COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

IN THE MATTER OF

Verizon Virginia Inc.'s compliance with the conditions set forth in 47 U.S.C. § 271(c)	**CASE NO. PUC-2002-00046**

TESTIMONY OF ROBERT W. WALKER
ON BEHALF OF OPENBAND OF VIRGINIA, L.L.C.

I. Introduction & Summary

1. My name is Robert W. Walker. I am the founder and president of Comsource, Inc., a telecommunications regulatory and technology consulting firm located at 22W343 Arbor Lane, Glen Ellyn, Illinois 60137. I have 42 years experience in the telecommunications industry with 33 of those years spent at Illinois Bell and Ameritech. I have held a wide range of technical staff and management positions within Illinois Bell and Ameritech in the switching, transport and operational support systems ("OSS") areas. Comsource's efforts are largely focused on assisting Competitive Local Exchange Carriers ("CLECs") entering the telecommunications business with technical and regulatory matters. OpenBand is one of my clients.

2. OpenBand is a wholly owned subsidiary of M.C.Dean, Inc.[1] and a licensed, facilities-based telecommunications carrier in the Mid-Atlantic region. OpenBand offers to consumers "one stop shopping" broadband communications solutions. In particular, OpenBand designs, engineers, constructs, and then utilizes state-of-the-art, broadband networks to provide bundled and converged

communications solutions that include high-speed data, voice, video, converged network, consulting, and OSS services.

3. In the past, OpenBand has tailored and provided its service offerings primarily to business and government customers. In the past year, however, OpenBand has been able to extend its network engineering expertise and converged, broadband service offerings to residential consumers. In particular, OpenBand now teams with land developers and builders to design and build "smart neighborhoods" or "wired communities." To date, OpenBand has invested over $15 million in residential broadband facilities at these communities, with over $25 million more on the immediate horizon.

4. Drawing from the design and engineering expertise of its parent company, OpenBand provides to new residential communities custom designed, secure communications infrastructure, including, among other things, community-wide fiber-optic backbones, fiber-to-the-home connectivity, and a community-dedicated central office housing state-of-the-art voice, video, and data equipment. Through these facilities, OpenBand is able to provide every community resident a complete, pre-wired package of communications service options, including, but not limited to, local and long distance telephone, analog and digital cable television, 100 mbps, always-on Internet connectivity, digital home security, web-based home automation, and even a community intranet (including connections to local schools). Moreover, these services come with the convenience and efficiency of a single, monthly bill and a single provider with a demonstrated commitment to cutting-edge technology and service quality.

[1] M.C. Dean, Inc. is a mid-atlantic company with over 50 years of experience in systems design, integration, construction, and life cycle support.

5. OpenBand believes that in "smart communities" or "wired communities" it has found a competitive, effective, and vital model for the future growth of residential broadband, bundled, and converged service availability. The success of this model, however, lies in part on OpenBand's ability to connect its community-based, broadband networks to each other and to the outside world (*i.e.*, national and international networks). The primary medium for making these connections is fiber-based transport facilities, and, in many cases, the most cost efficient and sometimes only viable option for obtaining these facilities is to utilize the existing network of the Verizon. The purpose of my testimony, therefore, is to encourage the Commission to ensure that competitive providers like OpenBand have full and fair access to these facilities in responding to Verizon's application in this proceeding.

II. Access to Verizon UNEs

A. Interoffice Transport

6. In the *UNE Remand Order*, the FCC determined for interoffice transport that viable competitive alternatives do not exist for competitors and that competitors are impaired without cost-based access to these ILEC facilities. OpenBand maintains that the FCC's determination is still true in the areas of Virginia in which OpenBand is now deploying wired community facilities.

7. In the largely rural and suburban residential markets in which OpenBand now operates, OpenBand still does not, in many cases, have competitive alternatives for obtaining the interoffice transport facilities necessary to connect its wired communities to one another or to outside networks. In these residential areas, the market for transport facilities simply has not matured to a level that provides OpenBand viable options to Verizon. Indeed, in many places, Verizon is essentially OpenBand's only option (outside of cost-prohibitive self-deployment) to obtain the last vital link necessary to give

residential consumers the full benefit of the sophisticated, community-based broadband networks that OpenBand is actively deploying.

8. The Commission should, therefore, make every effort in this proceeding to ensure that competitive providers like OpenBand have (and will continue to have) fair and full access to Verizon interoffice transport facilities on an unbundled basis. Moreover, the Commission should prohibit any Verizon limitations on this access (*e.g.*, capacity restrictions) that would in any way destroy opportunities or incentives or preclude or impair facilities-based, broadband providers like OpenBand from extending innovative and competitive broadband, bundled, and converged service capabilities to residential consumers.

B. Dark Fiber

9. A related element that OpenBand believes will greatly facilitate and encourage the "smart neighborhood" or "wired community" model is dark fiber. In many instances, Verizon has deployed fiber transport facilities running in and around OpenBand wired communities with capacity along a network route that OpenBand desires to serve. The availability of this facility, just like interoffice transport, gives OpenBand the opportunity to avoid the substantial and, at times, competitively prohibitive cost required for deploying what in essence would be a duplicate facility. Moreover, by using available dark fiber, OpenBand avoids the disruption caused by construction while roadways are dug up to lay new facilities.

10. While OpenBand may ultimately still decide to overbuild an idle Verizon facility for its own network purposes, the ability to make a "buy" vs. "build" decision is a critical element of competition. The importance of this decision was not lost on the FCC in unbundling dark fiber in the U*NE Remand Order*, and it is not something that should be lost in this proceeding. Moreover, the

same lack of alternatives in residential markets that calls for full and fair access to unbundled Verizon interoffice transport (as discussed above) calls for the same unfettered access to unbundled Verizon dark fiber. The Commission should, therefore, make every effort in this proceeding to ensure that competitive providers like OpenBand have (and will continue to have) fair and full access to Verizon dark fiber facilities on an unbundled basis.

11. In doing so, OpenBand believes that the Commission should, at a minimum, address and rectify a number of substantial dark fiber access impediments that Verizon has created in Virginia. In short, the FCC is not the only one to recognize the competitive importance of dark fiber. Verizon also recognizes its importance. Because of this, OpenBand has found that while Verizon tacitly purport to make dark fiber available on a nondiscriminatory basis, it has, in practice, shielded dark fiber from competitors behind unnecessary and unlawful barriers. Indeed, despite the FCC's best efforts in the *UNE Remand Order*, in OpenBand's experience, Verizon has made the right to obtain unbundled dark fiber in Virginia almost entirely illusory.

1. Dark Fiber Termination

12. One of the primary examples of a Verizon barrier to dark fiber in Virginia is not making available in-place, spare fiber facilities that have been left un-terminated (or at some other stage of installation that leaves the fiber one simple step away from use). The following language from a recent version of Verizon's multi-state template interconnection agreement proposal is an illustrative example of this ILEC limitation:

> Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber [Transport] are not available to [CLEC] unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber [Transport] already are terminated . . . Unused fibers located in a cable vault or a

> controlled environmental vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to [CLEC].[2]

13. The apparent basis for this "termination" requirement is that under the FCC's *UNE Remand Order* definition of dark fiber, dark fiber must "connect two points within the incumbent LEC's network" and be "installed and easily called into service."[3] If, therefore, Verizon installs spare fiber facilities, but chooses not to terminate the fiber until Verizon desires to use it, the facilities are not available to CLECs. This is a patent manipulation of the FCC's rules, creating a substantial barrier to the availability of dark fiber in Virginia.

14. As an initial matter, it cannot be said that a termination requirement naturally flows from the FCC's *UNE Remand Order* definition of dark fiber. In particular, the fact that fiber facilities are not physically connected to a termination frame or other facility does not mean that they still do not connect two points within Verizon's network. Fiber facilities still constitute an uninterrupted pathway between two locations in Verizon's network whether or not the ends of that pathway are attached to a fiber distribution interface (FDI), light guide cross connect (LGX) panel, splice shelf, or other facility at those locations. In addition, the termination of fiber is an inherently simple and speedy task. It cannot fairly be argued that un-terminated fiber is not "installed and easily called into service." Indeed, it is completely disingenuous to say that fiber is not "installed and easily called into service" when a competitor asks for it, but is readily available (after marginal work) when Verizon wants to use it.

15. Interpretation aside, the primary problem with Verizon's termination requirement is that it would allow (and, in OpenBand's experience, has allowed) Verizon to render dark fiber unbundling

[2] *See* Verizon Multistate Interconnection Agreement Template Proposal, v2.2-083101 at § 8.2.2.

[3] *See UNE Remand Order* at ¶ 325.

obligations completely meaningless. Simply put, by requiring termination, Verizon can unilaterally insulate every strand of spare fiber in its network from use by a competitor by simply leaving it un-terminated until Verizon wants to use it. Indeed, Verizon could conceivably disconnect existing spare fiber to remove it from its definition of dark fiber. This is surely not what the FCC intended in the *UNE Remand Order*, but it is a very real obstacle that faces competitive providers like OpenBand every day.

16. Last year, the Public Utility Commission of Texas tackled the termination requirement in an interconnection arbitration involving Southwestern Bell Telephone Company ("SWBT").[4] In the resulting arbitration award, Texas PUC arbitrators flatly rejected the requirement. The arbitrators rejected the notion that fiber does not connect two points in a network simply because it is not physically terminated. Substantial evidence and testimony in the record also demonstrated that termination only required less than one day or night's work to perform and that the termination of fiber at the time it is installed is infinitely more efficient than piece-meal termination thereafter. The arbitrators, therefore, also concluded that in-place, spare fiber that was not terminated was nevertheless "installed and easily called into service" consistent with the Commission's *UNE Remand Order* definition of dark fiber.

17. In accordance with these determinations, the Texas PUC arbitrators adopted the following contract language, specifying that SWBT's dark fiber unbundling obligations do not turn on whether or not fiber is terminated:

> In SBC-12STATE dark fiber is deployed, unlit fiber optic cable that connects two points within the incumbent LEC's network. Dark fiber is fiber that has not been activated through connection to the electronics that "light it", and thereby render it

[4] *See Joint Petition of CoServ, LLC dba CoServ Communications and MultiTechnology Services, LP dba CoServ Broadband Services for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company*, Arbitration Award, Docket No. 23396 (April 17, 2001) ("*Arbitration Award*"). Relevant excerpts from the *Arbitration Award* are provided in Attachment A.

> capable of carrying communications services. Dark fiber also includes unlit fiber optic cable that has not yet been terminated on an LGX or FDI panel or other appropriate device.[5]

18. In instances where a CLEC requests dark fiber from SWBT that is not terminated, the arbitrators adopted a simple mechanism in which SWBT will terminate the fiber on the requesting CLEC's behalf subject to the recovery of all reasonable costs for doing so from the CLEC. The following approved language reflects this equitable arrangement:

> SBC-12STATE will make available to CLEC dark fiber facilities based on the facilities cross-section of all fibers between "A" and "Z" locations regardless as to whether the fiber is terminated or not. If dark fiber is not terminated, SBC-12STATE will terminate the fiber, and CLEC will pay SBC-12STATE's reasonable costs in connection with such activities.[6]

19. The rejection of SWBT's termination requirement by the Texas PUC was entirely necessary and appropriate to preserve dark fiber as a meaningful competitive option for CLECs in Texas. Unfortunately, the termination requirement is an obstacle that goes beyond the borders of Texas or the business practices of SWBT. As demonstrated in the Verizon language provided above, the termination requirement is a Virginia problem that requires the attention of this Commission. The Commission should, therefore, use this proceeding to reject a termination requirement or any other similar impediment to the availability of dark fiber and adopt clear guidelines like those created by the Texas PUC.

2. Dark Fiber Information

20. Another primary example of a Verizon barrier to dark fiber is Verizon's refusals to provide timely or usable information on the location of dark fiber in their networks. Typically, Verizon

[5] *See Arbitration Award* at 116.

will only inform a competitor whether dark fiber is available between two locations if the competitor specifically inquires about the particular route. The following provision from a recent version of Verizon's multi-state template interconnection agreement provides a description of this typical process:

> A Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber [Transport] may be available between the locations and in quantities specified. Verizon will respond within (15) Business Days from receipt of the [CLEC's] request, indicating whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber [Transport] may be available based on the records search.[7]

21. If Verizon responds that there is no dark fiber available for the route requested, there is no way for the competitor to question or confirm Verizon's determination. Moreover, Verizon may deny that dark fiber exists between two locations based on the competitor's route request, but there may still be an alternative route that Verizon does not disclose. Competitors like OpenBand, therefore, are relegated to guesswork and a virtual "shell game" with Verizon. Verizon's piecemeal disclosure of the location and availability of dark fiber also leaves competitors without any effective information source to include dark fiber in any of its long term network planning. This guesswork also extends to the competitor's network forecasting. In short, competitors like OpenBand need to know where dark fiber is in Verizon's network in order to have any meaningful opportunity to use it.

22. At least one other Verizon state has recognized this problem in reviewing a Verizon 271 application. In particular, the Maine PUC found that Verizon's practice of not providing information regarding the location and availability of dark fiber inadequate for compliance with Checklist Item 5 –

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[6] *See Arbitration Award* at 116.
[7] *See* Verizon Multistate Interconnection Agreement Template Proposal, v2.2-083101 at § 8.2.5.

Transport.[8] Maine reasoned that rejection of dark fiber orders with the simple explanation that there are no facilities is inadequate and turns the process of ordering dark fiber "into nothing short of a guessing game." In keeping with this finding, the Maine PUC required Verizon to adopt practices relating to dark fiber information that are similar to those that required in other Verizon states. Specifically, the Maine PUC required Verizon to provide dark fiber provisioning information as follows:

> If a dark fiber inquiry reveals there is no dark fiber available, Verizon will, upon separate request from a CLEC, provide the CLEC with written documentation and a fiber map within 30 days of the request. The document will show the following information:
>
> ? a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates.
>
> ? the total number of fiber sheaths and strands between points on the requested routes;
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> ? the number of strands currently in use or assigned to a pending service order;
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> ? the number of strands in use by other carriers;
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> ? the number of strands assigned to maintenance;
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> ? the number of spare strands;
>
> ? the number of defective strands.
>
> The CLEC will be billed a non-recurring charge per request for cable documentation to reimburse [Verizon] for the costs incurred in providing the CLEC with the Documentation.
>
> The Maine PUC set the interim rate for providing the documentation at $132.00. *Id.*

[8] *See Maine Order* at Sec. IV(F)(3)(a).

23. In addition, in the same Texas proceeding noted above, the Texas PUC also addressed a SWBT proposal to provide dark fiber information to CLECs in the same manner described above. Again, Texas PUC arbitrators flatly rejected SWBT's proposal. The arbitrators recognized the inefficiencies, discrimination, and potential abuse inherent in forcing CLECs to rely on SWBT record searches for dark fiber information. The arbitrators, therefore, required SWBT to let a CLEC access SWBT plant location records itself, as reflected in the following approved contract language:

> To determine the actual fibers available, SBC-12STATE will allow CLEC to access the Plant Location Records (PLR) to ascertain a count of the total installed fibers between the "A" and "B" locations. If necessary SBC-12STATE will then provide information from the Trunks Integrated Records Keeping System (TIRKS), or any equivalent system, prepared by SBC-12STATE personnel to identify the total number of (lit) fibers in service.[9]

24. The arbitrators also instructed the parties to the arbitration to negotiate and include language in their interconnection agreement that reflected the following guidelines:

> SWBT will provide [CLEC] access to PLRs indicating the location of fiber. This access must be reasonable and no different than what it provides to other CLECs.
>
> In instances where the PLRs do not show the most recently completed fiber jobs in a requested geographic area, SWBT is instructed to advise [CLEC] of what facilities have been deployed but are not reflected in the PLRs.
>
> Additionally, SWBT shall provide [CLEC] reports from the TIRKS database prepared by SWBT within 5 business days of a [CLEC] request. SWBT and [CLEC] shall abide by confidentiality agreements aimed at preventing either party from inappropriately using the competitively sensitive information shared between them. Within 90 days from the date of this order, SWBT and [CLEC] shall jointly file a report concerning the procedures that they have put in place to protect customer-specific dark fiber information.[10]

[9] *See Arbitration Award* at 117.
[10] *See Arbitration Award* at 122-123.

25. As with the termination requirement, OpenBand encourages the Commission to adopt the same or similar standards for dark fiber information as those adopted by the Texas PUC and, at a minimum, the Maine PUC. OpenBand, and many other similarly situated competitive providers in Virginia, are faced with the same inefficient and anticompetitive process for obtaining dark fiber information as that rejected in Main and Texas. Simply put, to use dark fiber, competitors must know where it is. Existing Verizon procedures for providing dark fiber information are woefully inefficient, discriminatory, and are ripe for Verizon abuse. OpenBand, therefore, encourages the Commission to adopt guidelines similar to those provided by the Texas PUC or, alternatively, the Maine PUC, clarifying that a necessary component of dark fiber requirements is to give competitors nondiscriminatory access to necessary information that will allow a competitor to determine where dark fiber is available in Verizon's network.[11]

C. UNE Combinations

26. A final aspect of Verizon unbundling obligations that is important to OpenBand in deploying broadband, bundled, and converged services to wired communities is UNE combinations. In particular, in some cases, OpenBand expects that it will require combinations of interoffice transport, and perhaps other network elements, in order to connect its community-based, broadband networks to each other and to outside networks. OpenBand, therefore, encourages the Commission to ensure in this proceeding that OpenBand will not have to face the same tired obstacles that Verizon has traditionally placed in the way of obtaining UNE combinations.

[11] The Maine PUC also created a number of other dark fiber related requirements for Verizon to comply with before recommending the approval of Verizon's 271 application. OpenBand encourages the Commission to give Virginia CLECs the benefit of no less than what was required of Verizon in Maine.

27. Initially, the Commission should reaffirm the requirement that Verizon may not separate UNEs that Verizon currently combines. This common sense requirement was created by the FCC in its original interconnection rules, affirmed by the U. S. Supreme Court, and reaffirmed by the FCC in the *UNE Remand Order*. There is still no valid reason to let Verizon take apart its network simply to force a competitor to put it back together again.

28. Beyond converting existing combinations, OpenBand encourages the Commission to follow the lead of a number of state commissions to re-institute obligations requiring Verizon to affirmatively combine network elements on behalf of competitive providers. As these state commissions and the FCC, have recognized, the Supreme Court's decision in *AT&T v. Iowa Utils. Bd.* inherently undercuts any questions about the Commission's authority to impose UNE combination obligations beyond simply preserving existing UNE combinations. The Commission should, therefore, use this opportunity to empower broadband providers like OpenBand to have Verizon combine transport links for OpenBand without the inefficiency, extraordinary cost, and anticompetitive delay of collocation.

29. In OpenBand's experience, re-instituting the full panoply of the FCC's original UNE combination obligations is very important. As noted above, it will curtail the inherent problems, inefficiencies, and abuses that Verizon has inflicted through arduous and unnecessary collocation requirements. In addition, the availability of UNE combinations will facilitate the deployment of broadband services and facilities by OpenBand, as well as similarly situated providers, by allowing them to connect and coordinate wired communities affordably and efficiently.

30. In sum, OpenBand should no longer be saddled with the unavailability of efficient, cost-based UNE combinations because of uncertainty, inefficiency, or arguments designed simply to facilitate Verizon foot-dragging. The Commission should require UNE combination obligations that enable

facilities-based, broadband providers like OpenBand to affordably and efficiently deploy competitive and innovative broadband, bundled, and converged services to residential consumers.

III. Conclusion

31. OpenBand believes that the promising competitive area of "smart neighborhoods" or "wired communities" will significantly and particularly benefit from the availability of transport and fiber options. Wired community providers install the extensive and expensive infrastructure to wire the last mile and provide true broadband solutions, offering perhaps the best hope of increasing the number of residential broadband subscribers. The Commission should ensure that Verizon's provision of access to critical unbundled facilities facilitates and fosters this model by offering to providers like OpenBand ready access to interoffice transport, dark fiber, and UNE combinations.

32. OpenBand looks forward to offering further details in the course of this proceeding.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered via e-mail, hand-delivered, or mailed, first-class postage prepaid on this 3rd day of May, 2002, to the following:

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