8 Verizon to do this. Because I assume that the CLEC would
9 pay for it.

10 WITNESS EVANS: Absolutely, Your Honor.

11 JUDGE CHESTNUT: But I am not going to get into
12 that.

13 MS. HYER: That would turn us into a construction
14 company. And it would be useful for the witnesses to
15 describe what would go into performing that type of
16 construction to further illustrate it for you.

17 JUDGE CHESTNUT: Well, make it brief.

18 WITNESS WHITE: Well, it's hard to make it brief.
19 I was involved in the technical conference and had to do
20 demonstrations and show videotapes about the complexity.
21 Everybody makes it look very simple but it is actually
22 very complex and very dangerous to go into working cables
23 and to open them up and to splice them without damaging
24 other cables.

25 JUDGE CHESTNUT: Don't you do that all the time?

1 WITNESS WHITE: We do it as little as possible.
2 They are not designed to be entered. A fiber cable has
3 within it ribbons that are the size of a pencil and when
4 you look at the splice you wouldn't even know the splice
5 was on there except there is a little heat shrink put
6 over it. It is fused together just like -- it is
7 literally melted and welded. So you are talking about
8 microscopic activities that have to happen. And when you
9 try to do that in field and if there are any of those
10 that are working you have a high, high risk of causing
11 damage. And we did demonstrations to the staff in the
12 technical conference to demonstrate that.

13 JUDGE CHESTNUT: Mr. Clancy? That sounds
14 reasonable to me, that it is difficult to deal with them.

15 WITNESS CLANCY: Well, yes, I heard that it is
16 difficult to do. I heard that Verizon does it as little
17 as possible. So the only question I have is then why if
18 you do it as little as possible would you have
19 unterminated fiber in the cable vault, for example, which
20 is the main hub for the entire distribution network for a
21 central office. Why would you have that if it is
22 dangerous to have it. Why wouldn't you splice it all to
23 something in the CO and terminate it to something in the
24 CO, a point of interconnection in the CO, if it is
25 dangerous to go in there and mess with it after that.

1 Why would you do that?

2 WITNESS WHITE: I also just mentioned about a
3 ribbon. When you leave things unterminated you don't
4 leave a couple of pairs unterminated. If you have a
5 ribbon of 12 or 24 you terminate the entire 12 or 24.
6 You don't ever terminate 11 out of the 12. You terminate
7 the entire ribbon.

8 The cables themselves come in increments of 24. So
9 that if you order a cable of 432 strands -- you can't
10 order 408 strands. There are certain increments of size.
11 So as we build plant we might have a 432 fiber cable or
12 feeder going out and being spliced when it was
13 constructed to a couple of 134 fibers. And some of those
14 would not add up. So you might have extra fibers left
15 over that aren't terminated in the central office just
16 because of the ordering capacity of the fiber.

17 WITNESS CLANCY: But essentially those fibers would
18 not go anywhere anyway.

19 WITNESS WHITE: That is exactly what I just said.
20 You just asked why they wouldn't be terminated in the
21 central office.

22 WITNESS CLANCY: So any case where the fiber in a
23 feeder distribution route would be unterminated in the
24 field, which I understand because you never know where it
25 is going to be asked for, all of those fibers would

1 somehow be terminated in the central office onto some
2 kind of fiber distribution panel so when they are asked
3 for at some building they could be connected?

4 WITNESS WHITE: I'm starting to lose you because in
5 the beginning you said why didn't we terminate everything
6 in the central office. And I talked about the increments
7 of the size of the cable.

8 WITNESS CLANCY: Okay. I understand that.

9 WITNESS WHITE: Okay. So now you have taken
10 another step.

11 WITNESS CLANCY: You've got 12, 12, 12 and, like
12 you said, you might have a big fat cable of 432 going out
13 to a manhole some place in the world.

14 WITNESS WHITE: Into this building we may use a
15 minimum size cable. A minimum size cable might be a 24.

16 WITNESS CLANCY: Might be a 12.

17 WITNESS WHITE: Let's say 24.

18 WITNESS CLANCY: Okay.

19 WITNESS WHITE: And we have used a minimum size as
20 the entrance and when we built it we spliced it in.

21 WITNESS CLANCY: Now you've got 408 left.

22 WITNESS WHITE: But we didn't need all 24 in this
23 building. We may only energize 12 of the 24. And what
24 I'm saying is if we had spliced those back to the central
25 office and they are available here we will add that

1 termination on the other 12 and we will provide that to
2 you. But if it is not spliced, if it was just the
3 increment of the size of cable, we are not going to go
4 into multiple manholes and try to piece these fibers
5 together.

6 WITNESS CLANCY: Let me go back to what you just
7 said because you did lose me.

8 You got a 432 fiber cable and you are dropping off
9 two ribbons of 12 in this building. So you now have
10 dropped 24 here. You got 408 left that are going
11 someplace else. But you have 24 that are terminating
12 here.

13 WITNESS WHITE: The cable was 24.

14 WITNESS CLANCY: The cable was 24. But you were
15 only going to use 12. So you are going to terminate 12
16 of those in this building. The other 12 you are going to
17 leave dangling.

18 WITNESS WHITE: They are basically dead fiber. I
19 would not even call them dark fiber. They are dead
20 fiber. They go 500 feet to the manhole. If we had a six
21 fiber cable we would have put it but you don't. You keep
22 a minimum size reel depending on the job.

23 WITNESS CLANCY: So you have 12 that are
24 terminating. Are those 12 terminating back to the CO on
25 some kind of fiber distribution frame?

1 WITNESS WHITE: If they were we would have them
2 available also to you here.

3 WITNESS CLANCY: But I'm saying the 12 that you are
4 using here.

5 WITNESS WHITE: The first scenario I said no. They
6 are dead between here and the manhole. They don't go
7 anywhere.

8 WITNESS CLANCY: I think we are talking past one
9 another.

10 WITNESS WHITE: It's two scenarios. One is we have
11 a 24 fiber cable but we really only needed a 12. Nobody
12 orders 12. We put a 24 in. We only use 12 of the 24.
13 They go nowhere.

14 WITNESS CLANCY: Now, the 12 that you used, are
15 they going back to the CO?

16 WITNESS WHITE: No. They just go -- you couldn't
17 hook them up if you wanted to.

18 WITNESS EVANS: The 12 that you use.

19 WITNESS WHITE: Oh, the 12 that we use go back to
20 the central office, yes.

21 WITNESS CLANCY: Are they terminated in the CO?

22 WITNESS WHITE: Yes.

23 WITNESS CLANCY: So now you got 12 terminated in
24 the CO and 12 that are in the cable vault and 12 that are
25 hanging in the manhole outside this building that are

1 essentially dead.

2 WITNESS WHITE: Dead. Right.

3 WITNESS CLANCY: Are they inventoried as an asset
4 in Verizon, those 12 that are dead?

5 WITNESS WHITE: They are inventoried -- the cable
6 records will show a 24 ribbon cable, 12 spare, 12 dead.
7 It will say that on the cable records.

8 WITNESS CLANCY: Are the 12 that are dead
9 depreciated or are they written off that year?

10 WITNESS WHITE: Neither.

11 WITNESS CLANCY: Neither?

12 WITNESS WHITE: They are depreciated. I'm sorry.

13 WITNESS CLANCY: So they are depreciated?

14 MR. PANNER: I just have a question. You are free
15 to speak to this if you know about it. Do you know about
16 what we do in terms of depreciation? The only reason I
17 raise this is because that strikes me as sort of beyond
18 what I understood the intent --

19 JUDGE CHESTNUT: Mr. White seems to be able to
20 answer it.

21 MR. PANNER: He knows a lot of stuff but as his
22 lawyer I want to be careful.

23 WITNESS WHITE: Units of plant in underground are
24 an entire sheath. We don't do any partial installations
25 or partial retirements. So unlike other facilities

1 around an outside plant, a cable is a cable. So the cost
2 of that cable would be depreciated.

3 WITNESS CLANCY: The whole thing, the 432 thing.
4 And the piece that goes in the building, the 24, is that
5 a separate unit, the 24? Or is that part of the 432?

6 WITNESS WHITE: Units of plant in underground
7 cable, the way it is inventoried is by size, type,
8 underground or buried, and then it is put in the books as
9 point to point for a particular year. So if in one year
10 we placed a 432 cable for two miles that is what is
11 inventoried and that is what is depreciated. And the
12 same for each segment.

13 Now, those were, quote, efficiently designed. It
14 wouldn't be efficient to order a 411 pair ribbon because
15 it would cost you more than a 432.

16 WITNESS CLANCY: Because it's custom.

17 WITNESS WHITE: It's like going to the grocery
18 store and I only want nine eggs. It is cheaper to buy 12
19 than to buy nine at the grocery store. It's the same
20 kind of thing.

21 And some examples that I gave may not be true in
22 all geographies. You may have a geography where the
23 standard entrance cable is 12 and they terminate 100
24 percent and it makes sense. Somewhere else it may be
25 unusual to have anything, you know, that you would want

1 to have a 12 so you standardize on a 48. Those are
2 engineering construction decisions to optimize inventory
3 and minimize costs.

4 WITNESS CLANCY: Based on history and engineer
5 economics.

6 WITNESS WHITE: Yes.

7 WITNESS CLANCY: So let's say I wanted -- the 12
8 that are terminated are used up.

9 THE WITNESS: Right.

10 WITNESS CLANCY: They are done.

11 JUDGE CHESTNUT: I'm sorry. Aren't the 12 that are
12 terminated used to provide service?

13 WITNESS CLANCY: Yes. But they are used up. They
14 got service on them.

15 JUDGE CHESTNUT: Okay.

16 WITNESS CLANCY: So now there is no more fiber
17 available to the building but there are 12 fibers in the
18 building going back to the central office that are
19 unused, dead.

20 JUDGE CHESTNUT: Right.

21 WITNESS CLANCY: Can you activate them? Can you
22 put them into service?

23 WITNESS WHITE: Two questions. In my example, when
24 it was built it either could have been left in the
25 manhole or it could have been spliced back to the central

1 office. If it was left out in the manhole there may not
2 be any fiber. There may be two 24s meeting a 24 going
3 back to the central office. There may not be any fiber
4 from that manhole to the central office.

5 WITNESS CLANCY: You used the 24 ribbon fiber.

6 WITNESS WHITE: Right.

7 WITNESS CLANCY: From the manhole to get into the
8 building.

9 WITNESS WHITE: Well, if one ran down Broad Street
10 and at the manhole we said we got to go into this
11 building and this building, take one ribbon into this
12 building and one into this building.

13 WITNESS CLANCY: In that case they are all
14 terminated, right?

15 WITNESS WHITE: No. Well, they are all terminated
16 except we had this 12,000 foot reel of 24 ribbon which we
17 ran down and said, okay, run it into that building and
18 run it into this building. But you only splice 12 from
19 each building and then at the manhole 24 go back.

20 WITNESS CLANCY: All right. So you used the 24 to
21 get back but you only use 12 from each that go into a
22 building.

23 WITNESS WHITE: Right.

24 WITNESS CLANCY: Therefore the ones that are
25 unterminated in those buildings they don't really go

1 anywhere.

2 WITNESS WHITE: They are dead.

3 WITNESS CLANCY: But in the instance where you do
4 have a cable where you use 24 and 12 are just laying here
5 in the building and laying back in the cable vault back
6 in the CO, could you put them back in service?

7 WITNESS WHITE: Well, the ones in the CO, if they
8 were spliced back all the way to the CO we would
9 terminate those to the CO.

10 WITNESS CLANCY: So even if they were just laying
11 here not terminated you would terminate them in the CO?

12 WITNESS SHOCKET: Everything we put in the building
13 would be terminated in the building on the fiber patch
14 panel in the building.

15 WITNESS WHITE: If you inventory it at one end you
16 want to inventory it at the other end.

17 WITNESS CLANCY: So you would terminate it on both
18 ends?

19 WITNESS WHITE: We would terminate on both ends.

20 WITNESS CLANCY: So the only thing that is
21 unterminated is what is laying out in the manhole.

22 WITNESS WHITE: That's the only thing I can think
23 of.

24 WITNESS SHOCKET: I'm sorry?

25 WITNESS CLANCY: Laying out in the manhole.

1 WITNESS SHOCKET: I don't know if that is the only
2 one, but that would be definitely one of the cases where
3 it's not terminated.

4 WITNESS CLANCY: Well, what are the other cases?

5 WITNESS SHOCKET: I would have to leave that to
6 John.

7 MR. ANGSTREICH: If you look at the Shocket/White
8 joint declaration there are three examples given in
9 paragraphs 15 to 17.

10 WITNESS CLANCY: That is the total universe of
11 unterminated, three examples?

12 WITNESS EVANS: Can I ask a practical question?
13 Since you have made this investment and for engineering
14 reasons or whatever you've got stuff out there that you
15 can't use, it's unterminated for whatever reason, why
16 would you not want to allow others to have access to it
17 and pay you for it? It's not like we want to just steal
18 it and walk away. We are willing to pay you for it.
19 It's just that we want to get access to it. And it is
20 only by your engineering design that you designed it and
21 left it dead out there. That's not my fault.

22 MR. PANNER: Mr. Clancy, would you want to get
23 access to that dead fiber?

24 WITNESS CLANCY: The dead fiber?

25 MR. PANNER: Yes.

1 WITNESS CLANCY: No, I don't want the dead fiber.
2 The fiber that John described that is terminated -- that
3 is laying in this building or laying in the manhole and I
4 can't use it because it doesn't go anywhere? I don't
5 want that fiber. Unless I'm running my own fiber up to
6 here.

7 MS. HYER: Just so that we clarify I just want to
8 ask a question. So what we are saying is there is no
9 fiber that goes from a central office all the way to a
10 customer premise that is not terminated on either end.
11 It has been installed and the only thing left to do is to
12 terminate it.

13 WITNESS WHITE: There might be a construction job
14 in process or something. Those are the things we would
15 pick up on the engineering review.

16 WITNESS CLANCY: Let me ask you about the other 408
17 fibers. The other 408 is sitting back in that CO in the
18 cable vault at least. Let's say you are not using the
19 other 408 but you had to get to this building to use the
20 24, or the 12 in this building and the 12 across the
21 street. Are the 408 terminated on a fiber distribution
22 frame in the building waiting to get built out into the
23 distribution plant or are they unterminated in the cable
24 vault as well as out here?

25 WITNESS WHITE: I think the appropriate answer for

1 me is to say I don't know. I mean, if I was an engineer
2 I would tell you that, you know, if you terminate it here
3 you want to terminate it in the central office. When you
4 terminate a fiber you want to test it and make sure it is
5 good end to end and you do that by adding the termination
6 and plugging in the OTDRs and turning it up. It is no
7 good to do it from one end or the other.

8 If it's not considered for use, and that is the
9 example I gave you before, all of the plans, we needed
10 411 fiber so we spliced up 412, the others may not be
11 terminated. We may not ever terminate those. Those are
12 the extra 20 that got lost in the route and we might not
13 terminate them.

14 WITNESS CLANCY: So there could be instances where
15 it would be unterminated in the vault and going out to
16 the world but not going into any particular building
17 because that fiber has not been built yet to get to that
18 building.

19 WITNESS WHITE: Yes, that could be.

20 WITNESS CLANCY: And if I asked you for that you
21 would say, well, you want to go to the next building down
22 the street, you are not there yet, so that is not
23 available. Because that would require that you build the
24 fiber from out here in the manhole, take another 24 and
25 run it over to that building.

1 WITNESS WHITE: I think that is the example that we
2 got into in Virginia where we talked about people doing a
3 wire center stick mat to show the routes where we really
4 have fiber or we don't. Those are the kind of
5 discussions we had, you know, what are the alternatives.
6 I don't know what all of those could be. I can't
7 theorize that.

8 WITNESS CLANCY: Now, in terms of inter-office
9 would there ever be an instance where fiber is built
10 ostensibly for under the inter-office network design,
11 whatever requirements are there, that it would be
12 unterminated on either end?

13 WITNESS WHITE: We have not found one unterminated.

14 WITNESS CLANCY: So by design --

15 WITNESS WHITE: You terminate. You build them and
16 terminate them.

17 WITNESS CLANCY: And then test them.

18 WITNESS WHITE: Yep. Term them, yes, and put them
19 in the inventory.

20 WITNESS CLANCY: Okay.

21 JUDGE CHESTNUT: I was going to wait until we
22 finished dark fiber to take a break, but my attention
23 span is just not capable of continuing. But I was
24 fascinated because obviously you are all experts in this
25 and I am not. I think I followed what you were saying

1 but I do need a break. Why don't we take ten.

2 (Recess.)

3 JUDGE CHESTNUT: Okay. Let's resume, please.

4 I think we have discussed extensively issue 42. Do
5 you want to skip the rest of the issues?

6 MR. PANNER: In all seriousness, Your Honor, we did
7 have discussions about trying to -- we talked about a lot
8 of the material to be covered. I don't think there is
9 much in terms of building a record. I thought it might
10 be helpful just for us to go through and summarize what
11 the specific issues are and then, as I say, I think we
12 have covered it. If you have any questions, of course,
13 but that way we would be sure to cover everything.

14 JUDGE CHESTNUT: I don't want you to repeat your
15 positions that you stated in your briefs. You can even
16 just say that you addressed it in your briefs, frankly.

17 For example, issue 43.

18 MR. PANNER: That's fine. Issues 43, 45, 44 and
19 46, I think Verizon is comfortable that it has been
20 covered or addressed in the brief, as is true with issue
21 47.

22 JUDGE CHESTNUT: I'm not sure about issue 44. Has
23 that been addressed? I know you talked about the most
24 efficient route and the lesser efficient routes or if
25 there are gaps. I guess this goes to gaps, doesn't it?

1 Before you start maybe you could define something
2 for me. What is an intermediate central office?

3 WITNESS SHOCKET: It would be an office that is in
4 between the requested A and Z location.

5 JUDGE CHESTNUT: Okay. So it's intermediate in
6 terms of the route. It's not a type of central office?

7 WITNESS SHOCKET: Exactly.

8 MR. PANNER: I think we have actually talked about
9 some of this in terms of issue 44. Because this is
10 talking about the issue of cross-connection, which there
11 was discussion about before. Verizon's position on that
12 is that -- well, maybe you could summarize our policy.

13 WITNESS SHOCKET: Right. We will do the
14 cross-connections at intermediate offices. What is in
15 question here is we will not splice to provide a
16 continuous route between an A and Z location.

17 JUDGE CHESTNUT: Now, why not? Is that just a
18 legal decision or technical?

19 WITNESS WHITE: Technically that is not how we do
20 it. We bring the inter-office cables in and we terminate
21 them on a fiber panel. And then we have the patch cords.
22 Think of the old switchboards. We actually plug them in
23 and that is how we cross-connect them.

24 JUDGE CHESTNUT: As opposed to splicing?

25 WITNESS WHITE: It's not splicing. It's

1 connecting.

2 JUDGE CHESTNUT: Right. As opposed to splicing.

3 THE WITNESS: Right.

4 JUDGE CHESTNUT: Well, what's wrong with that?

5 MR. HANSEL: Well, two issues. One, with respect
6 to inter-office cross-connects, we have talked about
7 already that Verizon is also retaining the right upon its
8 view to not do -- depending on the list of issues that
9 was identified, they won't cross-connect in some cases
10 between intermediate offices if in their view it won't
11 work. We don't think that that -- that is not what the
12 law is. It's not unilaterally up to them to decide at a
13 particular point whether or not they should do
14 intermediate cross-connects. So the statement that they
15 do cross-connect for intermediate offices is too general.
16 We went through it already but there are exceptions to
17 that. They have listed about five of them and I am sure
18 there are more.

19 With respect to splice points, again, we believe
20 that Yipes has addressed this with respect to two issues
21 in that particular arbitration. One was with respect to
22 existing splice points. And the Yipes arbitration also
23 addressed the ability to cause Verizon to provide access
24 to dark fiber when making a new splice. So both issues
25 were addressed in Yipes.

1 JUDGE CHESTNUT: Well, the Yipes decision will
2 speak for itself obviously. So if you disagree, don't
3 bother telling me, okay? Although I seem to remember
4 that Yipes didn't decide a whole lot of things,
5 unfortunately. Have there been arbitrations since Yipes
6 that have addressed dark fiber issues?

7 WITNESS SHOCKET: Yes, there have. The VA/FCC
8 consolidated arbitration did address splicing and in the
9 decision the bureau said that splicing to create a
10 continuous route is not required and they do not require
11 that of the incumbent LEC.

12 JUDGE CHESTNUT: So to make it clear, the basis for
13 your refusal to splice is legal, that you don't have to?
14 Or is it technology? I heard Mr. White say you don't do
15 it.

16 WITNESS SHOCKET: Well, it is both. We made a case
17 before the FCC that said that splicing is not technically
18 feasible, that it is dangerous, there is a large chance
19 of risk to other services that are on that fiber and we
20 don't generally do it for ourselves and it's not
21 something that we would consider doing for others.

22 JUDGE CHESTNUT: It seems reasonable to me,
23 Mr. Hansel, that if Verizon doesn't do it for themselves
24 why should they do it for you?

25 WITNESS CLANCY: Well, Verizon does do it itself.

1 In the conversation that we had before where we were
2 talking about 432 strands coming out and we used 24 of
3 them to come into this building, the way that happened is
4 through a splice.

5 JUDGE CHESTNUT: Is that true?

6 WITNESS WHITE: We are jumping between things. A
7 minute ago we were talking about IOF cables and
8 intermediate and how we use a patch cord and it is test
9 point and we loop and test between to the two central
10 offices. Now we are talking about how we construct the
11 fiber and how we build it.

12 Fiber is spliced. There is no question about it.
13 But we don't go into a central office and say we want to
14 go from, you know, one central office to another and take
15 two cables and splice them together. We go to our patch
16 panel, we test them and we patch them together.

17 WITNESS CLANCY: Your Honor, before Verizon
18 testified that when they build inter-office fiber they
19 terminate it. So there should be no instance where there
20 would be an inter-office fiber that would be available
21 for splicing according to their testimony.

22 WITNESS SHOCKET: That's right.

23 JUDGE CHESTNUT: Right. That is why they don't
24 splice, because it is terminated.

25 WITNESS CLANCY: But the splicing here -- this says

1 put a connection between dark fiber and the same central
2 office for splicing in order to provide a continuous dark
3 fiber strand on a requested route. It doesn't say
4 inter-office route. So if I wanted to go from a central
5 office to an end user premise like we were talking about
6 before there might be splicing involved.

7 WITNESS WHITE: Construction splicing, yes.

8 WITNESS CLANCY: Splicing.

9 WITNESS EVANS: Just so I am clear, are you saying
10 in that instance you would like the right to be able to
11 do a cross-connect as opposed to -- you know, doing the
12 thing on the patch panel as opposed to the thing on the
13 splice.

14 MR. ANGSTREICH: The patch panels, if I understand
15 correctly, have to do with the inter-office transport.
16 What Mr. Clancy is referring to is the distribution.

17 MS. HYER: The loop portion of the plant.

18 MR. ANGSTREICH: The loop portion of the plant.

19 WITNESS CLANCY: Scott, what I was talking about is
20 I was talking about both. Because what is on the record
21 is Verizon terminates their inter-office fibers.

22 WITNESS WHITE: Yes.

23 WITNESS CLANCY: So that would be patch panel.

24 WITNESS WHITE: Yes.

25 WITNESS CLANCY: So the inter-office, we should be

1 able to get a cross-connection for any inter-office span
2 that we need. They are all terminated.

3 JUDGE CHESTNUT: Is that right?

4 WITNESS WHITE: Yes.

5 WITNESS CLANCY: So that need is satisfied.

6 The issue on the splicing -- and I believe Scott is
7 correct, that what I was talking about is if I am going
8 outside of the central office into distribution splicing
9 might be required to get to where I am going.

10 JUDGE CHESTNUT: Let me ask you, has it been
11 required for you? Has it been required?

12 WITNESS CLANCY: In one instance and I forget if it
13 was Maryland or Virginia.

14 JUDGE CHESTNUT: One out of how many provisions?

15 WITNESS CLANCY: That was because we were
16 interconnecting with another company.

17 JUDGE CHESTNUT: Well, I mean, is this something
18 that is even going to come up? We have spent a lot of
19 time and energy on this. This may be a situation that
20 does not need to be addressed in such a comprehensive
21 manner.

22 WITNESS CLANCY: Well, if we go back to the example
23 that we were talking about before where there are 12
24 fibers coming into this building and going out to the
25 manhole.

1 JUDGE CHESTNUT: Right.

2 WITNESS CLANCY: But they don't go back to the
3 central office.

4 JUDGE CHESTNUT: Right.

5 WITNESS CLANCY: And I want to get to this building
6 and Verizon says, well, I can't get you there because I
7 don't go back to the central office. Level 3 might go
8 back to the central office and they might pass this
9 building. So I may want to splice into that cable that
10 comes into this building with Level 3's fiber. So I may
11 want to splice Level 3's fiber into the Verizon fiber
12 that comes into this building.

13 WITNESS WHITE: That has been clearly addressed by
14 the FCC and in Pennsylvania as not required, period.
15 That is access at splice points.

16 JUDGE CHESTNUT: All right. Why don't we move on.

17 MR. PANNER: Mr. White, you have put a lot of
18 testimony on about how hard that is to do as well.

19 WITNESS WHITE: Well, I really want to come back to
20 it is difficult to do. It is fully construction and we
21 do it in a minimal amount. It isn't like putting a drop
22 wire to a house. It's like brain surgery, is the
23 comparison.

24 JUDGE CHESTNUT: I'm sorry. I find that really
25 hard to accept.

1 WITNESS WHITE: What?

2 JUDGE CHESTNUT: That it's like brain surgery. I
3 mean, it may require a certain degree of precision,
4 but --

5 WITNESS WHITE: You got to understand that we are
6 aligning 12 fibers and those fibers themselves are the
7 thickness of a hair, which is about 100 nanometers, and
8 the centers, which are seven nanometers of that 100 -- so
9 envision one-tenth of the thickness of your hair -- have
10 to be lined up perfectly on 12 fibers. And it is glass.
11 And we use electronics to line it up and fuse it and melt
12 it together so that light will continue to pass through
13 it. That level of precision is what you are going
14 through when you are working on the brain.

15 JUDGE CHESTNUT: But you do it for construction.

16 THE WITNESS: Yes, before there are working
17 circuits in there. We don't want to go into that ribbon
18 when there is a working circuit.

19 JUDGE CHESTNUT: Because of the danger to the
20 working circuit?

21 WITNESS WHITE: Actually, even if you took a ribbon
22 -- any handling, you are supposed to be working in a
23 clean environment. So the splices have to come up out of
24 the manhole and go into a sealed truck. So, I mean, it's
25 like bringing it into an operating room. Then you open

1 it. Opening a splice may be similar to opening other
2 splices except that if any of these fibers were even bent
3 too much -- it doesn't need to break, just increase the
4 bending ratio as they come out -- you will dump thousands
5 -- many, many thousands of circuits get dumped. And I
6 demonstrated this to the staff, showing them exactly what
7 happens. It is not something that we take lightly.

8 JUDGE CHESTNUT: No, but it can be done.

9 WITNESS WHITE: Technically I can do anything.

10 JUDGE CHESTNUT: Well, I don't know if I agree with
11 that. If you could do anything you would have resolved
12 this by now. Seriously. I mean, it may be difficult but
13 I accept your representation that it may cause damage to
14 the working circuits and that it involves a lot of
15 precision and care.

16 But on the other hand, Mr. Clancy and you folks,
17 I've got to be honest with you, if this isn't something
18 that comes up all the time why am I spending a lot of
19 time listening to this?

20 I'm not going to ask for a response but I would
21 like you to keep in mind and think about what it is you
22 really need, not what you want but what you really need
23 to do business in the next couple of years with Verizon.

24 Let's move on. I've had it with this.

25 MR. PANNER: Okay. Do you want to move past dark

1 fiber or move through the issues quickly?

2 JUDGE CHESTNUT: If there is something that
3 somebody really wants to say about dark fiber that has
4 not been said already and won't be said again.

5 Let me ask you, issue 48, the way it is phrased in
6 the COVAD prospective seems reasonable to me.

7 MS. HYER: Your Honor, I would like to respond
8 briefly and then let Mr. White discuss it in more detail.

9 It is important to see exactly what it is that
10 COVAD is asking for. They are not just asking for test
11 data results. The language that they proposed says that
12 the fiber shall meet specific criteria and in essence
13 what they are asking Verizon to do is to guarantee that
14 the dark fiber they have installed in the network meets
15 specific performance criteria that COVAD wishes to have
16 for their services. The problem with that is that as
17 recently as the FCC Virginia arbitration the FCC's
18 wireline competition bureau agreed with Verizon that
19 Verizon cannot be held -- its dark fiber cannot be held
20 to particular transmission standards by a CLEC.

21 JUDGE CHESTNUT: Am I misunderstanding this issue?
22 And I'll be honest with you, I don't remember. I did
23 read everything but maybe I misunderstood something. I
24 thought it was a question of information provided as
25 opposed to the quality of the fiber.

1 MS. HYER: Your Honor, it is information about the
2 quality of it. But the language reads as certain
3 criteria that the fiber shall meet. And if you read
4 COVAD's --

5 JUDGE CHESTNUT: What are you looking at?

6 MS. HYER: Their proposed language, proposed
7 section 8.2.8.1.

8 MR. HANSEL: If I could clarify.

9 MS. HYER: It is attachment A.

10 WITNESS EVANS: A or B?

11 MR. ANGSTREICH: It is in both.

12 MS. HYER: Either attachment A or B. It is
13 proposed section 8.2.8.1, page 25.

14 JUDGE CHESTNUT: Okay.

15 MS. HYER: The language is very unclear. First of
16 all, the preceding statement says that responses to field
17 survey requests shall indicate whether. However, if you
18 look at number one, it says that the fiber is of a dual
19 window construction and then it has various standards.
20 Number two, the numerical aperture of each fiber shall
21 be at least .12.

22 JUDGE CHESTNUT: Where is that from, Mr. Hansel?

23 MR. HANSEL: I think she read it correctly. It
24 says the field survey shall indicate whether.

25 JUDGE CHESTNUT: Just whether, yes.

1 MS. HYER: However, Your Honor, if you read their
2 position statement in the reply brief they are very
3 specific by saying that Verizon should test to these
4 standards and if the fiber does not meet these standards
5 they should take affirmative action --

6 JUDGE CHESTNUT: Okay. Where is that? Is this
7 their reply brief?

8 MS. HYER: Actually, I'm sorry. It is their
9 opening brief.

10 JUDGE CHESTNUT: Okay.

11 MS. HYER: For instance, on page 145 the paragraph
12 that begins with the term significantly, or the word
13 significantly, they say COVAD merely asks that Verizon
14 test the fibers for COVAD at the same level that Verizon
15 tests them for use in their network. And Mr. White can
16 talk to what we actually do in our network and the
17 information that we provide in field surveys.

18 Then COVAD goes on to say that way the fiber may be
19 fixed by Verizon to correct the deficiencies revealed by
20 the tests. Verizon should not, as it contends, be
21 permitted to provision dark fiber as is and allow the
22 CLEC to accept or reject it if the facility does not
23 conform to the CLEC's services.

24 I will skip down here. Verizon will then
25 investigate to determine if it needs to re-splice that

1 section or replace that section altogether.

2 So in other words, what COVAD is asking Verizon to
3 do is not to give it information about the fiber but to
4 test it to specific performance levels that COVAD wants
5 the fiber to meet.

6 JUDGE CHESTNUT: Aren't they the same performance
7 levels that Verizon uses?

8 WITNESS WHITE: No. Absolutely not.

9 JUDGE CHESTNUT: Okay.

10 MS. HYER: Would you like to elaborate?

11 WITNESS WHITE: Sure.

12 JUDGE CHESTNUT: It says here COVAD merely asks
13 that Verizon test the fibers for COVAD to the same levels
14 that Verizon tests them for use in its network. Is that
15 a misstatement, Mr. Hansel, or what?

16 MR. HANSEL: No, it's not, Your Honor.

17 WITNESS WHITE: We would test it the same way but
18 the result of what they are looking for and their
19 expectations are not at all Verizon's standards at all.

20 JUDGE CHESTNUT: Why wouldn't they be the same?

21 WITNESS WHITE: They aren't.

22 JUDGE CHESTNUT: They are used for the same
23 purpose.

24 WITNESS WHITE: Look, COVAD hasn't used any of our
25 fiber. We do provide the readings on the fiber. When

1 fiber is designed depending on the type of equipment that
2 is put on each end there is a budget. In other words,
3 how much loss the fiber can have. And cable will be
4 ordered so that it stays under that loss budget. So if
5 you were allowed 15 dB of loss --

6 JUDGE CHESTNUT: Okay.

7 WITNESS WHITE: And then you go buy a piece of
8 cable. Other the years we have bought cable that is .50
9 dB of loss a kilometer, .40 dB of loss a kilometer and
10 .35 of dB of loss. Our existing plant is a mixture of
11 cable we ordered.

12 What actually is delivered, there may be variations
13 in the actual manufacture. The manufacturing process is
14 so complex they make it and then they measure it and then
15 they deliver it based on those measurements.

16 JUDGE CHESTNUT: Right. But you are not
17 addressing, for example, the statement on page 146: to
18 the extent Verizon does perform field tests on fiber
19 optic facilities and gathers certain information about
20 the facilities for itself, which by industry standards it
21 undoubtedly does, Verizon should treat COVAD in parity.

22 WITNESS WHITE: Yes. We will do that.

23 JUDGE CHESTNUT: I mean, are you asking for
24 something other than what Verizon tests for itself? They
25 are saying you are.

1 WITNESS CLANCY: Not from a testing perspective.

2 JUDGE CHESTNUT: What does that mean? That seems
3 kind of weaselly.

4 WITNESS CLANCY: The tests that were described were
5 at two separate frequencies. Verizon does that when they
6 turn up the cable.

7 JUDGE CHESTNUT: Is that true, Mr. White?

8 WITNESS WHITE: Yes.

9 JUDGE CHESTNUT: Okay.

10 WITNESS CLANCY: In order to assure that the loss
11 budget that John described is met once the cables are
12 terminated as John White described before, because now
13 you not only have the cable in the ground, you have the
14 fiber cable that runs up to the back of the connecting
15 point where they are going to do the test from, they do
16 the test, they connect an OTDR -- which is more technical
17 than you want to know; it is an optical loss measuring
18 tool --

19 JUDGE CHESTNUT: Okay.

20 WITNESS CLANCY: -- on either end of the fiber and
21 test in both directions at those two frequencies that are
22 described in our testimony. Verizon then records that
23 information for its inventory management system so when
24 it puts pieces of fiber together it knows the overall
25 loss budget of the entire span. Which is why they talked

1 about when you get up to, you know, 50 or 60 miles you
2 start to get into serious loss territory.

3 JUDGE CHESTNUT: I have to tell you, this seems to
4 be an issue that absolutely can be resolved. You tell
5 them what information you get from testing, they tell
6 you, hey, that's okay with us and then you provide it.

7 WITNESS WHITE: But Mike was very careful about
8 saying testing. And I think what he has asked for and
9 what we do and we will provide -- there is no problem
10 with testing.

11 JUDGE CHESTNUT: I will tell you right now, I am
12 not going to order Verizon to do additional testing other
13 than what it does for itself. There's no question about
14 that.

15 WITNESS WHITE: But the second piece that Mike
16 didn't say is they are looking for us to meet the .35 dB
17 kilometers. We don't have a standard to meet a .35 dB
18 kilometers.

19 JUDGE CHESTNUT: Where does that standard come
20 from?

21 WITNESS EVANS: Again, I think it's a matter of we
22 are looking for Verizon to give us the information. And
23 as you indicated if they come back and say, well, no, it
24 is at, I don't know, .62 -- I'm making this up -- we
25 would say, you know what, we don't want that. It is the

1 exchange of information that we are requesting. We are
2 not saying that it has to meet these things. We are just
3 saying we want to know this level of information and then
4 have the ability to say yes or no.

5 MR. PANNER: It sounds like we may be able to
6 resolve this.

7 JUDGE CHESTNUT: Yes. This sounds like a wording
8 thing.

9 MR. PANNER: I think you're right. That's why we
10 have these.

11 JUDGE CHESTNUT: All right. Are we done with dark
12 fiber?

13 MR. PANNER: We are fine to be done with dark
14 fiber.

15 JUDGE CHESTNUT: Okay. Let's move on, then, to
16 OSS/Metric.

17 MR. HANSEL: I think we are fine on that one as
18 well.

19 JUDGE CHESTNUT: When you say fine, does that mean
20 that --

21 MR. PANNER: We don't need to put anything
22 additional into the record.

23 JUDGE CHESTNUT: Fine means you have resolved it?

24 MR. HANSEL: No, we have not resolved it.

25 JUDGE CHESTNUT: Why haven't you resolved it?

1 Isn't this being addressed elsewhere? This is an issue
2 that comes up all the time, doesn't it?

3 MR. PANNER: I think part of the problem is that
4 Verizon has the view that it is addressed elsewhere, with
5 respect to the Commission has rules that address this.
6 And we don't think they should be -- first of all, we
7 certainly don't think they should be varied in what is in
8 the agreements and we think COVAD's language does depart
9 from what the Commission has required.

10 The second point is that because this has been
11 based on a generic basis industry-wide we don't think it
12 is appropriate to lock in a particular snapshot
13 requirement into the agreement. The metrics and
14 performance measurements that the Commission has with
15 respect to these various functions are the ones that
16 should apply and they should apply on a generic basis.

17 Part of what the parties have been disputing is the
18 extent to which that needs to be inserted into the
19 agreement. We don't think that is necessary. We are
20 concerned that if that is done it may create conflicting
21 legal obligations with respect to matters that have been
22 addressed.

23 JUDGE CHESTNUT: Yes, but they are always subject
24 to contract language. You know that. And that would be
25 the case here, wouldn't it? Assuming it is addressed

1 elsewhere, like in a tariff.

2 MR. ANGSTREICH: The performance measurements are
3 established by --

4 JUDGE CHESTNUT: I'm not talking about performance
5 measurements. I'm talking about the terms and conditions
6 of responding to the loop query.

7 MR. ANGSTREICH: One of the terms and conditions
8 that COVAD has proposed to include in the agreement is
9 that Verizon has to respond in one day. The performance
10 measurements establish a standard of 95 percent returned
11 within 48 hours. If there were a separate obligation to
12 return those exact same responses in a shorter interval
13 that would change the interval established for the
14 industry by the Commission. There is a procedure. COVAD
15 wants to change the interval that exists.

16 JUDGE CHESTNUT: And presumably it is going to give
17 something for that. Isn't that a negotiating process?
18 Isn't that the point?

19 WITNESS EVANS: Let me tell you where we are.

20 JUDGE CHESTNUT: Seriously. I mean, I know the
21 problem with the metrics, which is that for 45 percent of
22 the time it's great but for the five percent that you are
23 allowed to not meet the standard it's a problem. But
24 then again, you know, I know there is no expectation of
25 perfect performance.

1 MR. PANNER: I certainly hope my clients don't hold
2 me to perfect performance, Your Honor.

3 JUDGE CHESTNUT: I think we are all doing a good
4 job here.

5 Yes, it is addressed in the metrics but that
6 doesn't mean you can't come to an understanding with a
7 particular CLEC.

8 MR. PANNER: As a practical matter that would raise
9 a lot of problems. There are people here who could
10 address that if you want to hear from them. I think
11 there was a lot in the record in New York. This general
12 issue was discussed quite a bit. So I don't think
13 Verizon feels that it needs to build more of a record on
14 this.

15 But I think in terms of framing the issue, in terms
16 of the legal disagreement between the parties, Verizon's
17 position is that especially when it comes to matters of
18 procedure that need to be established on a generic basis,
19 for instance, a manual loop qualification process where
20 it may be of interest to multiple parties, that the
21 obligations that are established on a generic basis that
22 embody parity treatment between Verizon's retail
23 operation and the CLEC's operation, that those are the
24 obligations that apply to us and they don't need to be --
25 you know, whether we could agree in exchange for

1 something else is not the issue at this point. The issue
2 is should we be forced to adopt a shorter interval
3 specifically for COVAD.

4 JUDGE CHESTNUT: Well, that seems like a good
5 argument to me, Mr. Hansel. What is your response?

6 MR. HANSEL: Well, there are two responses. In
7 this particular case we are asking for a shorter interval
8 because in our view we believe that Verizon can meet that
9 interval and there is no reason why we should not be able
10 to address that issue in an interconnection agreement.

11 JUDGE CHESTNUT: Wouldn't the proper way to do that
12 be through reconsideration of the performance metrics?
13 Isn't there a process? I forget what it's called.

14 MR. ANGSTREICH: There is, Your Honor. There is a
15 Pennsylvania Carrier Working Group that was established a
16 while ago. This was reiterated in the December, 2002,
17 order adopting the current version of the performance
18 metrics.

19 JUDGE CHESTNUT: If you feel they can do better,
20 that is the way to do it.

21 MR. HANSEL: If I could make one more point, there
22 are some cases where we believe that a shorter interval
23 should apply because in our view Verizon can meet it and
24 they haven't shown otherwise. And in other cases we are
25 not asking for a shorter interval. Often we are asking

1 for the exact same interval that's in the performance
2 plan and Verizon still refuses to allow us to incorporate
3 it into the interconnection agreement.

4 JUDGE CHESTNUT: Well, what's the problem with
5 that? If it is already in the metrics why wouldn't you?

6 MR. PANNER: There are a couple of basic problems.
7 The language COVAD proposed does not contain what is in
8 the metrics. The metrics have a number of rules. For
9 instance, you said the basic rule is 48 hours 95 percent
10 performance. First of all, COVAD proposed a different
11 interval. But even where they have proposed intervals
12 that are the same, they have not included the rules.
13 They have not properly embodied the Commission's
14 resolution of the issue in the agreement language. So
15 that's the first problem.

16 And the second problem is that because these are
17 dealt with on a generic basis and because there is a
18 carrier working group that could adopt a different metric
19 in the future, to reproduce them in the agreement simply
20 creates a problem that if the metrics should change on a
21 generic basis the agreement would then be out of sync.

22 JUDGE CHESTNUT: I don't see why you couldn't have
23 language reflecting that in your agreement. You could
24 just say this is what the standards are, you know,
25 subject to whatever the process is and if it is changed

1 it will reflect that. I don't see the problem.

2 MR. ANGSTREICH: We have asked COVAD if that is
3 what they want.

4 JUDGE CHESTNUT: Well, they don't want it,
5 obviously.

6 MR. ANGSTREICH: If all we are doing is
7 photocopying the performance measurements and saying
8 that, you know, in the event things change replace this
9 photocopy with a different photocopy, it is hard to see
10 what the need is for --

11 JUDGE CHESTNUT: Well, because I know from my own
12 experience that change of law provisions are often
13 subject to differing viewpoints, frankly.

14 I have to say, Mr. Hansel, you might want to think
15 about proposing language.

16 MR. HANSEL: We are in the process of doing that,
17 Your Honor.

18 WITNESS EVANS: I was going to add a sound bite on
19 that. Where the parties are -- as you said, this is a
20 negotiation -- is we are stepping back and taking a look
21 at all the interval issues and seeing if we can have
22 language that talks about intervals for line sharing and
23 loops and a whole bunch of other things so that we have
24 something that addresses it more broadly and satisfies
25 both parties.

1 JUDGE CHESTNUT: Okay. Let's move on, then. Issue
2 38, 39. Is this the cable augmentation?

3 WITNESS CLANCY: No. It is more than that now.

4 JUDGE CHESTNUT: Because I know that this was
5 addressed.

6 MR. PANNER: We are going to defer this for now.

7 WITNESS CLANCY: Verizon is committed to filing a
8 tariff I believe February 28th --

9 WITNESS CLAYTON: Yes.

10 JUDGE CHESTNUT: I'm sorry. Could you identify
11 yourself?

12 WITNESS CLAYTON: Rosemarie Clayton.

13 JUDGE CHESTNUT: And I know this is a little out of
14 order here, but I would like, Mr. Hansel, when you get a
15 chance, for you to e-mail me with each witness' job
16 title.

17 MR. HANSEL: Certainly.

18 JUDGE CHESTNUT: Okay. Ms. Clayton, Verizon is
19 going to be filing a tariff?

20 WITNESS CLAYTON: We are talking the collocation
21 interval issue.

22 MR. ANGSTREICH: The next to the last issue on the
23 first page, Your Honor.

24 JUDGE CHESTNUT: Issues 38, 39.

25 MR. ANGSTREICH: That's correct.

1 WITNESS CLAYTON: With this issue we have spent a
2 significant amount of time negotiating intervals with
3 several CLECs, including COVAD, and have reached an
4 agreement in principle. It is a global settlement. We
5 are awaiting --

6 JUDGE CHESTNUT: I'm sorry. How do you define
7 global?

8 WITNESS CLAYTON: There are a number of CLECs who
9 are party to an agreement. We are all agreeing on the
10 same terms and conditions and timeframes.

11 JUDGE CHESTNUT: Did this arise out of the
12 collocation arbitration?

13 WITNESS CLAYTON: I can't answer that.

14 WITNESS CLANCY: It arose out of previous
15 arbitration cases in this state, New York state,
16 Massachusetts and Maryland. Each state issued a ruling
17 with different timeframes. So both Verizon and the CLECs
18 were faced with an operational dilemma in that in every
19 state they had to operate differently in terms of the
20 same product, collocation. So what New York ruled was to
21 create a collaborative in New York state to have CLECs --
22 not only the CLECs involved in the arbitration but all
23 the CLECs -- come together and decide what is appropriate
24 not only for augments but for full collocation, brand new
25 collocation.

1 JUDGE CHESTNUT: When you said global, you are
2 talking about all collocation issues or a lot of
3 collocation issues?

4 WITNESS CLAYTON: There are a number of collocation
5 issues and the interval is one of them that we are
6 specifically talking about here.

7 JUDGE CHESTNUT: Interval for augments --

8 MR. PANNER: I think global refers to the -- I'm
9 sorry, Your Honor.

10 JUDGE CHESTNUT: Mr. Panner, go ahead.

11 MR. PANNER: I was just going to try to clarify. I
12 may be wrong, but I think global refers to the fact that
13 it covers the industry.

14 JUDGE CHESTNUT: Okay.

15 WITNESS CLANCY: The entire Verizon footprint.

16 WITNESS EVANS: Right. All CLECs in all of their
17 footprint, all of their states.

18 JUDGE CHESTNUT: Well, I certainly would encourage
19 that. I think it makes sense for everybody, frankly.

20 So you are saying that this issue is going to be
21 addressed in the context of the tariff you are going to
22 file?

23 WITNESS CLAYTON: It will be as far as the interval
24 that COVAD is interested in. As far as the signing of
25 the global settlement by all the CLECs, we are still

1 waiting for one or two parties. We have worked on it as
2 late as this morning and we are still trying to get them
3 to sign the agreement.

4 JUDGE CHESTNUT: I know from my own experience that
5 a lot of times there is an agreement that Verizon will
6 file a tariff and then there are a lot of issues raised
7 with the tariff they file. I hope that doesn't happen
8 here.

9 WITNESS CLANCY: Part of the settlement is that the
10 parties agree to support the tariff filings.

11 JUDGE CHESTNUT: Okay. So this issue goes away.

12 WITNESS EVANS: I'm sorry. Maybe I missed it. So
13 specifically in Pennsylvania Verizon is doing what?

14 WITNESS CLAYTON: We are filing a tariff with the
15 agreed to interval including the terms and conditions for
16 meeting that specific interval and the tariff will be
17 filed on February 28th with an effective date of March
18 3rd.

19 JUDGE CHESTNUT: Okay. And that tariff will
20 address all intervals?

21 WITNESS CLAYTON: It will address the collocation
22 augment interval and terms and conditions.

23 WITNESS CLANCY: It may restate the interval for
24 full collocation as well.

25 JUDGE CHESTNUT: Well, I don't know if you can

1 address this in the context of that, but I am still on
2 the service list for getting the quarterly reports for
3 all the CLECs and Verizon for collocation provisions and
4 I would like to get myself taken off of it.

5 MR. PANNER: It will cost you.

6 JUDGE CHESTNUT: Okay. I think that issue has been
7 addressed, then. It is going to be addressed in the
8 tariff that is going to be filed.

9 Advanced services. I mean, you are joking with
10 this issue, aren't you? Issue 23.

11 MR. ANGSTREICH: I will let COVAD respond.

12 JUDGE CHESTNUT: That to me seems like something
13 you should just agree to.

14 Mr. Hansel?

15 MR. HANSEL: I will let Valerie address this issue.

16 WITNESS EVANS: As a provider of services
17 nationwide we obviously have to meet industry standards.
18 For Verizon to impose its own standards, I think you
19 heard before in the dark fiber scenario Verizon, you
20 know, develops and does things for itself, and that's
21 fine. But it should not impose those standards, those,
22 you know, guidelines, whatever, that it wants to impose
23 on its customers for its services to in this case COVAD.
24 So this issue comes down to the fact -- and, again, COVAD
25 is willing and heartily agrees to have the ANSI

1 standards, which are nationwide industry standards. They
2 have been developed by companies that involve a lot of
3 interaction and forums and stuff. Verizon is a party to
4 them. We are a party to them. They are industry-wide
5 standards. That is how we have to operate. It's like
6 buying a phone. You know that you can just go home,
7 stick your phone in the wall and it's going to work.
8 Verizon in this case wants to come up with a standard for
9 its own phone and wants us to be able to say that we are
10 willing to live up to their standard. And we don't agree
11 with that.

12 JUDGE CHESTNUT: I know I've seen this issue
13 before. Industry definitions versus Verizon definitions.

14 WITNESS EVANS: Yes.

15 JUDGE CHESTNUT: Why wouldn't you use the industry
16 definitions.

17 WITNESS WHITE: There are two things here. The
18 industry bodies work on the actual equipment and the
19 modulation schemes of how that equipment works and
20 establish those standards. Ours go the next step, and
21 that is the definition of the loop and how those
22 standards would apply to the loop. So we combine the
23 two. It's an enhancement to it. You know, they will say
24 a certain technology works on that loop. We will define
25 the loop characteristics and the types of designs you

1 will see in the Verizon territory.

2 JUDGE CHESTNUT: Am I hearing you saying that your
3 standards are not inconsistent with industry standards?

4 WITNESS WHITE: No, not at all.

5 JUDGE CHESTNUT: But they are extended.

6 WITNESS WHITE: They are extended.

7 JUDGE CHESTNUT: What's wrong with that?

8 WITNESS EVANS: I think that the issue is that
9 Verizon when they say they take the standards to a
10 different level they are talking about what engineering
11 guidelines they define for the products and services that
12 they want to sell.

13 For example, let's say DSL. Let's use that as an
14 example. There was an industry view by Verizon they only
15 wanted to offer DSL on loops of like 13,000 feet. And
16 that's okay if that is the standard that they want to
17 set. But that should not restrict me from wanting to put
18 DSL on a customer that I want to serve up to, say, 18,000
19 feet or 15,000 feet if I think it will work. It's like
20 we said before, it is the risk that I am willing to take
21 to provide services to my customers.

22 Verizon, which has millions of customers so if they
23 lose 20 to 30 percent of their customers because they set
24 their standards and it restricts their market, so what.
25 I fight for every customer I get. So I want to put every

1 customer that I can in service. And if Verizon has an
2 industry standard that they have defined for themselves
3 for their loops for their products, then fine. Let it
4 apply to their products. But they should not apply those
5 to what -- I want to take the loop and get it to work up
6 to an industry standard that will meet the service that
7 the customer is asking for. Verizon wants to say, well,
8 it should do this, this, this and this. That is what
9 they offer their customers and that is their choice. But
10 they should not impose that choice on my customers.

11 JUDGE CHESTNUT: But isn't Verizon concerned with
12 the integrity of the system?

13 WITNESS EVANS: I am concerned as well. I am just
14 as equally concerned, Your Honor, because if I couldn't
15 get it to work what is my point? I am dealing with the
16 customer. They are not going to pay me. I've got to pay
17 them for a loop I can't use. It makes no sense to me to
18 order something that won't work. I am just as concerned
19 if not more concerned about the integrity of the loop.

20 Again, I am okay with Verizon identifying for
21 itself industry standards or standards that it defines as
22 industry for their products and services. But it's not
23 right for Verizon to impose those on other competitors.

24 They control the outside plant network. We don't
25 have a choice on that. But they should then not be able

1 to say and because we control it these are the only
2 things that can go on it because that is not the way the
3 telecom act was designed. The telecom act was, okay,
4 industry standards will dictate what products and
5 services competitors can offer and if you ILECS don't
6 want to offer it so be it, but you should not be
7 restricting competitors from offering what is out there.

8 So that is why we have a difference. Verizon
9 couches it as all we do is take the industry standards and
10 make them apply to more detailed stuff. No. They define
11 for themselves engineering-wise products and services.

12 WITNESS WHITE: There is a total misrepresentation
13 in what she just said. We have loop products that we say
14 is an unloaded copper pair 18,000 feet and if you would
15 like to order an ADSL family of products please put it on
16 there and we will manage it as an ADSL product. When we
17 were offering 12,000 feet or 15,000 feet -- our retail
18 has nothing to do with the products out there. We have
19 non-conforming ones that go way beyond on longer loops.
20 We have the products so they can put out there whatever
21 they want.

22 But we have a responsibility to manage spectrum.
23 Every technology has a certain amount of noise with it.
24 We have to know if it is an HDSL signal or if it's an
25 ISDN signal or if it's an ADS signal or others. And by

1 ordering the proper loop types we manage those. We don't
2 restrict them from ordering it. They can order it. No
3 problem. But if they order a particular technology, if
4 they order ADSL and we see that we have a T-1 there we
5 say, oh, no, we know there is going to be a problem and
6 we move the service so it won't have a problem. So we do
7 we have a responsibility from a spectrum management
8 standpoint and we have identified loop types and kinds
9 that allow them to do whatever they want but we need to
10 have it labeled and identified. And it certainly is not
11 limited to what we provide. They do many products that
12 Verizon hasn't even put out there and we have loop
13 products for them to do it on.

14 WITNESS CLAYTON: The technical references were
15 written specifically to address unbundled loops. They
16 are not for our retail market at all. And the technical
17 references are also prepared by Verizon's representative
18 who sits on the standards body and attends all of the
19 meetings and is part of the decision and policymaking at
20 those meetings. So we are in compliance with the
21 industry standards. Again, it just further defines what
22 we are providing to our CLEC customers.

23 MR. ANGSTREICH: If I could ask a clarifying
24 question, if we look at one of the specific changes not
25 only at page ten of attachment A, attached to our

1 response, section 3.2, which is the ADSL loop --

2 WITNESS EVANS: One second. Let me get to where
3 you are.

4 MR. ANGSTREICH: Sure.

5 WITNESS EVANS: I'm sorry. You are on page ten of
6 3.2?

7 MR. ANGSTREICH: Page ten carrying over to page 11
8 of 3.2.

9 WITNESS EVANS: Okay.

10 MR. ANGSTREICH: There COVAD proposed to strike
11 through language that refers to certain power spectral
12 density masks as described in a Verizon technical
13 document. I guess the question is what products is the
14 reference -- you made a representation that Verizon is
15 trying to prevent COVAD from providing services to its
16 customers. My question is it is not clear to me from
17 your presentation what products is COVAD being prevented
18 from providing to its customers by the inclusion of the
19 documents that are referenced here and that COVAD
20 proposes to stike out.

21 WITNESS EVANS: Are you asking about a specific
22 instance?

23 MR. ANGSTREICH: You could pick -- COVAD has
24 proposed to strike certain language from what Verizon has
25 proposed.

1 WITNESS EVANS: Right.

2 MR. ANGSTREICH: I understood you to represent that
3 you wanted to strike out this language because it stops
4 COVAD from providing certain services to its customers.
5 I don't understand what those services are. I am trying
6 to understand that.

7 WITNESS EVANS: Well, I mean, we have had instances
8 -- I'm not in the provisioning process. Our folks that
9 work at the detail level deal with when they, you know,
10 run into Verizon saying you can't put this circuit on
11 this loop because it doesn't meet a certain loss and then
12 we go into a debate. I mean, John has been involved with
13 those so I don't want to sit here and flesh all those
14 out.

15 But I think what I want to go back to is
16 specifically question 23, because I think we are kind of
17 bleeding into two issues, which is fine. The question on
18 the table is what technical references should be used for
19 the definition of ISDN, ADSL and HDSL. Does Verizon
20 agree that there are industry standards defining ISDN,
21 ADSL and HDSL?

22 WITNESS CLAYTON: We do agree that there are
23 industry standards that define those. However, the
24 Verizon TRs further define them for not only the CLECs
25 but for our techs as well.

1 WITNESS EVANS: So you felt the need for your
2 technicians to define those.

3 WITNESS CLAYTON: Wait a minute. Let me stop you
4 there. Not only for our own techs but there are certain
5 CLECs within our footprint that also require Verizon
6 technical references to be in their interconnection
7 agreements. One major voice provider has gone as far as
8 asking that not even the just reference but our entire TR
9 be included in their ICA.

10 WITNESS EVANS: That is that particular CLEC's
11 request. It sounds like you have been able to
12 accommodate where someone wanted it. If a company such
13 as COVAD says we don't want it because we feel that the
14 technical references are industry standards nationwide
15 and we are agreeing to meet those, then why does Verizon
16 have a problem with saying, okay, fine, as long as you
17 meet those technical standards? And we agree that those
18 are technical standards. You said they are the same
19 technical standards. Why is Verizon trying to add an
20 additional --

21 WITNESS WHITE: I didn't say they were the same.

22 WITNESS EVANS: No, I didn't say they were the
23 same.

24 WITNESS WHITE: I said one was a technical
25 reference for a technology and the electronics and the

1 modulation and the power spectrum density of that
2 particular technology. Our spec looks at that and then
3 describes and itemizes the loop and what loops we provide
4 and how we have designed those loops and how you can
5 order to get those loops to put that technology on there
6 and labeling that we have done.

7 WITNESS EVANS: Again, I don't know enough about
8 the CLEC that you are speaking of, what services they
9 offer. Perhaps for the products and services they offer
10 those additional criteria in your tech reference met
11 their need. But our concern is -- and, again, we have
12 been in scenarios in the past several years where
13 Verizon's perception as to whether or not they should be
14 able to put something on a particular loop was in debate.
15 And we have gone through numerous scenarios of these.

16 MR. PANNER: Can you give an example of that within
17 the last two years?

18 WITNESS EVANS: Sure. The one that comes to mind
19 -- and, again, I don't deal with it daily. They only
20 bubble up to me if they have been around for a long time
21 or to a higher degree. The one that comes to mind is in
22 Verizon West. I believe we had the spectrum management.

23 MR. PANNER: Verizon West in Pennsylvania?

24 WITNESS EVANS: Is Verizon West in Pennsylvania?

25 MR. PANNER: I'm asking you. Are you talking about

1 in Pennsylvania?

2 WITNESS EVANS: I don't know. These are loops in
3 several states. I mean, again, this is going back like
4 two or three years -- one-and-a-half to two years.

5 And the scenario that was involved was Verizon felt
6 that they could not put our services on a loop because
7 the loop had a certain measurement. And it said that by
8 their specs that it should not -- the services should not
9 be compatible with that loop. And we fought them and we
10 won. And I think you guys changed the standard or
11 changed the...

12 WITNESS CLANCY: Insertion loss.

13 WITNESS EVANS: Thank you.

14 WITNESS CLANCY: The insertion loss in their
15 documented spec was prohibitive in providing service.

16 WITNESS CLAYTON: But there was a reason for that.

17 WITNESS WHITE: I don't want to say we lost. There
18 are standards, state standards, for voice service, how
19 many dB of loss in voice service. So we would do
20 calculations to figure out the impact. Because we cannot
21 have voice service impact.

22 We had used a very strict build standard as opposed
23 to a maintenance standard. We agreed to move to the
24 maintenance standard for measurement as opposed to the
25 design standard. But we were not creating the standards.

1 These were state mandated voice parameters for dB loss.

2 WITNESS CLAYTON: And if we violated those
3 standards we are at risk for financial penalties. So
4 that was the concern there.

5 WITNESS CLANCY: The issue here, Your Honor, is I
6 think Mr. Angstreich was pointing to language and the
7 language that we were looking to strike. What he did not
8 say or point Valerie to is the language that we are
9 leaving in, which is the industry standard. So the
10 reference to the industry standard is what we want to use
11 to provide products that comply with those industry
12 standards. That is the essentially issue.

13 MR. ANGSTREICH: If I could clarify this issue just
14 for the purpose of closing up the record on this, I think
15 Ms. Evans is right that we are shading between two
16 issues. One is I believe it is still called issue 27 in
17 this state, which has to do with the services that COVAD
18 provides on the loops that it orders from Verizon. And
19 issue 23, which defines what it means to order a loop of
20 a certain type.

21 Mr. White, can speak further to this and Ms.
22 Clayton as well. But the definitions say if COVAD orders
23 an ADSL loop this is what Verizon will provide you, a
24 loop that meets both a certain industry standard and a
25 loop that meets a certain Verizon technical standard,

1 which as Mr. White explained the application of the
2 industry standards to the various loop types. So what
3 this issue is about is when COVAD puts in an order for a
4 product of a certain type what is it going to get, what
5 type of loop is it going to get, not what kind of
6 services it can then run over that particular loop. That
7 is a separate issue.

8 JUDGE CHESTNUT: Well, I'm glad you said that
9 because that was the way I was looking at it. I don't
10 understand why there is disagreement on issue 23.

11 WITNESS EVANS: But I think it is also a matter of
12 the application of it. What Verizon is saying is that if
13 I want to order something and it does not feel that my
14 service will work on that --

15 JUDGE CHESTNUT: That is a whole different issue,
16 isn't it?

17 MR. ANGSTREICH: That is issue 27, Your Honor.

18 JUDGE CHESTNUT: Let's talk about issue 23. I'm a
19 simple person, you know. As long as you have the same
20 definition what difference does it make?

21 WITNESS EVANS: We agree that the technical
22 reference for ISDN, ADSL and HDSL are industry standards.
23 We absolutely agree.

24 JUDGE CHESTNUT: Yes. What's wrong with that?

25 WITNESS CLAYTON: We agree they are industry

1 standards but we also agree that there are Verizon
2 technical references that --

3 JUDGE CHESTNUT: So put a sentence in there that
4 you agree --

5 MR. PANNER: That is what we struck.

6 WITNESS CLANCY: That is the one we struck out.

7 WITNESS EVANS: And I think the concern is, Your
8 Honor, maybe we can come up with language that says
9 Verizon wants to apply it but they can't limit us from
10 applying, you know --

11 MR. ANGSTREICH: Your Honor, this is why I'm still
12 confused. If Verizon is saying if you put in an order
13 for a certain loop type we are going to give you access
14 to a loop that meets the industry standards as applied to
15 our loops in the industry technical documents. I don't
16 understand how that is limiting. I have heard this claim
17 repeatedly. I honestly don't understand it.

18 JUDGE CHESTNUT: Wait. If COVAD wants an ADSL loop
19 or a loop that can support that service why is there any
20 question about what the specifications have to be for
21 that? There are industry standards that define it.
22 Shouldn't they know what they are ordering and shouldn't
23 you know what you are providing?

24 MR. PANNER: The language is intended to tell them
25 what we are providing. The language tells them what we

1 are providing.

2 WITNESS CLANCY: If it was within the industry
3 standard why would I need two documents?

4 JUDGE CHESTNUT: I think you are the one that says
5 that things should be set out even if it is addressed
6 someplace else. I don't see why you don't put in
7 there a reference to a document that you both agree to.

8 MR. HANSEL: I guess that is the point. We have
9 both agreed to industry standards but then Verizon is
10 trying to add or limit -- I mean, who knows what their
11 technical references say and who has control over what
12 they say. But they are limiting the industry standard
13 based on their technical reference.

14 WITNESS CLANCY: The technical reference can be
15 changed at any time without going to an industry standard
16 body and voting on it. Verizon has control of the
17 document. They could do whatever they want with the
18 document. We could sign this statement today and
19 tomorrow they could change the document.

20 JUDGE CHESTNUT: So what if they change the
21 technical reference so long as the industry standard is
22 still the same?

23 WITNESS EVANS: Well, I think we need to be clear.
24 There are two things when we talk about technical
25 references. One is just defining stuff. And that's

1 great if Verizon just wants to define stuff. The concern
2 is how Verizon applies those definitions and that is
3 where we get into discussions with their engineering
4 folks about the application of a particular standard. If
5 we want the standard to be lower or higher, they are
6 going to go back to their technical reference and we are
7 saying that is your thing. That is your own thing you
8 came up with that you want to use internally for your
9 circuits.

10 JUDGE CHESTNUT: Ms. Evans, you said if you want to
11 go lower or higher. Aren't you saying you want to
12 deviate from the industry standard then?

13 WITNESS EVANS: No, no, no. Let me be very clear.
14 COVAD will never vary from industry standards. But
15 Verizon's interpretation, although they are saying all we
16 do with our technical reference is we make the industry
17 standard more clear, we make it more specific, by
18 definition it means they are defining something to a
19 particular view that they have.

20 Let's just flip it. Previously Verizon's arguments
21 in a lot of issues were I've got to provide this for a
22 lot of CLECs. I've got to do these things and so I have
23 to have some way of operating and designing my network to
24 meet everyone's needs. Well, so does COVAD. So when I
25 place orders or I sell to customers, I am selling

1 nationwide and I should not have to have something
2 specifically from Verizon that says, okay, customer, you
3 can get it, it meets the industry standard, but wait a
4 minute, let's see if it meets Verizon's standards.

5 WITNESS CLAYTON: If I could set the record
6 straight on this, first of all, the technical references
7 are available on the CLEC web site. You have access to
8 them. You always have. We don't hide what is in our
9 technical standards.

10 WITNESS EVANS: That's fine.

11 WITNESS CLAYTON: The standards are updated if and
12 when the industry standards change as well to be sure
13 that we are in compliance with the industry standards.

14 JUDGE CHESTNUT: But that is not the only time you
15 make changes to it, is it?

16 WITNESS CLAYTON: No. In some cases, again, the
17 technical references were built to accommodate both the
18 CLEC market and our internal workforces. If an industry
19 standard comes out -- you've seen an industry standard.
20 Most often it is filled with complex charts and
21 algorithms. We simplify those for our techs in the
22 field. We don't want them to have to interpret 20
23 different charts to provide one unbundled loop to a CLEC.
24 We simply give them the characteristics of a loop that
25 they should be supplying to the CLEC.

1 WITNESS WHITE: And it is additional information.
2 The technical reference is talking about how ISDN works.
3 Our technical reference -- the industry reference. Our
4 technical reference is going to say this piece of copper
5 can only have this much capacitance, is this much leaks
6 to ground and tells about the physical characteristics of
7 the piece of copper. That is not defined in the industry
8 standards. So it describes the physical plant.

9 JUDGE CHESTNUT: Ms. Evans, Mr. Hansel -- or
10 Mr. Clancy, for that matter -- wouldn't it benefit you to
11 have -- I mean, obviously what you seek is some kind of
12 predictability so that when you order something you know
13 what you are getting. Wouldn't it help to have more
14 specific references, whether they are an industry
15 standard or Bell's technical reference but then have some
16 provision in there that if there are changes Verizon will
17 communicate them to you?

18 MR. HANSEL: An industry standard -- an advanced
19 service is deemed acceptable if it meets industry
20 standards. That is the premise we need to go on. And
21 for Verizon to then say, okay, if it meets industry
22 standards and then our own standards, we are sitting here
23 in this arbitration and that is like saying we will
24 provision dark fiber pursuant to applicable law and
25 pursuant to our interpretation and go to our brief and

1 see what it says.

2 MR. PANNER: Your Honor, that is just not accurate.
3 The issue here is simply the description of the loop we
4 are providing, not the service that is provided over the
5 loop. It is the loop. And what we are saying is that
6 the loop that will be provided meets the industry
7 standard and our tech reference.

8 JUDGE CHESTNUT: Why is that a problem?

9 WITNESS CLANCY: To answer your previous question,
10 we talked about insertion losses. That is one issue that
11 came up. There were other issues on where Verizon West
12 had certain standards on how they deployed cabling in the
13 central office which was more restrictive than it is in
14 Verizon East which had to be resolved. But that was a
15 standard and the reason they were going to do it is
16 because it was a standard written by them and documented
17 by them. It was CAT 5 switchboard cable. So that would
18 be more costly for COVAD to enter the market for line
19 sharing, for example, because we would have to deploy the
20 switchboard cabling which was proven in another
21 collaborative to be not necessary or not required. So if
22 we are going to move toward including both documents
23 because both documents give a more complete description,
24 then Verizon would have to open that TR up to negotiation
25 with our engineers.

1 WITNESS EVANS: That's right. And, Your Honor,
2 again, I think we are going to beat this one to death.
3 The issue here is that Verizon for its own purposes needs
4 to define when their technicians and their engineering
5 folks deliver loops what they feel it should live up to.
6 And that is great for their purposes. However, that is
7 more of their internal limitations that they want to
8 place on loops that they provide to their customers.

9 If a loop that I am ordering meets the industry
10 standards and if Verizon claims that all they are doing
11 is telling me more about the loop, the thing that we need
12 to be clear on is that Verizon is binding me to saying
13 you can't get that loop because it's not going to meet
14 the standards that we think it should meet.

15 It would be great if Verizon just said for
16 informational purposes, oh, by the way this is what the
17 loop is. But because they are putting it in this
18 interconnection agreement then they are trying to bind me
19 to their technical reference.

20 My suggestion would be since we both agree on the
21 industry standard, fine. And then if you want to have a
22 technical reference that I can look at, that's great.
23 But don't bind me to your own interpretation of an
24 industry standard. That is exactly, as you all agreed,
25 what you are doing. You are taking the industry standard

1 and sticking it in and making it your own thing. Bind my
2 to the industry standard. No problem there. But you
3 cannot bind me to something that your engineering folks
4 determined on their own and I have no input into it and
5 you want to bind me to it. That is why we have a
6 problem. And no other ILEC in the country does this, by
7 the way.

8 MR. ANGSTREICH: Your Honor, I think we have made
9 our position clear on what we think these documents
10 define. Given that they are available on the web site
11 and COVAD seems to have a strong objection to them,
12 again, for our purposes since it has not been made clear
13 to us, is there anything in the existing technical
14 references that you feel denies you a loop to which you
15 should be entitled to under the industry standards?

16 MR. PANNER: Well, now you are on issue 27.

17 MR. PANNER: No, no.

18 MR. ANGSTREICH: We say if you order an ADSL loop
19 you are going to get a loop that looks like this. It is
20 going to meet these things and it's going to have these
21 characteristics which are set forth in the Verizon
22 technical document. What it sounds like Ms. Evans is
23 saying is that there are loops out there -- that
24 basically Verizon is misapplying the industry standards.
25 If the industry standard says this is the field of loops

1 but Verizon is only carving out this narrow field of
2 loops, the question is what kind of loop can't you get as
3 a result of --

4 WITNESS EVANS: No, no, no. Stop. You are missing
5 the scenario. The scenario is not, oh, great, Verizon
6 delivers the ISDN loop and this looks underneath. It is
7 when I go to place an order for ISDN and Verizon says you
8 can't have it, that loop that you're trying to get won't
9 meet the technical reference. That is the scenario.
10 It's not when you deliver it to me. It's when I request
11 the service they are going to use -- their technicians
12 use a technical reference to say, oh, no, that loop you
13 ordered, COVAD, it ain't meeting our technical reference.
14 That is when they use the technical reference. The
15 technicians use the technical reference for testing to
16 ensure that the loop meets certain parameters. Their
17 engineers use it to make sure that the loop will meet
18 what I request. That is the scenario. Not once I get
19 it.

20 MR. PANNER: So you want the loop that doesn't meet
21 the standards?

22 WITNESS EVANS: Perhaps I do.

23 MR. ANGSTREICH: It's a honest question.

24 WITNESS CLANCY: This is the way I would answer
25 your question. Today right now with what I am ordering

1 from Verizon it's not preventing me from doing anything
2 that I am doing today. Today.

3 What is the term of this agreement?

4 MR. ANGSTREICH: I believe it is three years.

5 WITNESS CLANCY: In three years there could be
6 something that comes out that is in the industry standard
7 and is not in your TR. What do I do then?

8 WITNESS CLAYTON: You have an amendment to your
9 interconnection agreement.

10 WITNESS CLANCY: It only took us two years to get
11 here.

12 WITNESS EVANS: Why do I need to do that?

13 WITNESS WHITE: The issue is -- and I'm repeating
14 what I said in New York -- if you get a new technology
15 out there and we have to do spectrum management we may
16 need to have a different loop product to be able to
17 manage those and not cause interference in the field.

18 WITNESS CLANCY: There is an NRIC proposal that
19 takes you out of that game and makes us responsible for
20 that. So I don't think that is an issue going forward.

21 And the other thing that you talked about with the
22 TR is that your technicians use it to shoot trouble. I
23 haven't found one technician in the field that was
24 properly equipped to use your TR, that has the right test
25 equipment to actually test for power to density spectrum.

1 So, you know, unless we have a real thorny problem where
2 we are sending techs out and they are both equipped with
3 these power density time domain references, you know,
4 those kind of things don't happen.

5 WITNESS WHITE: Mr. Clancy, I will agree that you
6 have deployed industry standard products that meet the
7 power spectrum density and we have not had to deploy
8 technicians with that equipment to test your lines.
9 However, I have done it for others who have bought some
10 crazy equipment and they have had to disconnect it
11 because it caused significant problems.

12 WITNESS EVANS: Did they meet the industry
13 standards?

14 WITNESS WHITE: No.

15 WITNESS EVANS: Well, that's the problem.

16 JUDGE CHESTNUT: I don't understand this whole
17 discussion, frankly. If it meets the industry standards
18 you all agree it should be provided, the loop should
19 provided, right?

20 WITNESS WHITE: Right.

21 JUDGE CHESTNUT: Verizon, do you agree that if it
22 meets the industry standards but it doesn't comply with
23 your TR it should be provided?

24 WITNESS WHITE: There are different loop products
25 that we have --

1 JUDGE CHESTNUT: No. That's a yes or no.

2 WITNESS WHITE: We will have a loop product that is
3 defined in our TR that will be able to order any industry
4 standard, yes.

5 JUDGE CHESTNUT: The way I understood the testimony
6 is that your TRs are consistent with industry standards.

7 WITNESS WHITE: Yes.

8 JUDGE CHESTNUT: But you are saying it's not -- or
9 it may not be, I should say.

10 WITNESS EVANS: Your Honor, this is the way the
11 world really works. An industry standard comes out. It
12 may take Verizon months or years. There is no timeframe
13 on when they have to come up with a TR to meet what I
14 want. Our point is the minute the industry standard says
15 that we can order something on that loop and it meets
16 industry standards we should have access to it. We
17 should not be bound by Verizon then having to --

18 JUDGE CHESTNUT: That seems reasonable to me.

19 MR. ANGSTREICH: That is issue 27, Your Honor.

20 JUDGE CHESTNUT: Aren't you you talking about
21 ordering the loop?

22 MR. ANGSTREICH: If we are talking about the
23 definition of existing product types that is issue 23.
24 If we are talking about what services COVAD runs and what
25 information COVAD has to provide Verizon about the

1 services that it runs on the loops it obtains from
2 Verizon, that is issue 27. We are happy to talk about
3 issue 27 as well, but the language that has been stricken
4 has to do with the kind of loops that Verizon provides,
5 not the kind services.

6 MR. HANSEL: Hold on. Your question was to Valerie
7 and Mike what service can you name right now that doesn't
8 work over the loop. You basically brought 27 into the
9 issue.

10 WITNESS CLAYTON: And the reason for the question
11 is you keep throwing that up as the reason why our TRs
12 won't work for you. Our TRs don't restrict what you are
13 attempting to provide your end users.

14 MR. ANGSTREICH: I think Mr. Clancy said that.

15 WITNESS CLANCY: Today.

16 WITNESS EVANS: Today.

17 All right. Unfortunately in the real world -- we
18 are arguing over language but the real world is that the
19 technical references are tied to the products and
20 services that you all offer. That is what Mr. White was
21 saying before, that if you guys want to order something,
22 you know, we come up with a technical reference and we
23 come up with a product and service that will define that
24 for you. They are tied together. They are related
25 issues. The technical reference, as you said, is what

1 you use for your technicians --

2 WITNESS CLANCY: Let me put it in a historical
3 context. I have been working for COVAD since August of
4 1998.

5 JUDGE CHESTNUT: Is that a long time for this
6 industry?

7 WITNESS CLANCY: That's a long time. I was working
8 for the phone company longer.

9 When we first started doing business in New York
10 and Pennsylvania and some other states there was no
11 standalone ADSL product that was in their TR. There was
12 an ISDN product. Now, that caused problems for us
13 because when we ordered as ISDN because that is what was
14 in their TR the end result was we had a bunch of loops
15 that were actually misidentified in their inventory
16 management system. But that was the only loop they
17 offered and that is what they directed us to do. So the
18 end result was we had to go through a huge project of
19 converting those back to ADSL when ADSL became available.
20 The technical reference for ADSL was available. It was
21 an industry standard. It wasn't documented as a product
22 by Verizon.

23 Line sharing. In 1998 we were asking for line
24 sharing. Verizon didn't offer line sharing. Was it
25 technically feasible? Yes. Was there a reference to it

1 in their TR? No. Was it available for us to purchase?
2 No. And then it became a big legal issue --

3 JUDGE CHESTNUT: Are you saying you couldn't
4 purchase it because it wasn't in a TR and there was an
5 industry standard?

6 WITNESS CLANCY: There was an industry standard.
7 That is how they started selling their own --

8 WITNESS EVANS: And that's what we are trying to
9 clarify, Your Honor. In the real world the way Verizon
10 does this is you have the industry standard. That's
11 great but they don't care about that. Until they come up
12 with their own TR and their own definition of a product
13 and service you don't get it. You don't have access to
14 that service.

15 JUDGE CHESTNUT: Is that true, Ms. Clayton?

16 WITNESS CLAYTON: No, it's not.

17 WITNESS CLANCY: What I said was not true?

18 JUDGE CHESTNUT: No. I asked if what Ms. Evans
19 said was true.

20 WITNESS CLAYTON: I would say that is not true.

21 WITNESS EVANS: So in the scenario when as we
22 discussed in New York -- and this is on the record, as
23 the Judge identified, the big issue in this is tied to
24 your availability for products and services is you guys
25 agree that, yes, you have to have a product and service

1 defined before I can order it. Otherwise what do I
2 order? I just say put this in? You all know that the
3 first thing you all do when something comes out is you
4 say what? I got to work on a product and service. Once
5 we deploy that then you have access to it. It is very
6 similar to what we talked about before. And based on the
7 arbitration for dark fiber when the order came out it was
8 not until November you came out with a product and
9 service for dark fiber. Now I can order it. But in July
10 the order came out --

11 WITNESS WHITE: What are you talking about?

12 WITNESS EVANS: I am applying the fact that just
13 because --

14 WITNESS WHITE: We haven't had anything discussed
15 about that in the last three years.

16 WITNESS CLAYTON: I don't think you are providing
17 the whole story either. There are a lot of instances
18 where we hear that a CLEC is interested in a product. If
19 we have not specifically built something for it we
20 usually accommodate by allowing that order under another
21 loop type if we have to. Which is what happened in the
22 case that Mr. Clancy brought up himself.

23 WITNESS EVANS: Hold on a second. Time out. ADSL
24 technology came out in 1980 what. And we are talking
25 about in 1998 I am trying to order it and you don't have

1 a product for it.

2 WITNESS CLAYTON: You said it came out in 1980?
3 When did the telecom act come out?

4 WITNESS EVANS: 1980's.

5 WITNESS CLAYTON: When did the telecom act come
6 out?

7 WITNESS EVANS: 1996. And I am trying to order
8 something in 1998.

9 MR. ANGSTREICH: The parties have discussed this
10 issue amongst themselves and at least reached a
11 conceptual agreement. Mr. Clancy said today the existing
12 product types meet the products that COVAD wishes to
13 provide.

14 WITNESS CLANCY: That we order today.

15 MR. ANGSTREICH: That you order today.

16 WITNESS CLANCY: The issue is that within the three
17 years we might be into --

18 JUDGE CHESTNUT: But isn't that taken care of by
19 27?

20 MR. ANGSTREICH: Exactly. And I am sort of
21 updating Your Honor on the the status of the negotiations
22 with respect to 27. The parties -- and you will find
23 this in the discussion in the New York transcript -- the
24 parties have reached at least a conceptual agreement to
25 the extent there is a new product that comes out that

1 could work under one of the existing product types --

2 WITNESS WHITE: New service.

3 MR. ANGSTREICH: New service. Thank you for
4 correcting me.

5 A new service that comes out that could work under
6 one of the existing product types, COVAD could come to
7 Verizon and say we want to run this. Verizon will say
8 order it under this loop type. Verizon may say order it
9 under this this loop type for now and later for
10 management reasons we would like to manage it separately,
11 or they may say order it under this loop type forever.
12 And at least conceptually on a going forward basis for
13 technologies that don't exist today and are not creating
14 a problem, that is where the parties are as far as
15 discussions go.

16 JUDGE CHESTNUT: There are two issues here.

17 MR. ANGSTREICH: There are.

18 JUDGE CHESTNUT: There is Ms. Evans' issue and
19 Mr. Clancy's issue. Mr. Clancy's issue was the one that
20 said how about a new service they are going to provide
21 that does not fall under the definition and how you are
22 going to treat that. Ms. Evans' concern is loop ordering
23 where Verizon may not exercise good faith in providing
24 the loop requested even though there is an industry
25 standard because there may not be a technical reference.

1 WITNESS EVANS: Or the technical reference may be
2 different, may add more clarity from their view, on the
3 industry standard.

4 JUDGE CHESTNUT: I don't think there can be any
5 doubt that obviously industry standards apply to both
6 parties. I think there is also no doubt that Verizon's
7 technical references don't apply to COVAD. Do they?

8 WITNESS WHITE: If the loop has a 20 volt ground on
9 it, it doesn't meet our technical reference, it is
10 defective, if they don't want to use that we will give
11 them a loop that has a 20 volt ground. I would think
12 they would be helpful.

13 JUDGE CHESTNUT: Frankly I would too, but...

14 WITNESS EVANS: Your Honor, again, I just want to
15 clarify. I do not want them to use their specs when a
16 loop that I have asked service for, that I have
17 pre-qualified using their loop, when they do further
18 review they say it does not meet our technical reference.

19 WITNESS WHITE: You cite there can be mistakes in
20 the database. We have worked through technical issues in
21 the last four years. I don't see any on the table that
22 we are debating on a day-in and day-out basis. Somebody
23 may say there is a spare and they go out there and no,
24 there is no spare.

25 WITNESS EVANS: That's not the issue. You know

1 that's not the issue. A spare or not a spare is not the
2 issue.

3 We have a pre-qualification tool that you require
4 for us to use these products and services and we have
5 agreed to do that. Now you are saying, okay, but on top
6 of that I want to apply the technical reference document
7 to whether or not that loop that you just requested meets
8 Verizon's standards. So those do not apply to COVAD
9 ordering services. COVAD has just as vested interest as
10 you do in ordering something that will work. And I am
11 ordering a loop that meets the technical reference -- the
12 industry standard.

13 JUDGE CHESTNUT: Isn't that the whole point of the
14 qualification process?

15 WITNESS EVANS: The pre-qualification process is
16 for me to go in and I check each and every order to make
17 sure that it meets the pre-qualification industry
18 standards to support the products that I want to order.
19 You are absolutely right.

20 JUDGE CHESTNUT: Isn't that enough?

21 WITNESS WHITE: It should be enough. Unless there
22 is some mistake in the process.

23 WITNESS CLANCY: But those we resolve.

24 WITNESS WHITE: Those we resolve.

25 WITNESS EVANS: Yes, those we resolve. Absolutely.

1 But, again, that is not the technical reference issue.

2 JUDGE CHESTNUT: I thought that was the technical
3 reference issue.

4 WITNESS EVANS: Your Honor, let me just be clear.
5 The loops that are in the pre-qualification have not
6 necessarily been tested as a technical reference.
7 Verizon will even tell you that the way they did the
8 pre-qual was on a theoretical basis. They tested ten
9 percent of the loops, not 100 percent. When you order a
10 specific loop it does not meet the technical reference --
11 it may not meet the technical reference.

12 WITNESS WHITE: I have not seen any examples of
13 this. We have worked through technical problems. I
14 don't know what you're talking about. What have we
15 rejected because it does not meet a technical reference?

16 WITNESS EVANS: John, we have gone through five
17 years of being able to work through a lot of issues. I
18 cannot foresee the next three years. As you know,
19 technology changes. That's the world that we are in.

20 WITNESS WHITE: In the last two months of this year
21 are there any orders that we have said these don't meet
22 the technical references? I haven't seen that. I'm
23 missing something here.

24 WITNESS EVANS: John, I do not work, as you know,
25 in the day-to-day operations of our people.

1 WITNESS WHITE: I get the escalations. I get every
2 single -- if there is a conflict it comes to me and I
3 see, you know, did somebody make a mistake, who didn't do
4 something in California. And, you know, I hit them over
5 the head if they are wrong and I explain it if we are
6 right. I don't see anything here that you can point to
7 that is saying the technical reference is saying no. I
8 think it is helpful.

9 WITNESS EVANS: Our fear is that because the
10 pre-qualification tool, which what is we primarily use as
11 our basis, you know it has a lot of inaccuracies in it.

12 WITNESS WHITE: It is as good as the data in. But
13 it is useful. It's a very useful tool. It's not
14 perfect.

15 WITNESS EVANS: It's not perfect. It has a lot of
16 inaccuracies in it.

17 MR. PANNER: This has nothing to do -- the
18 pre-qualification tool cannot possibly have anything to
19 do with this issue as far as I know.

20 WITNESS EVANS: Well, does it or doesn't it?

21 MR. PANNER: You brought it up.

22 WITNESS EVANS: I used it because I want to live up
23 to the process that we agreed to, pre-qualification, and
24 I want to live up to industry standards. I don't need a
25 third requirement placed on --

1 MR. PANNER: I would be surprised if the word
2 pre-qualification appears in your brief on this issue,
3 but it's possible.

4 WITNESS EVANS: I'm sorry?

5 MR. PANNER: I just don't think that -- I mean,
6 know that you have started talking about
7 pre-qualification. I don't think this issue has anything
8 to do with the pre-qualification. I think the point that
9 we have made and you cannot contradict is that there is
10 no situation in which you have ordered a loop that met
11 the industry standards that was rejected because it
12 didn't meet the technical references. That just doesn't
13 happen.

14 JUDGE CHESTNUT: I think we have addressed this
15 enough. If you want to find instances where that has
16 happened, submit it.

17 MR. HANSEL: If I may make one clarifying point?

18 JUDGE CHESTNUT: Sure.

19 MR. HANSEL: Really the point is that if there is a
20 new advanced service that comes out in the next three
21 years we should be able to deploy it if it meets industry
22 standards.

23 JUDGE CHESTNUT: That to me seems obvious.

24 MR. HANSEL: But they are saying it needs to meet

25 TR X.

1 WITNESS CLAYTON: We will not hold up the
2 introduction of a new product simply for a technical
3 reference.

4 WITNESS EVANS: Then we will put language in there
5 that says that. That will solve this problem.

6 JUDGE CHESTNUT: Isn't that your position? If it
7 meets an industry standard but there may not be an
8 applicable TR you will provide it anyway.

9 WITNESS CLAYTON: We will still create a technical
10 reference.

11 JUDGE CHESTNUT: But that is their own business.
12 That shouldn't hold up them providing it.

13 MS. EVANS: That's right. We want language that
14 says that. Then we are fine.

15 MR. ANGSTREICH: That is not the language that
16 COVAD proposes.

17 JUDGE CHESTNUT: Why don't you work on that
18 language.

19 MR. PANNER: I think Mr. Clancy in New York
20 referred to violent disagreement. I think we have
21 violent agreement.

22 WITNESS EVANS: I think we have violent agreement.

23 MR. HANSEL: I wouldn't go that far.

24 JUDGE CHESTNUT: Now, we have addressed 27 too? I
25 thought Ms. Clayton had said if you request a service

1 that is not being provided you will find some way to give
2 it to them.

3 WITNESS CLAYTON: Yes. And we have done that. We
4 are doing that today.

5 MR. PANNER: I think we have addressed 27.

6 JUDGE CHESTNUT: That to me is a question of
7 language.

8 MR. HANSEL: Well, I think we have discussed issue
9 27 at length in New York, up to almost an hour. So
10 relying on that one sentence, I wouldn't do that. I
11 would go back to the record and see what was discussed.
12 It's not as simple as the fact that they will do it.
13 That was actually the longest issue that we talked about
14 in New York. So there is a lot there.

15 MR. ANGSTREICH: The parties are working on
16 language with respect to that issue.

17 JUDGE CHESTNUT: Okay.

18 MR. PANNER: I also think a great deal of the
19 discussion that happened in talking about issue 23 in
20 fact dealt with issues that dealt with issue 27 as Your
21 Honor pointed out. I think there is a record and the
22 parties are going to be prepared to the extent they can
23 come to an agreement on language to crystalize the issue.

24 JUDGE CHESTNUT: I've got to tell you, it just
25 seems to me that you should resolve this. Maybe I'm

1 missing the nuances but I don't think you are that far
2 apart in terms of protecting your own particular
3 interests here.

4 Let's move on to UNEs.

5 MR. HANSEL: I think the parties at this point are
6 comfortable, if you are, of course, on relying on the
7 record in the New York technical conference with respect
8 to the additional issues. If you have questions we could
9 try to answer them.

10 MR. PANNER: If you would like what we could do is
11 sort of go through and frame the issue and summarize what
12 it entails.

13 JUDGE CHESTNUT: Okay.

14 MR. PANNER: With respect to issue 34, this
15 actually is somewhat similar to issue 32, which we did
16 discuss a little bit more, the interval for provisioning
17 loops. Verizon's position is that our obligation is to
18 provide service at parity with what we do for our retail
19 operation or in accordance with the PUC's interval if
20 there is no retail analog. That is what we propose to do
21 and we think that those standard intervals should not be
22 altered in the interconnection agreement. And we have
23 talked a little bit about that.

24 JUDGE CHESTNUT: Mr. Hansel, do you want something
25 other than parity?

1 WITNESS EVANS: Well, Your Honor, the fact of the
2 matter is that at this point in the process the
3 arbitration process is really the only way that CLECs
4 have an opportunity to change the interval. Verizon has
5 never changed an interval on its own without a Commission
6 order or as a result of an arbitration or a 271 process.
7 And the 271 train has left. So COVAD is using this
8 opportunity to have Verizon revisit its provisioning
9 process as it relates to intervals because the intervals
10 are the key game in this process. Not only getting
11 access to it but when I get access to the loop is
12 critical.

13 We feel that Verizon -- we have been in this game
14 for many years now. Verizon should be raising the bar in
15 terms of delivering services to customers. If it does
16 not want to do it for its own customers, so be it. But
17 as competitive customers we rely completely on Verizon
18 delivering something in a timely fashion. The fact that
19 they want to extend that as long as they can, we are
20 looking for them to improve that so that we can deliver
21 the services faster to our customers.

22 WITNESS CLAYTON: I would like to set the record
23 straight on one thing you said, and that is in regards to
24 intervals. Verizon has voluntarily reduced intervals on
25 a number of our products, line sharing being probably the

1 largest most recently. About six commissions did come
2 out and order a shorter interval on line sharing.
3 Verizon willingly took the shorter interval and
4 implemented that across all of our states, east and west,
5 and we reduced the interval.

6 WITNESS EVANS: Can I just clarify that? That came
7 out as a result of the Massachusetts 271. If you want to
8 go back to Clair Beth Noga and have a discussion about --

9 JUDGE CHESTNUT: Ms. Evans, stop. Thank you.

10 MR. PANNER: I think the parties' positions are
11 clear. Tony, do you want to take the first shot at 19
12 through 25?

13 JUDGE CHESTNUT: Frankly, the way that 19 is
14 worded, how can anybody say anything other than yes?

15 MR. PANNER: We would argue that the wording is not
16 an accurate description of the issue. But Mr. Hansel
17 will no doubt clarify that.

18 MR. HANSEL: Well, COVAD basically asked Verizon to
19 provide UNE and UNE combinations to COVAD in instances
20 that it would provide it to itself. Specifically we are
21 talking about DS-1 loops where Verizon is requiring COVAD
22 to order a DS-1 loop as a retail special access service
23 and then convert it to a UNE rather than allowing COVAD
24 to order the circuit as an UNE. So clearly this is
25 discrimination. If they are provisioning it as a retail

1 service non-discrimination would require them to
2 provision it as a wholesale UNE as well.

3 JUDGE CHESTNUT: Frankly that seems so obvious.

4 MR. PANNER: It's not right, Your Honor. First of
5 all, I think the requirement to provide access to UNEs is
6 to provide access to an existing network. If a retail
7 customer comes to us we may have to do construction to
8 expand our network. That is not something that we are
9 required to do in order to provide unbundled network
10 elements. So the real difference here goes to where --
11 in fact Verizon does do certain things to relieve
12 capacity constraints and does do other things that in
13 fact enhance the network for purposes of unbundling. But
14 the question here is whether we are required to engage in
15 major construction activities in order to create the
16 network that we then unbundle. And that is not something
17 that we are required to do under law and we won't agree
18 to do it.

19 And the example of the DS-1 is actually a fair one.
20 If there is no facility between two points a retail
21 customer can order it and we will build it. I think it
22 is fairly extraordinary that under the telecom act they
23 can order it as a retail customer and then very quickly
24 convert it to an unbundled network element and start to
25 get the same service at an extremely attractive discount.

1 But that hardly suggests that we should have to construct
2 it simply to unbundle it. That is not what we are
3 required to do under the law. And that is really the
4 focus of this.

5 MR. HANSEL: That is the focus of Verizon's
6 discussion, but COVAD is not asking for major and new
7 construction. Clearly the acts that Verizon is
8 performing to provision this loop to its retail customers
9 are routine modifications. So we are not asking them to
10 build a superior network. We are not asking them to lay
11 new fiber. We are asking them to install, you know, a
12 card in a multiplexer. If that shelf has happened to run
13 out of cards go to the next shelf and just slip in a
14 card. Those are routine modifications that Verizon is
15 attempting to characterize as new and major construction.

16 MR. PANNER: Your Honor, there was some discussion
17 of this on the record in New York, but since Mr. Kelly is
18 here and can quickly try to explain it, I think that
19 might be useful.

20 JUDGE CHESTNUT: Okay.

21 WITNESS KELLY: I think in New York that the
22 discussion went to basically what's the difference
23 between provisioning and what's the difference between
24 construction. Basically provisioning is connecting those
25 elements that are in our inventory together. So it is

1 there and we will do cross-connects. But basically it is
2 putting things in our inventory together to make them
3 work.

4 MR. PANNER: And you will do that to unbundle
5 network elements?

6 WITNESS KELLY: Yes. What we don't do is something
7 that is not in our inventory, okay, construction, to be
8 required to go out and put something in to now have it
9 work.

10 JUDGE CHESTNUT: How about a putting in a new card?
11 Is that construction?

12 WITNESS WHITE: We will do a card. The shelf is
13 populated. We just have to push the card in and option
14 it. We do that.

15 WITNESS EVANS: But Your Honor, it's musical
16 chairs. If the shelf is full -- the shelf has 16 slots,
17 right? So I'm customer 17. If I want to put that loop
18 in for my customer they won't give it to me as an UNE.
19 If their customer wants it they will put the shelf in.
20 They want to hijack, they want to hold the loop hostage
21 until I'm willing to pay a special access rate as if I am
22 a retail customer. That is not what getting access to
23 UNEs is all about.

24 I am supposed to get access to the element and they
25 are supposed to do the same thing they would do for their

1 retail customers at the UNE rates. That is what UNEs are
2 all about. They are trying to hold those customers
3 hostage until I'm willing to pay them the freight.

4 Mr. Panner said I can convert it back to an UNE
5 after a short period of time. It is 90 days in one part
6 of the region, 60 days in another and 30 days in another
7 region. It's not consistent in the region and sometimes
8 it is as long as 90 days.

9 JUDGE CHESTNUT: I'm sorry, Ms. Evans. I don't
10 even begin to understand that point.

11 MR. HANSEL: Well, I think the point is if the
12 multiplexer has three shelves and there is one slot left
13 on the first shelf they will put it in. But if the shelf
14 is full and the task would involve putting the card in
15 the next shelf they won't do it. What he said was if
16 there is a shelf that has a spot they will put it in.
17 But they won't go to the next shelf. That has to be
18 ordered as retail and then the following positions you
19 can order as UNEs.

20 JUDGE CHESTNUT: Is that true?

21 WITNESS WHITE: No. No. If the shelf is there --
22 you have to understand that you have -- it's fiber cable
23 that comes in. It goes to an optical to electrical
24 converter, MUXes it down into DS-3 and then down into
25 DS-1. All of those are terminated on a shelf. So when

1 we come in and we put up the card and power it up we
2 install the equipment. If we have set up the bank and
3 have four shelves we will go from the next shelf to the
4 next shelf. All of those are in inventories to be able
5 to be provisioned.

6 But in order to put another shelf in -- it's not
7 installing a shelf in the typical sense. That's the easy
8 part. That's a shelf with a couple of bolts. All of
9 this has to be spliced and cabled and electronics added
10 behind it to go, again, from the fiber to the optical to
11 electrical connection. But might have to bring more
12 power in. There might not be space on the shelf. It is
13 a huge engineering effort.

14 JUDGE CHESTNUT: That doesn't sound like huge
15 engineering.

16 WITNESS WHITE: Well, it is engineering and
17 construction. It is expensive.

18 JUDGE CHESTNUT: Isn't it commonly done in your
19 industry?

20 THE WITNESS: It is building the network. Yes. We
21 commonly do it. But it is building new network.

22 MR. HANSEL: COVAD will rely on the record in New
23 York, but it's not COVAD's position that it is major
24 construction. It is a minor modification that is
25 routinely performed.

1 WITNESS EVANS: That Verizon does for itself and
2 for retail customers.

3 JUDGE CHESTNUT: I guess I don't understand this.
4 If you are at the end of the shelf and you order
5 something from Verizon and it requires a card and if
6 there is no space -- if the shelf is full how do you sell
7 it to them? Not as an UNE, right?

8 WITNESS WHITE: We have to go in and do a major
9 construction job. We have to go and have engineering go
10 there and look at the space, look at the power, look
11 where the cabling is going to go, turn up a new MUX --

12 JUDGE CHESTNUT: My question is are they selling it
13 as customer --

14 MR. PANNER: That is exactly the issue. The point
15 is if they come to us and we don't have that and we have
16 to build that shelf and do all the work that Mr. White
17 has described, then what we would say is there are no
18 facilities available to order an UNE. You have to order
19 a special access service.

20 JUDGE CHESTNUT: Okay. And then it becomes an UNE
21 because it is going to be used for your business, right?

22 WITNESS WHITE: For the retail business it now
23 becomes available and now they can technically order it,
24 disconnect it and now there is a spare UNE, order it. So
25 we do it in one process. They order the access, we build

1 to the access, they technically disconnect one second and
2 turn it on another second.

3 JUDGE CHESTNUT: Maybe it's because I'm not that
4 familiar with your industry, but that does not sound like
5 major construction to me. There is engineering involved,
6 sure. But that sounds like a normal expansion of your
7 business. If you had a new customer you would do that,
8 wouldn't you?

9 WITNESS WHITE: It's a construction job that we
10 would do for a new customer. It is a construction job,
11 though.

12 JUDGE CHESTNUT: And would you charge them for
13 that?

14 THE WITNESS: Access rates recover the full cost.

15 JUDGE CHESTNUT: So you would charge them a special
16 access rate also?

17 THE WITNESS: Yes.

18 MR. ANGSTREICH: The special access tariff is
19 available to both retail carriers and CLECs like COVAD.

20 MS. HYER: It's not an issue of whether or not they
21 can order the service. They can. It is just how they
22 order it and what they pay for it.

23 JUDGE CHESTNUT: How it is characterized, I guess.

24 MR. HANSEL: Well, what they are saying is that
25 they give it to their retail customers but they don't

1 give it to the wholesale customers and if you want it
2 you'd better get in the retail line because we are not
3 giving it to you in UNE.

4 JUDGE CHESTNUT: Is that right?

5 MR. PANNER: Yes, that's right.

6 WITNESS EVANS: I don't think when we do UNE cost
7 cases it says, oh, you can give this as an UNE but if
8 it's not available this is what the price is going to be
9 or this is what you're stuck with. Either it's an UNE,
10 which is getting access to the loop, or it's not. It's
11 not available. Verizon is characterizing that if the
12 facility is out there but they have to do the engineering
13 work required to put the stuff in to order the services
14 that I am providing and I'm paying them for that loop --
15 recognize that if I just want a plain old loop I pay, I
16 don't know, five or six dollars month. When I order an
17 UNE loop I pay a lot more, 100 and some dollars. I don't
18 know. Whatever it is. But the expectation is when I
19 order it it is to get the equipment that I need to supply
20 that service.

21 Verizon is saying that if you want to get something
22 and have it meet the need of the service that you are
23 providing, in this case a DS-1 loop, if I haven't put
24 everything out there already you can't get it as an
25 unbundled element, order it as a retail customer. That

1 is not what UNEs were supposed to be set up to do.

2 JUDGE CHESTNUT: Let me make sure I understand
3 this. Your position is it's not an UNE because it
4 requires construction?

5 MR. PANNER: It's not an UNE because it's not
6 there.

7 JUDGE CHESTNUT: Although other elements that
8 provide that are there?

9 MR. PANNER: The UNE is not there.

10 WITNESS CLANCY: The issue, Your Honor, as I see it
11 is it's not an UNE in Verizon's eyes because it's not all
12 there. Elements of it could be there, but not every
13 little bit of it is there; therefore it's not an UNE.

14 MR. HANSEL: And if you want to know what major
15 construction is go to TRF on page 57 on our web site.
16 They dictate what major construction is and we have no
17 say. It's the same issue. It is basically unilateral
18 decisions and the only way to get it resolved is to take
19 the technical reference out of the contract or basically
20 go to the Commission to clarify what is major
21 construction and what is minor modification. Because
22 Verizon is not going to take, in my view, a reasonable
23 position on this.

24 JUDGE CHESTNUT: Let's move on to issue 24.

25 MR. PANNER: That actually covers all three of

1 those issues.

2 JUDGE CHESTNUT: What is involved in relieving loop
3 capacity restraints?

4 MR. PANNER: Your Honor, it is essentially the same
5 issue. In other words, the question here is to what
6 extent are we required to engage in -- in other words, if
7 we have to to serve a retail customer we will have to
8 sometimes lay copper into the network. I guess we don't
9 lay copper anymore.

10 WITNESS KELLY: We do.

11 WITNESS CLANCY: You do? You told me you never do
12 that.

13 JUDGE CHESTNUT: Do you?

14 WITNESS WHITE: Distribution, yes. It depends.

15 MR. PANNER: Remember the whole thing about not
16 being perfect? That was a good example.

17 There might be situations where we have to build
18 more of a network to reach a retail customer. We do not
19 engage in that kind of construction to make new network
20 facilities available for unbundling. And that is the
21 issue in -- in other words, it's a similar issue to the
22 DS-1 issue. In other words, when do we have to engage in
23 construction. We do not have to engage in construction
24 to order to make elements available for unbundling.

25 JUDGE CHESTNUT: Any construction?

1 MR. PANNER: Well, we don't have to engage in any
2 construction. In fact, we do engage in certain
3 activities in order to make things available. We have
4 witnesses here who can talk about it for quite a while.

5 WITNESS WHITE: Yes, we do run wire. Once the
6 cable is in the inventory and we can assign to it we will
7 run drop wire, we will run inside wire, we will run
8 cross-connections and connect the pieces together.

9 JUDGE CHESTNUT: But you don't consider that
10 construction?

11 WITNESS WHITE: That is not construction. That is
12 provisioning.

13 JUDGE CHESTNUT: Is that defined anywhere?

14 THE WITNESS: Yes. It is all in that same
15 reference that they highlighted.

16 And we will put in cards. Those are provisioning
17 issues. We clear defective pairs.

18 JUDGE CHESTNUT: Okay. What about 30?

19 WITNESS CLANCY: Well, there is a lot of
20 information on the New York record on this. I don't know
21 if it serves to go into it in detail here. The issue is
22 that we do this today and we just want it written in the
23 IA.

24 MR. PANNER: He is talking about the cooperative
25 testing.

1 JUDGE CHESTNUT: Okay.

2 MR. PANNER: Just very quickly, Your Honor, I will
3 state from Verizon's point of view where the essential
4 differences are on this issue.

5 WITNESS CLANCY: I thought we were going to be
6 using the record.

7 MR. PANNER: I thought we were going to be making
8 some statements.

9 JUDGE CHESTNUT: I might have some questions. I
10 haven't seen the record from New York yet.

11 MR. PANNER: Where the parties are on this is that
12 there is a process that both parties are using for
13 cooperative testing. Part of this goes to language.
14 COVAD's language is very detailed and includes a number
15 of steps in the process that may not be appropriate. For
16 instance, manual loop testing where automatic loop
17 testing may become appropriate. So what we are trying to
18 do is get to language that embodies what the parties are
19 interested in ensuring happens without locking into a
20 process that becomes obsolete.

21 JUDGE CHESTNUT: Isn't that just a wording problem?

22 MR. PANNER: It is to an extent, Your Honor.

23 WITNESS KELLY: As an example, I think part of what
24 the wording states is, in my opinion, a lot of manual
25 calls between our technicians, the Verizon technicians,

1 and the COVAD offices to do testing and stuff. In the
2 meantime, we have an IVR, the interactive voice response
3 system, that COVAD has that our technicians are now
4 using. My hope in negotiations with COVAD are such that
5 I am looking for that process because I never call a
6 COVAD technician. I use their system and it gives me the
7 loop is okay, everything is okay, it gives me
8 confirmation and then we go ahead. If I took the wording
9 as it is today I would always to have to call a COVAD
10 tech.

11 JUDGE CHESTNUT: That's not right, is it?

12 WITNESS CLANCY: Well, the representation is a
13 little bit incorrect in that several calls are not
14 required.

15 JUDGE CHESTNUT: Are any calls required?

16 WITNESS CLANCY: A single call is required to close
17 out the order with a COVAD agent.

18 JUDGE CHESTNUT: A single person to person call?

19 WITNESS CLANCY: A single person to person call.

20 JUDGE CHESTNUT: Why?

21 WITNESS CLANCY: That was the way it was
22 established to begin with. COVAD has created an
23 innovation where we have created an interactive voice
24 response unit. In the past Verizon technicians in order
25 to shoot troubles on the loop while they were

1 provisioning it -- in other words, they go out to the end
2 user's premise and they know it's not working so they
3 have to work backwards the central office. They would
4 constantly call in to COVAD to get an agent to test
5 because they had no capability to test the loop.

6 JUDGE CHESTNUT: You mean no physical capability of
7 testing the loop?

8 WITNESS CLANCY: They had no physical capability of
9 testing the loop.

10 WITNESS KELLY: I will just clarify. We had
11 physical capability to test the loop. We could do tests
12 on it. The better testing is on from COVAD out.

13 WITNESS CLANCY: From the collocation arrangement
14 out.

15 JUDGE CHESTNUT: Okay.

16 WITNESS CLANCY: Which we provided testing that is
17 right after our DSLAM and looks outwards on the copper
18 facilities that we connect to. So all the
19 cross-connections and the copper facility out to the end
20 user's premise can be tested electronically from the
21 central office. The only thing that is required that is
22 the technician in the field use their pliers to put a
23 short in the loop so that we can nest continuity.

24 JUDGE CHESTNUT: Is that true? You are laughing.

25 WITNESS KELLY: No. It is. It is very high tech.

1 MR. HANSEL: So is provisioning a shelf.

2 WITNESS CLANCY: That is the way the test has been
3 done since the beginning of -- well, maybe a little bit
4 after Alexander and Watts.

5 The essential issue here is do I have DC continuity
6 from the central office all the way out to end user's
7 premise, which is testing that was done on POTS lines
8 from the beginning. Now, on a POTS line a Verizon
9 technician has an access terminal where they access their
10 own test head in the central office and they can test it
11 themselves. The IRV provides similar functionality to
12 that.

13 JUDGE CHESTNUT: What is the issue here?

14 WITNESS WHITE: It is the wording.

15 WITNESS CLANCY: Putting the words in the contract.

16 WITNESS WHITE: That's the issue, putting the words
17 in the contract. Mike and I worked out the initial
18 cooperative testing when this all started. He has
19 described that in great detail and what he described is
20 exactly what we agreed to a couple years ago and what we
21 did a couple years ago, but it has improved since then.
22 So he has captured correctly what we used to do. We have
23 enhanced now using the IVR and we should continue to
24 enhance it. So to lock in the wording, to me, is doing a
25 disservice. We should continue to enhance and improve to

1 find the most efficient process.

2 JUDGE CHESTNUT: What's wrong with that?

3 WITNESS EVANS: Your Honor, I think that COVAD
4 certainly would agree to language where Verizon indicates
5 that they are willing to do this because it is the
6 process that we are implementing and have language that
7 would say and that the parties mutually agree to test in
8 a different way. That is the way we will do it. But
9 Verizon would like to just have no detail in terms of
10 what type of testing will occur. The IVR, although they
11 are saying they use it and they love it and things like
12 that, they are not willing to have any reference to it
13 and they are not obligate to use it.

14 WITNESS CLANCY: The facts are the use of the IVR
15 are spotty. They are not universal. It's not an
16 universally accepted tool. We have information we could
17 provide that shows that. The issue is that we have not
18 come together and said we will use the IVR and not use
19 the test call to close out the orders. We haven't come
20 together and done that yet.

21 If as part of this process we do that and document
22 it and then have something in there that says in the
23 future if we come up with innovations we will come
24 together and document them, as long as the documentation
25 is someplace -- it does not exist anywhere today. It is

1 nowhere to be found. If a new CLEC came into business
2 they wouldn't know what to do.

3 MR. PANNER: Just to clarify the record, we,
4 Verizon, has recently proposed language to COVAD that
5 does make reference to the automated process. It may not
6 reference the IVR by name but the goal on Verizon's part
7 is to maintain a certain level of generality so that when
8 the process is changed it does not require us to come
9 back and renegotiate the agreement. But the notion that
10 it's Verizon's resistance to including the automated
11 process in the language I find very difficult to agree to
12 given that it is the COVAD's detailed language in which
13 you will find no mention of the IVR process. The first
14 mention I saw of it, the first time I was made aware that
15 this was part of the issue, was when it appeared in their
16 opening brief in New York, and you will find a similar
17 discussion here. So the parties are working on
18 additional language. We are waiting to hear from COVAD
19 on the language that we have proposed.

20 JUDGE CHESTNUT: It sounds like you could work this
21 out.

22 MR. HANSEL: Just some background here. Verizon's
23 language as written in their contract is vague and does
24 not mention the IVR.

25 MR. ANGSTREICH: I agree.

1 MR. HANSEL: It doesn't mention anything. Our
2 intention was to detail what the procedures are because
3 it is so vague, as Mike Clancy said, you wouldn't be able
4 to tell what it was if you were new to a CLEC. So we are
5 trying to detail it so that if Mike Clancy should win the
6 lottery someone at COVAD would know what the process is
7 because it's not written anywhere.

8 We discussed that in New York and to the extent we
9 have left New York and we are willing to negotiate
10 something different, that's fine. But if we are going to
11 discuss it here again, let's discuss it and let's discuss
12 the issue as it is presented. I can say that I shot an
13 e-mail to Verizon yesterday and, you know, I am willing
14 -- it sounds like we proposed something but that is not
15 what the issue is right now.

16 WITNESS WHITE: I am a little bit concerned that we
17 are repeating a lot of New York. We spent a lot of time
18 in New York to fully expand this.

19 The bottom line is we have metrics and measurements
20 on performance, on delivery, on repair and installations.
21 We have to deliver a quality product. To deliver a
22 quality product we have to do testing. We want to do it
23 the most efficient way. It is an evolving process and we
24 shouldn't have to describe that we are using a pair of
25 pliers or an IVR. That is a level of detail that is not

1 helping us evolve to the most efficient way to do it.

2 It is to our mutual benefit. We have only gone
3 halfway to IVR. We have only used the IVR for helping us
4 isolate and test. But COVAD is still asking for a manual
5 process on top of the IVR and I don't think we should be
6 forced to do that.

7 WITNESS CLANCY: We could write commitments into
8 the contract that when IVR usage hits a certain threshold
9 that you are free of calling us. No problem.

10 WITNESS EVANS: Yes, I think this is a language
11 issue. I think Your Honor indicated that the parties can
12 come to an agreement.

13 JUDGE CHESTNUT: To me it seems like your interests
14 are parallel here.

15 MR. PANNER: I think there are some real
16 differences but hopefully we are coming close to meeting
17 in the middle.

18 Can we move on to 31?

19 JUDGE CHESTNUT: Is this that tagging thing?

20 MR. PANNER: Your Honor, it is.

21 JUDGE CHESTNUT: I don't even want to --

22 MR. PANNER: Shall we pass that? You might be
23 happy if we skip tagging.

24 JUDGE CHESTNUT: I would be happy if you gave up on
25 that issue, not that we can't discuss it.

1 MR. PANNER: I think actually the parties are going
2 to settle that.

3 JUDGE CHESTNUT: Good.

4 MR. PANNER: But in any event, I think that
5 Verizon's position, which is that Verizon has an
6 obligation to make clear to COVAD where the loop is,
7 which by the way is in our interest to do because if
8 COVAD can't find the loop then we have a problem that we
9 have to solve, our position is that tagging, when tagging
10 is the most appropriate way to do that we should tag.
11 When it is not, when there is another way to accurately
12 describe the precise location of the loop, that the techs
13 should follow that course.

14 JUDGE CHESTNUT: That is something for COVAD to
15 determine about what suits its needs, but of course
16 Verizon has to ensure that COVAD can locate the loop.

17 MR. PANNER: No disagreement.

18 JUDGE CHESTNUT: Without jumping through hoops,
19 without having to call and find out the location.

20 MR. PANNER: There is no disagreement about that.

21 MR. HANSEL: The disagreement is how is that going
22 to be done.

23 JUDGE CHESTNUT: Yes.

24 MR. HANSEL: We think tagging is the best way.
25 Their contract language says tagging or something better.

1 Well, what is something better?

2 JUDGE CHESTNUT: It would have to be something that
3 COVAD agrees is better, frankly.

4 The line sharing, isn't that addressed someplace
5 else? I seem to remember there is something involved in
6 this issue.

7 MR. PANNER: The FCC has addressed it in the 271
8 order. In our view it is a pure issue of law as to
9 whether we have an obligation to do this, and we have
10 been held not to have that obligation.

11 MR. HANSEL: And in COVAD's view it is
12 discrimination. With line splitting, basically, UNE P
13 providers get access to the voice while a data provider
14 is providing data on the high frequency portion of the
15 loop. With line sharing Verizon gets access to the voice
16 while the data provider is providing data on the high
17 frequency portion of the loop. It is discrimination
18 against the resellers that they can't get access to the
19 voice if there is a data provider on the high frequency
20 portion of the loop.

21 JUDGE CHESTNUT: Does this have to do with access
22 charges?

23 MR. ANGSTREICH: No, Your Honor. I believe what
24 Mr. Hansel said is not accurate. If a reseller is
25 providing voice service the customer can get DSL service.

1 Verizon makes DSL service available for resale.

2 WITNESS CLANCY: They just can't get COVAD's
3 service.

4 MR. ANGSTREICH: Well, COVAD could resell Verizon's
5 DSL service. They can't get DSL service as an unbundled
6 network element.

7 JUDGE CHESTNUT: Is line splitting the same as line
8 sharing?

9 MR. PANNER: No, Your Honor. The difference is
10 there is line splitting -- well, let me start with line
11 sharing. Line sharing, Verizon provides the voice and
12 then the high frequency portion of the loop is unbundled
13 for purposes of a CLEC providing data services. Line
14 splitting is where there is unbundling of both the voice
15 portion of the loop as an UNE platform and the high
16 frequency portion of the loop to a data provider. So,
17 for instance, MCI or WorldCom could be providing the
18 voice service and COVAD could be providing the data
19 service, to give an example.

20 WITNESS KELLY: And there is a partnership.

21 WITNESS CLAYTON: Pre-established partnership
22 arrangement.

23 JUDGE CHESTNUT: A partnership between...?

24 WITNESS KELLY: The data provider and the voice
25 provider. So COVAD and MCI have an agreement for certain

1 responsibilities for that loop and things they will do.

2 WITNESS CLANCY: And the ILEC has to be notified
3 that the partnership exists.

4 JUDGE CHESTNUT: Okay.

5 MR. PANNER: So this issue goes to line
6 partitioning, which is where it is a resale service, a
7 CLEC is reselling Verizon's voice service. The question
8 is does Verizon have to unbundle the high frequency
9 portion of the loop over which there is resale of voice.

10 JUDGE CHESTNUT: Right. And, again, to me that is
11 a pure legal issue.

12 The next one. Why shouldn't it? Is that because
13 there is a metric involved?

14 WITNESS CLANCY: No. The record in New York makes
15 it clear that they already do it.

16 JUDGE CHESTNUT: They already do it?

17 WITNESS CLANCY: They already do what COVAD
18 requests.

19 MR. ANGSTREICH: Verizon does not commit to
20 specific appointment windows. Verizon commits to certain
21 dates.

22 WITNESS KELLY: We provide a.m. and p.m.
23 appointments. And they can request first and last of the
24 day. The issue becomes the commitment, if you will, to
25 do that. We will schedule in good faith.

1 JUDGE CHESTNUT: So why don't you put that in the
2 contract?

3 MR. ANGSTREICH: We are in the process of working
4 out language on that.

5 JUDGE CHESTNUT: Okay.

6 Billing metrics. I have to tell you when I was
7 reading this it seemed to me that it is almost impossible
8 to do business if you can back bill for extended periods
9 of time. I think four years, you know, is just
10 unreasonable. I am not saying one year is an appropriate
11 period, but -- did you want to say something, Mr. Panner,
12 on this that you have not already said in your briefs?

13 MR. ANGSTREICH: I think the briefs cover Verizon's
14 position.

15 JUDGE CHESTNUT: Your position is that --

16 MR. ANGSTREICH: That the statute of limitations
17 governs. But in addition, that there is not a problem
18 here that needs solving. We have had one example
19 presented to us. There has been a single instance of
20 back billing outside of the limit that COVAD seeks to
21 impose here.

22 JUDGE CHESTNUT: Then why is there a problem with
23 agreeing to it?

24 MR. ANGSTREICH: Because we are dealing with a
25 process where the rates are set by a regulator and not by

1 the market and this is part of the reason why, because we
2 can't tell what the future is, how unbundled network
3 elements are dealt with in the future, if there is not a
4 rate established yet but there is a service obligation
5 and Verizon provisions that service and the CLEC orders
6 the service knowing it's going to be charged some time
7 down the road. Verizon makes good faith efforts to
8 charge them because it wants to be paid. But there is
9 not a rate established, there is no authority to charge
10 on an interim basis.

11 JUDGE CHESTNUT: Isn't that within Verizon's
12 control?

13 MR. ANGSTREICH: Verizon does not set those rates,
14 Your Honor.

15 JUDGE CHESTNUT: Well, they do in response to a
16 filing by Verizon.

17 WITNESS CLANCY: Scott, on the issue of line
18 sharing, which was the back billing issue, the interim
19 rates were set during the collaborative. The rates were
20 set and there was an agreement to true up. So the rates
21 were set from the collaborative before we ordered our
22 first line sharing loop.

23 MR. ANGSTREICH: I think the issue of the one
24 specific instance that COVAD has been able to demonstrate
25 and presented it in numerous regulatory proceedings,

1 including a collaborative proceeding in New York where
2 the New York PSC determined that it did not see a
3 significant problem of back billing, where the FCC made
4 the same conclusion, this is just not an issue requiring
5 resolution because it does not come up.

6 JUDGE CHESTNUT: Well, it has come up once.

7 MR. PANNER: It came up once and Verizon's position
8 would be, you know, that the very extraordinary
9 circumstances surrounding that instance demonstrate that
10 there may be circumstances where back billing exceeds the
11 one year period that COVAD has proposed.

12 But again, I think what we are stressing is that
13 Verizon has every interest in promptly billing for
14 services. And therefore this is basically a situation in
15 which where this would come into play could lead to a
16 windfall because COVAD has gotten the services, there no
17 is doubt about that. Nobody is saying that COVAD
18 shouldn't have to pay for services. COVAD knows the
19 services it has gotten and it knows it's going to have to
20 pay for them. The issue is where there is a technical
21 glitch or where there are other reasons why the bill is
22 delayed at what point the bill simply goes away.

23 There is a law that addresses that. It is called
24 the statute of limitations for a contract claim. So our
25 position is that that should apply here. It is good

1 enough for the commercial relationships that go on
2 throughout the state of Pennsylvania and there is no
3 reason why it shouldn't be applied here.

4 JUDGE CHESTNUT: Why don't you apply the statute of
5 limitations in the Public Utility Code?

6 MR. PANNER: That is what we are doing.

7 JUDGE CHESTNUT: No. That is a three year statute
8 of limitations.

9 MR. PANNER: I may have misspoken. If what the
10 statute is for back billing in the Public Utility Code is
11 three years -- in any event, this is addressed in our
12 brief. The principle, I think you see what I am saying,
13 is that there is a generally applicable principle --

14 JUDGE CHESTNUT: How about if you don't bill them
15 the right rate because of Verizon's mistake, not because
16 there was some question about the rate to be applied?

17 MR. ANGSTREICH: Assuming we underbill them?

18 WITNESS CLAYTON: It depends on the scenario. In a
19 lot of cases if we underbill we don't go back and try to
20 recoup our costs. If we overbill we do have an
21 obligation to go back and credit.

22 JUDGE CHESTNUT: Based on what?

23 WITNESS CLAYTON: There are orders out. Subject to
24 check, I --

25 MR. PANNER: Your Honor, the one thing I would

1 point out, there are a variety of situations that could
2 arise. There could be things that are governed by tariff
3 in which case the obligation for billing and collecting
4 the correct rate which exists under standard filed rate
5 law. But the point is that certainly people can make
6 mistakes in good faith in terms of what they bill and,
7 you know, I suppose that there is law that deals with the
8 circumstances under which in a contractual relationship
9 somebody can back bill.

10 Our position is simply that that generally
11 applicable law that governs any contractual relationship
12 is what should apply here and there should not be a
13 special rule governing this issue, particularly when it
14 has not proven to be in a very complex relationship a
15 significant problem.

16 JUDGE CHESTNUT: I don't see this one size fits all
17 statute of limitations applying to this type of business
18 where the billing is complex, large amounts are at stake
19 and where Verizon archives its billing data after 60
20 days, I think I saw.

21 MR. ANGSTREICH: That's correct, Your Honor.

22 JUDGE CHESTNUT: I think four years is too long. I
23 really do as a matter of business.

24 WITNESS EVANS: For Your Honor's sake, COVAD is
25 willing to, you know, limit -- we want the back billing

1 limit and Verizon wants us to have a limitation on filing
2 claims for the equitable period of time. We think that
3 is reasonable. We are willing to do that.

4 JUDGE CHESTNUT: Okay. Again, I don't see why you
5 cannot work this out. Nobody is saying that Verizon
6 should not bill what it is entitled to.

7 WITNESS EVANS: And we are willing to pay.

8 Could we just clarify one thing? I think Mr.
9 Angstreich said something about the New York PSC said
10 that this is not a problem. That is not correct. There
11 has been a billing collaborative going on and actually
12 the one issue that they have been unable to resolve is
13 back billing.

14 MR. ANGSTREICH: I am referring to a specific New
15 York PSC letter which I would be happy to provide for the
16 record.

17 JUDGE CHESTNUT: Again, I think this is something
18 you should resolve between yourselves as an operational
19 issue.

20 Let's go on.

21 MR. ANGSTREICH: Your Honor, issue three --

22 JUDGE CHESTNUT: No offense, but how can you
23 possibly disagree on this?

24 MR. ANGSTREICH: Verizon has agreed that if COVAD
25 submits a claim and puts its own number on it Verizon

1 will put COVAD's number as well as the number that
2 Verizon assigns for its internal tracking purposes on all
3 correspondence related to the dispute. And
4 correspondence includes the letter that says on such and
5 such a date on such and such a bill you are going to get
6 \$50 as a credit.

7 Verizon has also agreed that where its billing
8 systems currently have the capacity to put a claim number
9 on the bill next to that credit Verizon will do so. Some
10 of Verizon's billing systems just can't do that. Where
11 they can't do that COVAD can match up the line item on
12 its bill that says \$50 credit to the letter --

13 JUDGE CHESTNUT: Why should they have to do that?
14 I don't even begin to understand that. It seems to me
15 that it would be easier for everybody if you just knew
16 what you were talking about.

17 MR. PANNER: Well, you do know what you're talking
18 about, Your Honor.

19 JUDGE CHESTNUT: Without having to reference a
20 certain document.

21 MR. PANNER: But, Your Honor, the billing systems
22 aren't built -- not all of the billing systems are
23 capable of doing that information. And changing those
24 billing systems is a major job. You are talking about
25 billing systems that are used for multiple purposes,

1 including billing access charges, retail charges. They
2 are very complicated systems. It is on the record in New
3 York to explain why this is complicated and obviously
4 what I say here isn't evidence anyway, but the fact of
5 the matter is that we, I think, have done our best to try
6 to accommodate COVAD's concerns but it comes to a point
7 where technically there are things you can't do because
8 the systems are not designed to do them and we can't
9 change overnight and it is very expensive to change them.
10 And the question is whether there is a practical need.
11 But, as I say, I think this is pretty well documented on
12 the record in New York just how clear it is in our
13 dispute process, just how clearly we document the issue
14 at stake.

15 JUDGE CHESTNUT: The issue at stake being what?

16 MR. PANNER: The particular dispute. Just how
17 clearly we document how we are resolving a particular
18 dispute and how that will be reflected in a bill.

19 JUDGE CHESTNUT: Well, if is that true why is COVAD
20 even bringing this up as an issue?

21 WITNESS EVANS: Your Honor, I think you understand
22 the issue very clearly. As you indicated earlier, the
23 issue is that COVAD should not have to go some external
24 document to say, you know, when I get a bill and it has a
25 credit of \$50,000 what is that for. And Verizon makes it

1 seem like, well, I sent you is this letter on such and
2 such a date, that should clearly tell you.

3 The reality of it is we have three scenarios. One
4 is I get the letter and it matches and so life is great.
5 The other scenario is that the letter says that you get a
6 credit for \$20,000 and now the bill says that I am
7 getting a credit for \$50,000. That is great but guess
8 what? I still have to figure out what this \$30,000 is
9 for. The other scenario is I get a letter saying I am
10 getting \$20,000 and on the bill it's only \$10,000 and for
11 some reason the credit just didn't hit at the right time.
12 And this was all documented in New York where their
13 expert says, yes, that could happen, that they sent me
14 the letter but the credit didn't actually show up on the
15 actual bill.

16 JUDGE CHESTNUT: Does the letter specify what
17 billing statement the credit will show up on?

18 WITNESS EVANS: Sometimes it does and sometimes it
19 doesn't. But that doesn't happen. The process for
20 someone notifying and it actually showing up on the bill,
21 they don't coincide unfortunately.

22 MR. ANGSTREICH: Your Honor, Verizon has asked for
23 specific examples of this. If there is a problem we
24 would like to investigate it and resolve it. But
25 Ms. Evans made the same statement in the New York

1 transcript. Again, we would like to see examples of
2 letters that credit certain things and then a screen shot
3 from the bill that shows more or less or not. It is very
4 hard to respond without actually seeing the particular
5 scenarios.

6 WITNESS EVANS: Your Honor, our billing people have
7 bi-weekly calls with Verizon and they go through all that
8 level of detail. They can flood them with all that
9 stuff.

10 But what I want to do is just update you on the
11 recent discussions between the two parties. Verizon has,
12 as they stated earlier, certain billing systems will put
13 the claim number on there. So what they are doing is
14 providing us with like a matrix that shows where that has
15 occurred. And we are going to try to structure language
16 that says where technically feasible Verizon commits to
17 putting the claim number on the bill where the credit
18 appears. So that is where we are in terms of trying to
19 get language that will fit our needs.

20 Now, is it ideal for us? No, it's not. But it is
21 better than what we have and we are just looking to
22 improve the nightmare that we are going through now.

23 JUDGE CHESTNUT: Again, that seems like an
24 operational issue that you should be able to work out.
25 But it seems, again, not good business practice not to

1 indicate what dispute is being resolved by a particular
2 bill adjustment. I understand your position that you
3 can't reprogram your billing system, apparently.

4 MR. PANNER: There is a billing number. But it
5 would be ours. The problem is that it is not their's.

6 MR. ANGSTREICH: If the systems can't do it, it
7 can't put Verizon's number on either.

8 JUDGE CHESTNUT: Well, then you have to have
9 somebody there manually doing it.

10 MR. ANGSTREICH: It is an electronic bill, Your
11 Honor.

12 JUDGE CHESTNUT: Then you have to have somebody to
13 deal with that.

14 MR. PANNER: We do -- and I think it's documented
15 in New York -- we do provide information and we do -- it
16 is our goal -- I mean, obviously to the extent there are
17 disputes and our folks are on the phone, that is not good
18 for us. We want the bills to be clear and disputes to be
19 as few as possible because that saves us money. You're
20 right. This is a business issue that it is in both our
21 interests to resolve.

22 JUDGE CHESTNUT: Again, I don't understand why you
23 wouldn't use the same number. Why don't you? Well, I
24 don't want to open the door to that.

25 That takes us to issue four. Let me make sure I

1 understand this. COVAD's position is 30 days, which is
2 consistent with the tariff carrier standards but
3 Verizon's is inconsistent with the performance measures
4 and the obligation is to use commercially reasonable
5 efforts. Is that right?

6 MR. ANGSTREICH: Verizon's position is that for
7 Verizon-Pennsylvania, or what we have been referring to
8 as the east, this Commission has adopted performance
9 measurements that set out certain standards which are
10 more or less the 30 day standard that COVAD has proposed.
11 But due to the fact that it is two business days followed
12 28 calendar days it may not always equal 30.

13 JUDGE CHESTNUT: Two business days followed by 28
14 calendar days?

15 MR. ANGSTREICH: If they put it in on a Friday, two
16 business days is Tuesday. That is four calendar days.
17 So that's 32 days there.

18 JUDGE CHESTNUT: Isn't that something you can work
19 out? What's wrong with that?

20 MR. ANGSTREICH: Where it goes further, though, is
21 two days business and 28 calendar days isn't the sum
22 total of performance measurements. There are rules with
23 regard to which types of disputes are captured. The
24 rules currently are under discussion in New York. Ms.
25 Abesamis can talk about the current status. According to

1 this Commission's December, 2002, order when those final
2 rules are finalized in New York they will be presented to
3 this Commission. But those rules are far more detailed
4 than just give us an answer in 30 days or even 28 days.
5 You can find a copy of the Rhode Island version of those
6 rules as an attachment to Ms. Abesamis' declaration which
7 is attached to our opening brief.

8 And then for certain types of billing claims such
9 as bills that are older, where the data is archived or
10 COVAD doesn't provide enough information, at the outset
11 30 days is an unreasonably short period of time.

12 JUDGE CHESTNUT: Again, I don't see why you
13 couldn't work this out. It is an operational issue. It
14 would be in both parties' best interest to have as short
15 a period of time as possible, a reasonable short period
16 of time. Who wants to have a dispute dragging out
17 forever?

18 Anything else, then, before we move on to issue
19 number five? I've got to tell you, to me, again, this is
20 an easy issue. It depends on who wins. If Verizon wins
21 they can assess the late payment charge from the
22 beginning. If COVAD wins there is no late payment
23 charge.

24 MR. ANGSTREICH: That is Verizon's position.

25 JUDGE CHESTNUT: What is wrong with that? You

1 really don't want to have an incentive for parties to
2 raise an unmeritorious dispute. But on the other hand,
3 if you know you are going to be liable for the additional
4 charges I think that would be a break for both parties.

5 WITNESS EVANS: Your Honor, we absolutely agree.
6 It is very similar to the scenario -- and I will use it
7 again here -- if you dispute a charge on your credit
8 card, your credit card takes that amount out of your
9 outstanding balance and they don't assess late payment
10 charges on that outstanding balance. They wait until
11 that gets resolved.

12 JUDGE CHESTNUT: But then don't they put it back
13 in?

14 WITNESS EVANS: I'm sorry?

15 JUDGE CHESTNUT: Don't they --

16 WITNESS EVANS: If at the end of the dispute if the
17 charge was legitimate they expect you to pay the charge
18 within a certain period of time and if you don't you get
19 a late payment charge. It gets rolled back into your
20 outstanding balance. And that is very similar to what we
21 want to do here. Verizon has indicated --

22 JUDGE CHESTNUT: Wait. Is your position that the
23 late payment charge only applies when it is rolled back
24 in?

25 WITNESS EVANS: COVAD doesn't have a problem with

1 the late payment charge being assessed after the dispute
2 has been resolved. Our issue is as the dispute is in
3 process and it has taken Verizon months to resolve we
4 should not be charged for the late payment charges, not
5 only the initial late payment charges but then Verizon
6 every month rolls that outstanding late payment charge
7 and assesses late payment charges on both of the amounts.
8 So it is like a compounding late payment charge. If it
9 is \$1,000 --

10 JUDGE CHESTNUT: I don't understand that.

11 WITNESS EVANS: All right. If it's \$1,000 that's
12 in dispute and let's say for ease of reference \$25 is the
13 late payment charge, the next month the late payment
14 charge is assessed not only on \$1,000, it is assessed on
15 \$1,025. So now I get another 25 added.

16 JUDGE CHESTNUT: Okay. It is compounded.

17 WITNESS EVANS: It is compounded late payment
18 charges.

19 JUDGE CHESTNUT: I just think it is simple to work
20 this out between yourselves.

21 MR. HANSEL: If I could make one more point. I
22 will use the example that we have. COVAD received a \$1.1
23 million back bill with absolutely no supporting
24 documentation. Not surprisingly it takes nine months to
25 resolve that billing dispute. Thirty percent of those

1 charges were incorrectly billed. For the parts that were
2 not incorrectly billed -- or what if in the end all of it
3 was correctly billed but it took nine months for us to
4 get any type of supporting documentation. Should we have
5 to pay nine months of compounded late interest payments
6 because Verizon put an unsupported \$1.1 million claim on
7 a bill that took us nine months to figure out?

8 JUDGE CHESTNUT: Isn't that addressed someplace
9 else in terms of a violation?

10 MR. HANSEL: No.

11 JUDGE CHESTNUT: Is that a violation of anything?

12 MR. PANNER: The fact of the matter is that in that
13 example we didn't assess lay payment charges.

14 MR. ANGSTREICH: Even on the amount that COVAD was
15 ultimately obligated to pay.

16 JUDGE CHESTNUT: There were no late payment charges
17 at all?

18 MR. PANNER: That is the record in New York.

19 WITNESS EVANS: No, no. Let me just correct it
20 because Mr. Hansen is not here. Mr. Hansen's statements
21 were that the late payment charges were automatically
22 returned to COVAD. That does not mean that they were
23 not calculated. Verizon's position is that late payment
24 charges are automatically calculated. It is something
25 that we cannot stop. That is Verizon's position.

1 MR. ANGSTREICH: Ms. Evans is combining a number of
2 separate issues. There are really three issues under
3 issue five.

4 JUDGE CHESTNUT: Okay. Go ahead.

5 MR. PANNER: The record in New York will reflect
6 what it reflects. My understanding from the record in
7 New York is that there were no late payment -- in
8 connection with that particular billing that the
9 settlement that was reached did not include late payment
10 charges on the valid charges. That was my understanding.

11 JUDGE CHESTNUT: I thought Ms. Evans' statement was
12 that they were assessed but then taken off as a result of
13 the settlement.

14 WITNESS CLANCY: That's correct.

15 JUDGE CHESTNUT: Which is okay.

16 MR. ANGSTREICH: Which is the normal practice. If
17 they win they are credited for all late payment charges
18 as well as the amount. In that particular instance
19 Verizon also credited the late payment charges on the
20 amounts that COVAD was required to pay to Verizon.

21 JUDGE CHESTNUT: I guess COVAD's concern is not for
22 that particular instance but in the future one that may
23 come up.

24 MR. PANNER: Well, I mean, there are always going
25 to be disputes. You could always foresee that there are

1 going to be commercial disputes about whether, for
2 instance, a late bill is the fault -- you know, because
3 Verizon made a mistake so the bill was not correctly
4 documented. So, yes, we actually owed it but you
5 misdocumented it so we properly didn't pay it. Do we owe
6 the late payment charge? I don't know. It would be a
7 contract case. There would be a dispute maybe if the
8 amount were large, which is doubtful, and it were worth
9 disputing. But the point is that I think Your Honor is
10 exactly right and it is Verizon's position here that
11 where COVAD disputes a charge and loses they pay the late
12 payment charges.

13 JUDGE CHESTNUT: Then you have to define losing.
14 It sounds like in that case COVAD --

15 MR. HANSEL: We won in that case.

16 MR. PANNER: And they didn't pay the late charge.

17 MR. HANSEL: But if you look at the contract there
18 is no limit on back billing. And they are refusing to
19 put any timeframes in the contract that requires them to
20 respond in a particular time. And there is nothing that
21 requires them to provide details on the bill. And now
22 they are saying, you know, no matter how long the dispute
23 goes if you lose you owe us late payment charges
24 compounded. They are not willing to delay imposing late
25 payment charges to see who finally lost or make any type

1 of negotiations. It's pay the late payment charges if
2 you lose.

3 In our view it could take ten months and it is a
4 good faith dispute because they have not told us what the
5 \$1.1 million is for. Ten months. And even if we lose
6 that is ten months we have paid in our internal
7 resources, we have paid in numerous ways, and now they
8 are going to require us pursuant to the contract to pay
9 ten months worth of compounded late payment charges when
10 in our view it was a good faith dispute. We had no idea
11 what the bill was for.

12 WITNESS EVANS: And, Your Honor, for accounting
13 purposes, just to add, with the SEC with all these
14 accounting requirements, that outstanding balance with
15 the huge late payment charge would show as if it is a
16 valid payment due to Verizon although we are all sitting
17 here saying, well, at the end of the day you are going to
18 get it all back. From an accounting perspective, no. It
19 shows up as if it is a valid debt that I owe them when in
20 fact I do not.

21 JUDGE CHESTNUT: How often are there billing
22 disputes?

23 WITNESS EVANS: In 2002 alone just for -- from the
24 beginning of the year to September we filed close to
25 2,000.

1 JUDGE CHESTNUT: Two thousand? Geez.

2 WITNESS EVANS: I have that information. I have
3 shared that with Verizon's billing people. They did not
4 dispute it.

5 JUDGE CHESTNUT: Is that true?

6 MR. PANNER: Your Honor, we are at some
7 disadvantage because of the unavailability of our witness
8 on this issue.

9 JUDGE CHESTNUT: It seems to me that if there
10 really are really 2,000 billing disputes in an one year
11 period Verizon just as a business matter would want to
12 take care of that.

13 MR. PANNER: As I said, I am not in a position
14 respond to that. I'm sorry.

15 JUDGE CHESTNUT: Let's move on to issue 13/38. Did
16 you say this was resolved?

17 WITNESS EVANS: This, Your Honor, I think is
18 characterized on the other issue about intervals where
19 the parties are looking to take a bigger step back and
20 have a section about intervals and language that
21 addresses how they are dealt with in the carrier working
22 groups and in the metrics of the performance plans yet
23 allow, you know, if there changes in the metrics how they
24 would be dealt with -- I'm sorry -- changes in the
25 intervals how they would be dealt with.

1 Would you agree on that?

2 MR. ANGSTREICH: COVAD has suggested a proposal
3 along those lines. We are waiting to see language.

4 JUDGE CHESTNUT: It makes sense to me to do it
5 together.

6 MR. PANNER: And it relates to other issues that we
7 have already discussed.

8 JUDGE CHESTNUT: That takes us to issue eight. You
9 know, that again seems like a pretty easy one.

10 Is there anything you want to say about that,
11 Mr. Panner?

12 MR. PANNER: I guess at the risk that you think it
13 is easy against us --

14 JUDGE CHESTNUT: No. Why would you say that?

15 MR. PANNER: Because you gave me the chance to
16 speak first.

17 JUDGE CHESTNUT: No. Again, I understand that it
18 is an important issue. But on the other hand, it seems
19 to me that it could be easily taken care of in the
20 contract. There are all kinds of ways between no notice
21 and lots of notice and continuing your obligations as a
22 matter of contract. I mean, you are the one that brought
23 that up. That seems like it would apply here too.

24 Go ahead. Or Mr. Hansel.

25 MR. HANSEL: COVAD has proposed a different notice

1 period and it was rejected.

2 JUDGE CHESTNUT: All you are asking for is notice?
3 I thought you were also asking that the ICA obligations
4 continue.

5 MR. HANSEL: Well, they should. I was addressing
6 your concern that there should some type of negotiation
7 and some ability to negotiate the language. And COVAD
8 took a step forward and put forth a proposal on this
9 issue and it wasn't accepted. So I was responding to
10 that statement, that we have done something. But our
11 position is still what it is in the brief.

12 JUDGE CHESTNUT: Mr. Panner.

13 MR. PANNER: I think it is clear that Verizon -- as
14 you say, there is a notice issue. We have suggested what
15 we think is reasonable notice. Verizon cannot be
16 required to make continuing, you know, provision of
17 service to COVAD a condition of sale of an exchange.

18 JUDGE CHESTNUT: That to me, seems obvious. I will
19 read your brief again, Mr. Hansel, but that seems clear
20 to me.

21 MR. HANSEL: Basically if you sign a contract with
22 somebody and there are provisions in there that say you
23 can't just relinquish your responsibility in that
24 contract because you want to sell it off, if you sell the
25 property then there should be some transition so that

1 COVAD and its customer aren't just left without service.
2 Basically we are going to have all those customers
3 disconnected because they sold the territory and there is
4 no one willing to serve them.

5 JUDGE CHESTNUT: Is this actually an option that is
6 going to be coming up in the near future? Obviously it
7 is a potential circumstance that may occur, but is that
8 really going to happen?

9 WITNESS EVANS: I can't say specifically what
10 Verizon may have in their plans, but there are instances
11 around the United States where territories are sold by
12 the ILEC to rural carriers.

13 JUDGE CHESTNUT: But is this going to happen here
14 in the next couple of years?

15 MR. PANNER: I don't think we can speak to that,
16 Your Honor, to be honest.

17 JUDGE CHESTNUT: It seems to me that you are
18 wasting -- not wasting -- you are spending a lot of time
19 talking about a situation that may not occur in the life
20 of the contract. And maybe what you should put in there
21 is that if it happens then these are the steps that you
22 will take.

23 Did you want to say anything else about that?

24 MR. HANSEL: No, Your Honor.

25 JUDGE CHESTNUT: Issue 53. Why wouldn't Verizon

1 provide notice of tariff revisions?

2 MR. ANGSTREICH: Verizon does provide notice, Your
3 Honor.

4 JUDGE CHESTNUT: On its web site?

5 MR. ANGSTREICH: Verizon mails them directly when
6 it files the tariff. I think this issue has sort of
7 changed in scope. I will let COVAD describe the current
8 focus and scope of the issue.

9 MR. HANSEL: Actually, it is two parts, that
10 Verizon should provide notice of tariff revisions, and
11 the second part, which is the most important in our view,
12 and rate changes to COVAD. There are circumstances when
13 a rate that Verizon charges to COVAD is not a tariffed
14 rate and the only way we figure out that we are being
15 charged for that rate is by finding it on the bill and
16 saying wait a minute, this rate should not be here. It
17 has been there for months and months and finally we catch
18 it. And we go back to Verizon and we say where did this
19 rate come from and it takes months and months for Verizon
20 to track down the source of the rate. And they finally
21 do and it ends up that it was an inapplicable rate. So
22 what we want is basically notification prior to getting a
23 rate on a bill if it is not tariffed that tells us that
24 the rate is coming and it kind of highlights the fact
25 that we can look at the bill and we can dispute the rate

1 right there rather than having to find it down the road
2 seven months later in a bill.

3 JUDGE CHESTNUT: Are you talking that Verizon will
4 unilaterally change a rate?

5 MR. HANSEL: Yes.

6 JUDGE CHESTNUT: Has that happened?

7 MR. ANGSTREICH: Your Honor, COVAD has provided us
8 with two examples where they claim this sort of scenario
9 has happened, one involving the eastern jurisdiction and
10 one involving the western jurisdiction. Ms. Clayton
11 talked about the one involving the eastern jurisdiction.

12 JUDGE CHESTNUT: Why would you object to notifying
13 -- do you object to notifying them of non-tariff rate
14 changes?

15 MR. ANGSTREICH: Verizon's position is that such
16 changes almost always are affectuated by tariff. One of
17 the specific instances involved a service that COVAD --
18 it was a New York PSC order which said there will be a
19 charge. A charge came forward. There has been some
20 dispute as to the proper calculation of that charge. But
21 it's Verizon's position that basically we have seen two
22 examples. We have definitely made efforts to determine
23 whether there is a systematic problem. If it were a
24 systematic problem we would make efforts to correct it.

25 JUDGE CHESTNUT: Okay. But it is Verizon's

1 position that it does not object to providing notice of
2 non-tariff rate changes to COVAD?

3 MR. ANGSTREICH: Verizon is more or less unaware of
4 changes to existing rates that aren't affectuated
5 legitimately under the agreement by a tariff change or a
6 PUC order or some document that would in and of itself
7 provide that notice.

8 JUDGE CHESTNUT: Why wouldn't you just agree that
9 you would provide this notice for cases other than the
10 ones that you just indicated, which apparently doesn't
11 happen at all?

12 MR. PANNER: I think to the extent that we are not
13 able to simply agree, which this is also an issue where
14 the parties are working, it would reflect the concern
15 that there is some sort of a -- you know, the focus of
16 this issue when it was presented, I should say, went to
17 the issue of what Verizon's obligations were to identify
18 for COVAD tariff changes that were of particular
19 relevance to COVAD. A lot of that has fallen away. A
20 lot of what Verizon was initially concerned about has
21 fallen away. I think what remains to be worked out in
22 the language and the remaining point of disagreement
23 between the parties would really go to the concern that
24 an obligation is being placed on us that if we had to
25 undertake it for the entire industry would be very

1 onerous and impractical for us to carry out. But, again,
2 the parties are trying to work on language that addresses
3 an issue that has been narrowed through discussion.

4 JUDGE CHESTNUT: Mr. Hansel, would you agree with
5 that representation?

6 MR. HANSEL: Yes. The parties are discussing the
7 issue.

8 WITNESS EVANS: The only thing I would like to add,
9 Your Honor, is when Mr. Angstreich was talking about the
10 instance he used in New York where the decision was that
11 rates would be set, the rate was set at zero yet Verizon
12 imposed a charge based on a cost study that it had
13 submitted. But the cost study was not adopted. Yet it
14 applied the submitted rate. So the two instances that
15 Mr. Angstreich is referencing, there have been other
16 instances where Verizon will send a letter to a CLEC and
17 say these are the rates that we are going to apply, if
18 you pay the first bill you are saying that you agree to
19 these rates.

20 Again, we are in a position where unilaterally
21 Verizon can at its discretion decide that it wants to
22 charge a certain rate. We've got to figure out whether
23 or not to fight the battle through the claims process to
24 fight back and say that. And in this industry where the
25 majority of the rates should of course be adopted by

1 commissions and enacted or otherwise they should be
2 mutually negotiated, there is this gray area and we are
3 just trying to care for this gray area. The parties have
4 been trying to work out language that better accommodates
5 both parties. But clearly there is a need. Those two
6 are just minor examples, you know, recent examples.

7 JUDGE CHESTNUT: Again, I see this as an issue that
8 would benefit both of you by being resolved.

9 WITNESS EVANS: Agreed.

10 JUDGE CHESTNUT: Anything else in terms of specific
11 issues?

12 MR. PANNER: Those are the only issues that we had
13 on the agenda for today, Your Honor.

14 MR. HANSEL: No, Your Honor

15 JUDGE CHESTNUT: Okay. Let's talk about the
16 process from here on.

17 MR. PANNER: Could we have two minutes just to
18 confer?

19 JUDGE CHESTNUT: Why don't we take a ten minute
20 break.

21 (Recess.)

22 JUDGE CHESTNUT: Let's talk about the schedule.

23 Earlier Mr. Hansel and Mr. Panner talked about
24 addressing the PARTS issue in New York in terms of how we
25 are going to address it here. Have you decided how you

1 want to proceed?

2 MR. HANSEL: As a general matter, the notion that
3 filings in Pennsylvania would follow the filings in New
4 York by two weeks, which would allow time to address
5 additional issues that are in Pennsylvania and not New
6 York as well as make modifications to the New York
7 testimony that may be needed to address Pennsylvania, I
8 am comfortable with that two week lag if you are
9 comfortable and Verizon is. And we have dates in mind at
10 this point with respect to when things would be filed in
11 New York.

12 JUDGE CHESTNUT: What about this part of the case?
13 Are you going to wait and do it all together? I am just
14 really confused about the schedule.

15 MR. PANNER: If we can, Your Honor, let's leave
16 PARTS to one side and consider, if it is okay with you --
17 and I think it's okay with COVAD -- consider the
18 proceeding bifurcated and address PARTS on its own track.
19 Because we don't know yet what the exact schedule is
20 going to be in New York but we do know that it is going
21 to be a significant number of months before the record is
22 complete in that New York proceeding.

23 JUDGE CHESTNUT: So do you anticipate two
24 decisions, one with these issues and one addressing the
25 PARTS issue? How does that work in terms of your

1 agreement?

2 MR. PANNER: Well, the parties could leave the
3 issue open pending resolution and agree to the other
4 things. I don't know in terms of filing an approved
5 agreement with the Commission.

6 JUDGE CHESTNUT: Yes. I mean, that is one of the
7 ordering paragraphs, that you file an approved agreement
8 within a certain amount of time. Think of some proposed
9 language that will satisfy both of you because I am
10 concerned about the procedural aspect of it.

11 So I guess at this point for this part of the case
12 the next thing will be to set a briefing schedule, unless
13 you want to forego briefs and keep negotiating until you
14 resolve it.

15 (No audible response.)

16 JUDGE CHESTNUT: No? I didn't think so.

17 I am really busy through May. I know that we have
18 thrown the schedule out in terms of doing this in a
19 timely fashion, but I do want to get this out quickly.

20 MR. PANNER: Well, we have a schedule for briefing
21 in New York already set up where we will submit best and
22 final offer language on the 11th of March, opening briefs
23 on the 18th and then replies on April 1st.

24 JUDGE CHESTNUT: You're doing best and final
25 language and two rounds of briefs?

1 MR. PANNER: Yes.

2 JUDGE CHESTNUT: Wow. That seems like a lot.

3 MR. HANSEL: We could probably talk about the
4 extent of each filing. We haven't done that. We should
5 probably talk about what is involved in each of the
6 filings.

7 JUDGE CHESTNUT: Well, I assume with your best and
8 final offer you use that as a basis for taking care of
9 the issues that can be resolved so that hopefully the
10 issues that are briefed will not be big.

11 MR. PANNER: Right. I think the purpose of the
12 best and final offer, the reason we thought that the best
13 and final offer would be useful prior to the opening
14 brief rather than simply saying in the opening brief what
15 our position is is precisely so that people wouldn't be
16 talking past each other in the opening brief.

17 JUDGE CHESTNUT: What I have done with prior
18 arbitrations, though, is I have directed parties to
19 submit that to each other, not to me.

20 MR. PANNER: We would be happy to follow that, Your
21 Honor.

22 JUDGE CHESTNUT: Because if you resolve an issue
23 obviously I am not concerned about it.

24 MR. PANNER: From Verizon's point of view we would
25 want you to have that language for purposes of your final

1 decision.

2 JUDGE CHESTNUT: If you change your position -- if
3 you both exchange your best and final offers and you come
4 to an agreement or you may change your positions based on
5 something you have said, it is different from your real
6 best and final offer on that position, if you know what I
7 mean.

8 I guess what I would like you to do is exchange it
9 amongst yourselves and then attach it to your briefs.

10 MR. PANNER: Fine.

11 JUDGE CHESTNUT: I mean, if you want to send it to
12 me, okay, but I will tell you now I am not going to look
13 at it because it may be different.

14 MR. PANNER: And just for purposes of simplicity it
15 is one less filing. So that's fine.

16 JUDGE CHESTNUT: Do you have a suggested time for
17 filing stuff?

18 MR. PANNER: The parties had thought about --
19 although now I just realized that if we do a two week lag
20 then our opening briefs will be due on the same day as
21 our reply briefs in New York.

22 MR. HANSEL: I don't know if it is easier, if Your
23 Honor is amenable to this, if we take it back and
24 conference and then have perhaps a short conference call.

25 JUDGE CHESTNUT: If you want to confer amongst

1 yourselves and send me a proposal, that's fine. And then
2 I will issue a briefing order.

3 I'll tell you, it's really up to you, too, in terms
4 of how you want to do this. Obviously I would think that
5 there is some interest on both your parts in getting this
6 resolved quickly. But maybe there isn't.

7 MR. HANSEL: There is, Your Honor. But I think it
8 would serve a purpose to have us kind of confer and check
9 out where we stand.

10 JUDGE CHESTNUT: I have hearings literally four or
11 five days a week until the middle of May. And of course
12 writing this would be a priority, but it's just a bad
13 time. After May it is really clear. So think what works
14 best for you in terms of your New York efforts.

15 And again, I would urge you to see if you could
16 resolve issues. I will tell you it was very helpful to
17 me to be able to hear your witnesses discuss this.

18 So can you get back to me by next week?

19 MR. PANNER: Yes, Your Honor.

20 MR. HANSEL: Yes, Your Honor.

21 JUDGE CHESTNUT: And I also want to hear your
22 proposal in terms of the PARTS thing.

23 MR. HANSEL: There is a conference call, I believe,
24 next Tuesday to discuss further timelines. I think
25 initial testimony, reply testimony and possible hearing

1 days are to be discussed Tuesday.

2 JUDGE CHESTNUT: Okay. So we will have some idea
3 at some point. That is next Tuesday?

4 MR. HANSEL: Yes.

5 JUDGE CHESTNUT: Okay. So get back to me after
6 that.

7 MR. PANNER: Very good.

8 JUDGE CHESTNUT: Anything else, then, before this
9 hearing is adjourned?

10 MR. HANSEL: No, Your Honor.

11 MR. PANNER: No, Your Honor.

12 JUDGE CHESTNUT: Thank you very much. I appreciate
13 your professionalism.

14 MR. HANSEL: Thank you very much, Your Honor.

15 MR. PANNER: Thank you, Your Honor.

16 (Whereupon, at 2:05 p.m., the technical conference
17 was concluded.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken
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