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January 18, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via hand delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: CC Docket Nos. 98-147 and 96-98

Dear Ms. Salas:

On January 17, 2001, Jason Oxman and Thomas Koutsky of Covad Communications met with Brent Olson, Kim Cook, Elizabeth Yockus, Alexis Johns, and Bill Kehoe, all with the Policy Division of the Common Carrier Bureau, and with Shanti Gupta, with the Office of Engineering and Technology, to discuss issues related to the collocation remand proceeding. Specifically, Covad discussed the matters set out in the attached presentation.

Very truly yours,

Florence Grasso

Florence M. Grasso

cc: Bill Kehoe
Brent Olson
Kim Cook
Elizabeth Yockus
Alexis Johns
Shanti Gupta

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Addressing the Remand: Collocation Policy Decisions

January 17, 2001

- In *GTE v. FCC,* the D.C. Circuit determined that the Commission's interpretation of "necessary" pursuant to section 251(C)(6)
  - "...seemed overly broad and disconnected from ...statutory purpose."
- In remanding the case, the court simply asked the Commission to better explain its reasoning and how the collocation rules remained "within the limits of 'the ordinary and fair meaning'" of section 251(C)(6).
- The court seeks a limiting principle on the necessary test.

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- Denying CLECs the right to collocate equipment that meets the "necessary" test, yet also contains additional features and functions, is "good public policy." Verizon Reply Comments at 3.

- SBC states that "the 1996 Act authorizes the collocation only of equipment that is necessary for interconnection or access to UNEs." SBC Comments at 13.

- "…once a CLEC lawfully obtains a collocation arrangement -- then the CLEC should be allowed to deploy all reasonable ancillary functions of that equipment." Qwest Comments at iv.

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- Equipment that contains "necessary" functions can be collocated.

- Once a CLEC collocates equipment that meets the "necessary" test, an ILEC may not require the CLEC to disable certain functions of the necessary equipment.

- If an ILEC imposes that condition, then the ILEC is not providing collocation "on terms that are just, reasonable, and nondiscriminatory", and is therefore in violation of the Act.

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- The court held that "necessary" must be construed "so as to limit 'necessary' to that which is required to achieve a desirable goal." The stated Congressional intent in passing the Act was to promote the deployment of advanced and innovative local telecommunications services.
- The collocation of multi-functional equipment is required to achieve the stated goal of Congress. Multi-functional equipment is by definition innovative. It contains more features to be enjoyed by consumers, generally results in lower costs, and remedies the space-exhaustion problem cited by the RBOCs.
- Consider: "...an inflexible rule that unnecessarily limited the functionalities that qualify for collocation would have the unintended and undesirable consequence of placing additional burdens on incumbent LEC resources - just the opposite of what the D.C. Circuit sought in remanding the case to the Commission." Cisco Comments at 11.

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- By definition, Covad can collocate any equipment that meets the "necessary" test. Prohibiting the collocation of equipment that contains switching functions would fail the "just and reasonable" test of 251(C)(6).
- The Commission's original conclusions on the switching prohibition focused exclusively on the size of circuit switches and the space they would consume in central offices. That justification for the prohibition no longer exists, as broadband equipment continues to shrink in size.
- Collocating switches is also necessary. Because DSL is distance-sensitive, it is crucial that the terminating loop be as close as possible to switching/multiplexing equipment. The prohibition on switching equipment is an artificial barrier to collocating multi-functional equipment.
- A workable starting point would center on "rack-mountable" equipment, an objective standard for collocation limits.

- Once equipment has been collocated, an ILEC denial of the right to interconnect with other carriers would violate the "just, reasonable, and nondiscriminatory" provision of the Act.
- The Commission has ample authority to allow CLECs to cross-connect. All carriers are obligated, under 251(A)(1), to interconnect with each other. Further, if an ILEC interconnects with a CLEC, it is done in a central office. Section 251(C)(2)(C) requires the ILEC to provide interconnection to CLECs on equal terms as it provides interconnection to itself.
- If Congress, or the Court, had sought to prohibit CLEC to CLEC cross connects, they would have.

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- The Court asked the Commission to justify its rules regarding the allocation of collocation space.

- Verizon: "Giving collocators control over the assignment of equipment locations within a central office would completely abrogate the ILEC's property rights and go far beyond what is 'necessary' for interconnection…" VZ Comments at 14.

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- The absence of clear and enforceable rules regarding collocation policies has a dramatic chilling effect on competition. The ILECs have NO incentive to provide CLECs with the lowest-cost space, and no incentive to provide CLECs with the most efficient space.
- In fact, Verizon has required Covad to build separate entrances, staircases on the outside of the office, and bathrooms in some collocation arrangements. One price quote for a single office topped $400,000.
- ILECs use the collocation process as a barrier to CLEC market entry.
- The Commission should use the record in this and other proceedings to prove the need for pro-competitive collocation rules.

- Migration of Virtual to Cageless
- Augments
- Space Reservation
- Power Charges