

Stephen F. Mecham (4089)
Callister Nebeker & McCullough
Gateway Tower East Suite 900
10 East South Temple
Salt Lake City, Utah 84133
Telephone: 801 530-7300
Facsimile: 801 364-9127
Email: sfmecham@cnmlaw.com

Karen Shoresman Frame
Covad Communications Company
7901 Lowry Boulevard
Denver, Colorado 80230
Telephone: 720 670-1069
Facsimile: 720-208-3350
Email: kframe@covad.com

Attorneys for DIECA Communications, Inc., d/b/a Covad Communications Company

BEFORE THE PUBLIC SERVICE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION OF UTAH

IN THE MATTER OF THE PETITION)
OF DIECA COMMUNICATIONS, INC.,)
D/B/A COVAD COMMUNICATIONS)
COMPANY, FOR ARBITRATION TO)
RESOLVE ISSUES RELATING TO AN)
INTER-CONNECTION AGREEMENT)
WITH QWEST CORPORATION)

Docket No. 04-2277-02 **UT-043045**

~~**IN THE MATTER OF THE PETITION**~~
~~**OF DIECA COMMUNICATIONS,**~~
~~**INC., D/B/A COVAD**~~
~~**COMMUNICATIONS COMPANY,**~~
~~**FOR ARBITRATION TO RESOLVE**~~
~~**ISSUES RELATING TO AN**~~
~~**INTERCONNECTION AGREEMENT**~~
~~**WITH QWEST CORPORATION**~~

AMENDED

NON-CONFIDENTIAL

**DIRECT TESTIMONY OF
MEGAN DOBERNECK
(NON-CONFIDENTIAL VERSION)**

**FILED ON BEHALF OF
DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY**

October 13, 2004

July 15, 2004

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1 **I. QUALIFICATIONS**

2 **Q. MS. DOBERNECK, PLEASE IDENTIFY YOURSELF FOR THE**
3 **COMMISSION.**

4 A. My name is Megan Doberneck and I am employed by Covad Communications
5 Company (“Covad”) as the Vice President of External Affairs for the Qwest
6 region. My business address is 7901 Lowry Boulevard, Denver, Colorado 80230.

7 **Q. MS. DOBERNECK, PLEASE PROVIDE A BRIEF DESCRIPTION OF**
8 **YOUR JOB RESPONSIBILITIES AND EXPERIENCE.**

9 A. As Vice President of External Affairs for the Qwest region, I am responsible for
10 managing the business, regulatory, and legal relationship between Covad and its
11 incumbent telephone company vendor, Qwest. I am responsible for ensuring
12 resolution of business issues between the two companies, including driving
13 resolution on operational, OSS, and billing problems, and negotiating with Qwest
14 for the purpose of ensuring that Covad can pursue meaningful business
15 opportunities in this market.

16 Covad is currently providing high speed internet access service using DSL
17 technology in seven of the 14 Qwest states. Covad purchases commercial and
18 unbundled network elements from Qwest to provide residential and business DSL
19 services in those states. The team I manage interfaces with internal Covad groups
20 dedicated to provisioning Covad service.

21 I hold a Bachelor of Arts degree, *magna cum laude*, from the University of
22 California at Berkeley, with a major in Political Science. I also hold a Juris Doctor
23 degree, with honors, from Columbia University School of Law in New York, New

24 York. Before joining Covad, I practiced law in Denver with the firm of Faegre &
25 Benson, LLP. Prior to working at Faegre, I practiced law in Washington, D.C.
26 with the firm of Akin, Gump, Strauss, Hauer & Feld LLP. I joined Covad in
27 January 2001 as senior counsel for the Qwest region. In October 2002, I moved to
28 my current assignment with responsibility for the Qwest region.

29 **II. SUMMARY OF TESTIMONY**

30 **Q. PLEASE BRIEFLY SUMMARIZE YOUR TESTIMONY.**

31 A. While Covad and Qwest have worked in good faith from language supplied by
32 both Covad and Qwest to resolve the vast majority of issues raised during the
33 negotiations, Covad and Qwest have been unable to come to agreement on all
34 terms, particularly certain terms relating to copper retirement, Qwest's legal
35 obligations relating to commingling, and billing time frames. As I discuss below,
36 all of Covad's proposals should be accepted by the Commission, including the
37 requirements that (1) where copper is retired and Qwest deploys hybrid copper-
38 fiber loops, Qwest ensure that Covad can continue to provide service to existing
39 customers at no increase in price and no degradation of service quality; (2)
40 Covad's interpretation of certain of the commingling provisions in the Triennial
41 Review Order ("TRO") be accepted by the Commission; and (3) Qwest comply
42 with Covad's proposed billing time frames.

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III. ARBITRATION ISSUES

45 **1** **ISSUE 1: COPPER RETIREMENT: SHOULD QWEST BE PERMITTED TO**
46 **RETIRE COPPER FACILITIES SERVING COVAD'S END USERS**
47 **IN A WAY THAT CAUSES THEM TO LOSE SERVICE?**

48 **3** **Q. PLEASE PROVIDE SOME BACKGROUND ON THE COPPER**
49 **4** **RETIREMENT ISSUE.**

50 **5** A. Most homes and businesses in America are connected to the telephone network by
51 **6** a pair of twisted copper wires. This “last mile” connection is also called the local
52 **7** loop. In the simplest case, these loops connect a customer to a central office
53 **8** (“CO”) where phone lines over a wide area are aggregated and the connection is
54 **9** made to the network backbone that delivers calls all over the world. This existing
55 **10** telephone network is truly ubiquitous – it reaches nearly every home and business
56 **11** in America and constitutes the quintessential bottleneck facility that cannot be
57 **12** replicated today on the same scale and scope at any cost. According to the FCC’s
58 **13** ARMIS report, the book value of the total ILEC plant in service at the end of 2002
59 **14** was over \$388 billion. No company, not even the ILECs, could raise that kind of
60 **15** capital to duplicate an ubiquitous loop network.

61 **16** **Q. HOW DOES THIS PLAY INTO COVAD'S BUSINESS OF PROVIDING**
62 **17** **DSL SERVICE?**

63 **18** A. Digital subscriber line (“DSL”) service works by breaking up data into chunks and
64 **19** sending these chunks through 4 kHz “channels” on the local loop at frequencies
65 **20** above that used for voice service. In the absence of placing cost-prohibitive
66 **21** equipment at a mid-point on the copper loop (i.e., remote DSLAMs), the entire
67 **22** span of the local loop from the CO to the end user must be copper if Covad wants

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68 to provide any form of DSL service.¹ In other words, if Covad cannot access a
69 local loop comprised completely of copper, then it cannot provide service to its
70 end user customers.

71 **Q. HASN'T IT ALWAYS BEEN THE CASE THAT COVAD HAS REQUIRED**
72 **ACCESS TO AN ALL-COPPER LOOP?**

73 **A.** No. Until the Federal Communications Commission ("FCC") issued its Triennial
74 Review Order ("TRO"), Covad (or any other CLEC) could provide DSL service to
75 end users over hybrid copper-fiber loops if a packet switching functionality – an
76 ILEC DSLAM -- existed on that line. However, with the TRO, the FCC made an
77 abrupt about-face, and ruled that CLECs no longer had unbundled access to any
78 type of packet switching functionality placed by an ILEC on a hybrid copper-fiber
79 loop. Further, the FCC also determined in the TRO that the ILECs were not
80 required to provide unbundled access to hybrid copper-fiber loops, regardless of
81 whether there is any type of ILEC packet-switching functionality on that loop. So,
82 today, Covad can only provide its DSL service to customers over loops that are all
83 copper from the end user's home or business to the serving central office.

84 **Q. WHY IS COPPER RETIREMENT NOW SUCH A BIG ISSUE?**

85 **A.** The answer to that question is two-fold. As I mentioned above, per the TRO,
86 Covad can now only access the Qwest legacy copper network. And even as
87 Covad's access to the phone network is strictly limited to the copper loop plant,
88 the size of that copper network and the number of customers to whom we have
89 access shrinks on a daily basis as Qwest and the other Bells modernize their
90 networks by placing fiber.

91 **Q. PLEASE PROVIDE MORE DETAIL AROUND THIS NETWORK**
92 **MODERNIZATION.**

93 _____
94 ¹ Covad provides several different "flavors" of DSL – ADSL, SDSL, IDSL and T1 service.

93 A. Certainly. Fiber, or fiber-optic lines, are strands of high-quality glass that carry
94 1 digital data by way of light signals. Because of cost, competitive pressures, and
95 2 regulatory advantages, all of the ILECs, including Qwest, are upgrading their
96 3 networks to replace copper with fiber.

97 4 With respect to the cost issue, while it is expensive to lay fiber, the
98 5 maintenance costs for fiber cable are much lower than they are for copper,
99 6 resulting in long-term cost savings once fiber and the associated equipment is in
100 7 place. As for competitive issues, fiber optic lines can provide a tremendous
101 8 amount of bandwidth. Installing fiber can allow Qwest to provide voice, data, and
102 9 video services over a single loop (although that actually appears not to be the case,
103 10 as I discuss below). This capability allows Qwest to compete with the cable
104 11 companies for virtually all the services cable customers generally subscribe to. As
105 12 for the regulatory issues, as I discussed above, whenever Qwest replaces any or the
106 13 entirety of a copper pipe with fiber, it does not have to provide access to
107 14 competitors.

108 14 **Q. COPPER RETIRMENT IS ALSO A CONSUMER ISSUE, ISN'T IT?**

109 15 A. Absolutely. As I already mentioned, the size of the copper network to which
110 16 Covad has access – and as a consequence the number of current and potential
111 17 customers to whom we have access – is diminished daily. Looking at it from the
112 18 perspective of new consumers looking for a service provider, they have no choice
113 19 in providers where Qwest has retired copper and replaced it with fiber – the
114 20 consumers' only option is to go with Qwest (or, perhaps, the incumbent cable
115 21 company). And for consumers who have already opted to go with a competitor,
116 22 when Qwest replaces copper with fiber, it forces that consumer to go with a
117 23 provider that it does not and did not want as its service provider. Consequently,
118 24 not only must the Commission decide how to manage copper retirement because
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119 of the impact on competitors, but also it faces an important policy decision of how
120 it will protect and preserve consumer choice.

121 **Q. WHEN YOU DISCUSS THE RETIREMENT OF COPPER AND**
122 **REPLACEMENT WITH FIBER, ARE YOU TALKING ABOUT FIBER TO**
123 **THE HOME (“FTTH”), OR SOMETHING ELSE?**

124 **A.** The Covad proposal is now strictly limited to the situation in which Qwest has
125 retired copper feeder and the end result is something other than an FTTH loop. By
126 this I mean the Covad proposal on copper retirement applies only when the “end
127 result” after the Qwest deployment is either a hybrid loop – a loop that is
128 comprised of both fiber and copper media (i.e. fiber runs from the central office to
129 a field distribution interface, and the length of copper from the FCI to the customer
130 premise is copper) or mixed copper media (i.e. an all copper loop, but different
131 segments of the copper loop have different gauges or transmission characteristics).
132 Our proposal does not include the scenario in which copper is retired and an FTTH
133 loop is deployed by Qwest.

134 In order to clarify the scope of the Covad proposal, Covad proposed the
135 following language for Section 9.1.15:

136 9.1.15 In the event Qwest decides to retire a copper loop, copper
137 feeder, or copper Subloop and replaces it with fiber, Qwest will: (a)
138 provide notice of such planned retirement on its website
139 (www.qwest.com/disclosures); and (ii) provide e-mail notice of such
140 planned retirement to CLECs; and (iii) provide public notice of such
141 planned replacement to the FCC. The e-mail notice provided to each
142 CLEC shall include the following information: city and state; wire
143 center; planned retirement date; the FDI address; a listing of all
144 impacted addresses in the DA; a listing of all of CLEC’s customer
145 impacted addresses; old and new cable media, including transmission
146 characteristics; circuit identification information; and cable and pair
147 information.²

23 ² I will discuss Covad’s concerns regarding Qwest’s proposed copper retirement notices later in my
24 testimony.

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9.1.15.1 Continuity of Service During Copper Retirement. This section applies where Qwest retires copper feeder cable and the resultant loop is comprised of either (1) mixed copper media (i.e. copper cable of different gauges or transmission characteristics); or (2) mixed copper and fiber media (i.e. a hybrid copper-fiber loop) (collectively, “hybrid loops”). This section does not apply where the resultant loop is a fiber to the home (FTTH) loop.

9.1.15.1.1 When Qwest retires copper feeder for loops serving CEC-served End User Customers or the CLEC at the time such retirement is implemented, Qwest shall adhere to all regulatory and legal requirements pertaining to changes in the Qwest network. Qwest will not retire copper facilities serving CLEC’s End User Customers or CLEC, at any time prior to discontinuance by CLEC or CLEC’s End User Customer of the service being provided by CLEC, without first provisioning an alternative service over any available, compatible facility (i.e. copper or fiber) to CLEC or CLEC End User Customer. Such alternative service shall be provisioned in a manner that does not degrade the service or increase the cost to CLEC or End User Customers of CLEC. Disputes over copper retirement shall be subject to the Dispute Resolution provisions of this Interconnection Agreement.

Along with its proposed language in Section 9.1.15, Covad struck its proposed language for Section 9.2.1.2.3.1, which included within its scope not only the hybrid loops but FTTH loops as well. Covad decided that this was the appropriate way to address the copper retirement scenario since Qwest has taken the view (which Covad opposed), time and again, that Section 9.2.1.2.3.1 applies only to FTTH loops.

Q. DOES IT MATTER LEGALLY IF COVAD’S PROPOSED LANGUAGE APPLIES JUST TO THE HYBRID FIBER-COPPER LOOPS?

A. It absolutely does. While the Triennial Review Order (“TRO”) discusses an ILEC’s right to retire copper if and when it deploys an FTTH loop, the TRO is entirely silent as to the right, if it even exists in the scenario Covad is concerned with, of an ILEC to retire copper and the resulting loop is only a hybrid loop. The TRO thus does not provide Qwest with any protection relative to copper retirement

184 since the copper retirement provisions in the TRO pertain only to copper
185 retirement resulting in FTTH loops.

186 **Q. IS COVAD’S ADVOCACY ON COPPER RETIRMENT DRIVEN BY ITS**
187 **CONCERNS ABOUT OBTAINING NEW CUSTOMERS SERVED ON A**
188 **HYBRID LOOP AS WELL AS EXISTING CUSTOMERS WHO ARE**
189 **IMPACTED BECAUSE THE COPPER ON THEIR EXISTING LOOP IS**
190 **BEING REPLACED BY FIBER?**

191 **A.** The sole issue we are addressing in this arbitration relative to copper retirement is
192 how to address the impact on *existing* Covad customers whose copper loops are
193 being replaced with a hybrid copper-fiber loop. In other words, the language we
194 proposed, and which I set out above, is strictly limited to impacts on existing
195 customers, and is designed solely to allow those customers to continue to receive
196 Covad service at no increase in price or decrease in service quality until the
197 customer chooses to disconnect his/her Covad service.

198 You can see very clearly from the language in Section 9.1.15 what is *not*
199 Covad’s position, and what we are *not* trying to do. Covad is *not* preventing or
200 trying to prevent Qwest from undertaking routine network modifications or any
201 fiber upgrades or copper retirement resulting in hybrid loops. Covad is *not* trying
202 to force Qwest to keep copper or build copper where there is fiber placement.
203 Covad is *not* trying to create a method or process for adding customers where
204 apparently not permitted to do so per the TRO. The sole goal of Covad’s
205 proposed IA language and position on the copper retirement issue is to preserve
206 Covad’s existing customer base that might otherwise be impacted by copper
207 retirement.

208 **Q. PLEASE PROVIDE AN EXAMPLE OF HOW COVAD'S PROPOSED**
209 **LANGUAGE WOULD OPERATE.**

210 **A.** Sure. The concern, addressed by this issue, is limited in scope. The situation will
211 only arise when Qwest finds it has a copper cable that has become a significant
212 maintenance problem. It may be a 3600 pair *feeder* cable in Minnesota or
213 Washington that consistently gets wet, year after year, during the rainy season. Or
214 it may be a 4200 pair *feeder* in Arizona or New Mexico that has finally succumbed
215 to many years of desert heat. These problems, brought on by the elements,
216 ultimately result in significant customer service degradation and a constant
217 increase in costs to Qwest for repair. In today's world, the final resolution is often
218 replacement of the entire copper *feeder* cable with fiber and the placement of fiber
219 fed digital loop carrier in the field. In these cases, the entire *feeder* cable must be
220 replaced, leaving no copper option for services currently in place. Under Qwest's
221 proposed language, in the case where Covad DSL customers are currently being
222 served by these copper facilities, the only option would be for Covad to disconnect
223 the services of these customers. Under the Covad proposal, for the impacted
224 customers – and let's say there are five -- those customers would continue to
225 receive Covad service at no increase in cost or decrease in service quality until
226 they choose to leave Covad.

227 Covad's proposal allows it to retain those existing customers and,
228 importantly, it also preserves individual customer's choice in providers until that
229 customer changes providers. This is a particularly important point, because that
230 customer chose Covad and is not choosing to leave Covad at time of the copper
231 retirement. The customer should not be forced to leave Covad – or any other DSL

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232 provider -- before s/he otherwise chooses to do so simply because of acts of Qwest
233 1 over which neither the customer nor Covad have any control.

234 2 **Q. DOESN'T THE USE OF GENERAL LANGUAGE LIKE "ALTERNATIVE**
235 3 **SERVICE" CREATE SOME CONFUSION ABOUT THE COVAD**
236 4 **PROPOSAL?**

237 5 A. I don't know how it could. In the first place, Covad proposed this language
238 6 several months ago. Presumably, had Qwest found it at all confusing, it would
239 7 have told Covad so, and proceeded to ask some questions in order to eliminate that
240 8 confusion or at least served some discovery to clarify any questions it might have.
241 9 Instead, Qwest made no comment on the Covad language and, in fact, refused to
242 10 discuss it at all. So, if there is any confusion whatsoever on Qwest's part regarding
243 11 Covad's copper retirement proposal, it is entirely of Qwest's own doing either
244 12 because of its failure to negotiate this language or its failure to discuss or pursue
245 13 any questions it might have with Covad's proposed language.

246 14 Moreover, I am uncertain whether Qwest would even want further
247 15 additional specificity within the interconnection agreement itself. Because the
248 16 appropriate service option for each impacted end user customer may vary, I think
249 17 it would be unwise and fool-hardy to try and nail down one particular service
250 18 option. Such an approach might chain Qwest to one service option when another
251 19 service might prove to be a better alternative. Further, pinpointing one service
252 20 option as "the" alternative service that Qwest must provide ignores the fact that
253 21 technologies and products are changing and what might be available or work
254 22 today, might not work – or even be available as a product from Qwest --

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255 tomorrow. Flexibility in identifying an alternative service is by far the better
256 ¹ approach given the product and technology changes our industry has seen to date.

257 ² **Q. DOES COVAD HAVE ANY SPECIFIC IDEAS IN MIND REGARDING**
258 ³ **THE ALTERNATIVE SERVICE THAT WOULD BE PROVIDED BY**
259 ⁴ **QWEST?**

260 ⁵ A. Notwithstanding our desire to provide Qwest with as much flexibility as possible,
261 ⁶ one service option that comes to my mind is one that Qwest already makes
262 ⁷ available on a volume basis. Specifically, Qwest has a product offering out, called
263 ⁸ the Qwest DSL Volume Plan Agreement -- or "VISP" service offering, which I
264 ⁹ have attached to my testimony as Exhibit KMD-1. With this product offering, a
265 ¹⁰ CLEC is able to provide just broadband service (as opposed to the combined voice
266 ¹¹ and data product Qwest has proposed and which I discuss below) to customers
267 ¹² even where those customers are served over a hybrid copper-fiber loop.
268 ¹³ Consequently, this is a product that most likely would meet Covad's service and
269 ¹⁴ product requirements (although not the pricing requirements, given the pricing
270 ¹⁵ contained in the VISP agreement), and which has already been developed, defined
271 ¹⁶ and implemented by Qwest.

272 ¹⁷ **Q. WHAT ABOUT POTENTIAL ALTERNATIVES QWEST HAS PROPOSED**
273 ¹⁸ **IN OTHER INTERCONNECTION ARBITRATION PROCEEDINGS?**

274 ¹⁹ A. As I understand Qwest's testimony in prior arbitration proceedings, Qwest has
275 ²⁰ identified two products that potentially may serve as alternatives -- the Qwest
276 ²¹ Choice DSL product and the Qwest "naked DSL" product. As proposed by Qwest,
277 ²² however, neither of these serves as a sufficient alternative.

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278 Among many other reasons, resale of the Choice DSL product is not a
279 ¹ viable alternative to Covad because the Choice DSL product, by definition and
280 ² confirmed by Qwest in the Minnesota interconnection agreement arbitration, is the
281 ³ provision of both analog voice and DSL service over the same line. In the first
282 ⁴ place, Covad is not an analog voice provide and is not equipped (from a network,
283 ⁵ expertise or contractual right perspective) to provide or support analog or
284 ⁶ residential voice service. Even more problematic, because the voice service would
285 ⁷ be a Covad branded voice service, Covad would have to first persuade the
286 ⁸ customer to change voice providers (from Qwest to Covad) before it would be
287 ⁹ capable of reselling the Choice DSL service. Obviously, this creates a significant
288 ¹⁰ barrier to use of the Choice DSL product because the customer may not want to
289 ¹¹ change voice providers. Equally important, given the pricing packages that Qwest
290 ¹² makes available when customers get both local and long distance service from
291 ¹³ Qwest, Covad could not match the Qwest service offering since it does not provide
292 ¹⁴ any type of analog or residential long distance service, and it certainly cannot
293 ¹⁵ match the local service rates Qwest can offer by virtue of the bundle. The net
294 ¹⁶ result is that there are insurmountable barriers to the successful use of the Choice
295 ¹⁷ DSL product –even without factoring in the price that Qwest wants Covad to pay
296 ¹⁸ for this service.

297 ¹⁹ The “naked DSL” product is equally unsatisfactory as an alternative, albeit
298 ²⁰ for different reasons or problems that exist at this moment. First, based on
299 ²¹ Qwest’s news releases, naked DSL is a “second line” product – meaning that it is
300 ²² not provided over the primary line, but must be provisioned on a dedicated,
301 ²³ standalone, second line. As the Commission knows, a spare second line running to

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302 the premise is not always available, nor – particularly in a state like Utah – might
303 ~~1~~ that second line be capable of supporting broadband service. Beyond that,
304 ~~2~~ however, it is impossible to determine anything about the “naked DSL” product. I
305 ~~3~~ reviewed all of the DSL products Qwest advertises on its website for residential,
306 ~~4~~ small business and enterprise-class customers. There is no information whatsoever
307 ~~5~~ on the “naked DSL” product, and the only information I could find on the Qwest
308 ~~6~~ website came in the form of newspaper articles in the Qwest news release
309 ~~7~~ archives. At this point in time, therefore, Qwest has made it impossible to
310 ~~8~~ determine to any degree of certainty whether such a product would ever work as
311 ~~9~~ an alternative service.

312 ~~10~~ Based upon my experience with Covad products, I reasonably surmise that,
313 ~~11~~ at a minimum, the naked DSL product – if it is available in Utah, to a particular
314 ~~12~~ customer, or at all – would be much too costly for purposes of providing service to
315 ~~13~~ residential customers (who would generally be the class of customer impacted). It
316 ~~14~~ is beyond dispute that second or dedicated line DSL products are business class
317 ~~15~~ products, with the pricing to match. As a consequence, given what Qwest
318 ~~16~~ apparently wants to charge Covad should naked DSL even be available, there is no
319 ~~17~~ way that Covad could keep that customer because Covad would have to charge a
320 ~~18~~ price far higher than its current or even a remotely competitive price.

321 ~~19~~ **Q. QWEST HAS COMPLAINED ELSEWHERE THAT THE COVAD**
322 ~~20~~ **PROPOSAL WILL FORCE QWEST TO INCUR SUBSTANTIAL, BUT**
323 ~~21~~ **COMPLETELY UNDEFINED AND UNQUANTIFIED COSTS. PLEASE**
324 ~~22~~ **RESPOND.**

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325 A. Absolutely. Qwest has raised concerns elsewhere that the Covad proposal would
326 1 result in Qwest incurring costs far beyond what it reasonably could or should be
327 2 required to bear. As an initial matter, while Qwest has made this claim quite
328 3 loudly, it also admitted in the Colorado arbitration that it had made no attempt to
329 4 quantify these costs or undertake any kind of study to accurately or even
330 5 adequately capture what these costs are, or what the magnitude of such costs might
331 6 be. In other words, while Qwest claims concern about costs, to date we haven't
332 7 seen any evidence of them or why or how Qwest would not recover its costs.

333 8 Qwest also claims that providing any kind of alternative service would
334 9 result in Qwest sustaining additional costs in order to develop a product to meet
335 10 Covad's needs. Of course, as I discuss above, Qwest offers and supports a product
336 11 that very likely would meet Covad's needs (assuming the pricing conditions of no
337 12 increase in cost to Covad or its end user customer are met) so such costs just
338 13 wouldn't materialize.

339 14 Finally, Qwest claims that the Covad proposal would force Qwest to
340 15 support the cost of maintaining two loops – the fiber feeder it has deployed as well
341 16 as copper facilities to support Covad's "alternative service." That cost, however,
342 17 would only be sustained by Qwest if it made an economically irrational decision.
343 18 By this I mean that Qwest certainly could interpret its requirement to provide an
344 19 alternative service as one that requires it to maintain copper loop plant that it
345 20 otherwise would have retired. Conversely, of course, Qwest could interpret it in a
346 21 number of other ways, which would meet Covad's needs and not require Qwest to
347 22 maintain copper plant it otherwise would have retired. That choice is Qwest's, and

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348 it should not in any way be construed as a barrier to Qwest providing an alternative
349 ¹ service where and when it retires fiber feeder.

350 ² **Q. WHY DOESN'T QWEST'S PROPOSAL ACHIEVE THE SAME**
351 ³ **OUTCOME THAT COVAD'S PROPOSAL ACCOMPLISHES?**

352 ⁴ A. Well, as an initial matter, Qwest has made no proposal where fiber deployment
353 ⁵ results in hybrid fiber-copper loops. In other words, Qwest's commitment to
354 ⁶ keeping copper in the ground where technically feasible even when it deploys fiber
355 ⁷ as set forth in Section 9.2.1.2.3.2 apparently is limited to the situation in which
356 ⁸ Qwest deploys FTTH loops. To date, Qwest has refused to make a similar
357 ⁹ commitment to maintaining copper where technically feasible when Qwest
358 ¹⁰ deploys hybrid fiber-copper loops.

359 ¹¹ **Q. DOES QWEST'S REFUSAL TO COMMIT TO ANY KINDS OF**
360 ¹² **PROVISIONS REGARDING MAINTENANCE OF COPPER WHERE**
361 ¹³ **FIBER FEEDER IS DEPLOYED CONCERN YOU?**

362 ¹⁴ A. It absolutely does. By refusing to extend its commitments to the situation in which
363 ¹⁵ hybrid loops are deployed, Qwest is creating for itself an opportunity to take (not
364 ¹⁶ win) customers that very specifically chose NOT to have Qwest as their DSL
365 ¹⁷ provider. The possibility that Qwest might misuse its fiber upgrades causes me a
366 ¹⁸ great deal of concern, particularly given the Qwest pattern of conduct of delaying
367 ¹⁹ Covad market entry but expediting its own when Covad was rolling out its line
368 ²⁰ sharing network.

369 ²¹ **Q. WHAT HAPPENS TO COVAD'S CENTRAL OFFICE-BASED**
370 ²² **COLLOCATION EQUIPMENT WHEN QWEST DEPLOYS FIBER?**

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371 A. As more and more fiber feeder replaces copper, fewer and fewer potential
372 1 customers will be in reach of Covad's central office based DSL, which will result
373 2 in the progressive stranding of Covad's collocated investment. This is not an
374 3 inconsequential point. Today, in order to collocate in a single Utah central office,
375 4 Covad incurs between *** CONFIDENTIAL INFORMATION *** in non-
376 5 recurring collocation costs and approximately *** CONFIDENTIAL
377 6 INFORMATION *** per month in recurring charges.³ In addition, Covad will
378 7 lose the benefit of the investment it made in placing its equipment in the CO to the
379 8 tune of, on average, *** CONFIDENTIAL INFORMATION *** Additionally,
380 9 Covad has ordered and paid for transport (approximately *** CONFIDENTIAL
381 10 INFORMATION *** and UNEs to provide service to those customers, all of
382 11 which Covad will ultimately lose under the Qwest proposal.

383 Covad is not passively sitting around waiting for Qwest to force customers
384 12 off of our network and to result in a stranding of our central office-based
385 13 collocation spaces and equipment. To the contrary, Covad is working to develop
386 14 alternative ways to provide service to our customers. Notwithstanding these
387 15 efforts, it is not appropriate for Qwest to have the unilateral ability to disconnect
388 16 existing Covad customers under the guise of technological development.

389 17 At the end of the day, while Qwest may complain about its supposed
390 18 investment disincentive (which, as I discuss below, is an illusory concern), it is
391 19 Covad that suffers the monetary harm because it loses the value of its central
392 20 office investment.

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23 4 These are the current, commission-approved rates and the rates that Covad has received for over the past
24 year when submitting collocation applications. These rates include special pricing via the Collocation
25 Available Inventory Promotion.

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393 **Q. IN DESCRIBING THE COVAD PROPOSAL IN ACTION, YOU STATED**
394 **THAT ONLY A HANDFUL OF CUSTOMERS WOULD BE IMPACTED.**
395 **HOW DO YOU ARRIVE AT THAT CONCLUSION?**

396 A. By two different methods. First, Qwest is and has been replacing copper with
397 fiber. To date, those activities have not impacted Covad so we reasonably assume
398 that the impact will not be huge, just that there will be some impact. The second
399 way I arrive at that conclusion is based on our experience in other ILEC regions.
400 In the BellSouth region, which is of comparable size in terms of Covad's customer
401 base to the Qwest region, ***** CONFIDENTIAL INFORMATION ***** Covad
402 customers have been impacted by copper retirement with fiber replacement.
403 Notably, BellSouth has been far more aggressive than Qwest in replacing copper
404 with fiber, and more than 40% of the BellSouth remote terminals are served by
405 fiber – whereas it appears that only approximately 20% of Qwest's remote
406 terminals are served by fiber. Importantly, Covad filed copper retirement
407 complaints in each of the BellSouth states where customers were impacted, and
408 was able to successfully settle those complaints in a fashion that allowed those
409 customers to continue to receive the same service they were receiving before the
410 retirement.⁴

411 **Q. IF IT IS ONLY A HANDFUL OF CUSTOMERS, WHY SHOULD THE**
412 **COMMISSION OR COVAD CARE ABOUT THESE CUSTOMERS?**

413 A. While four or five customers may be something Qwest is willing to ignore, Covad
414 most certainly is not. Covad is committed to delivering to each and every one of
415 its end users outstanding service. Covad's commitment is not just to provide the
416 service that the end user wants, but also to ensure that the end user's entire

⁴ The precise terms of the settlements are confidential. However, Covad is permitted to disclose the fact that the complaints were settled successfully and that, as a result of the settlement, the customers continued to receive the same services they were receiving prior to the copper retirement.

417 experience with Covad, from ordering through disconnection, is a positive
418 experience and that the end users get what they want – excellent service *from*
419 *Covad*. Because of its commitment to service and end user satisfaction, Covad
420 does not just dismiss the predicament of a few customers because they are just a
421 few.

422 The Commission, too, does not ignore the predicament of a few consumers
423 just because there are a few rather than hundreds or thousands. If anything, the
424 Commission has evinced an overwhelming interest in making sure that each and
425 every consumer in Utah is treated with respect and that providers over whom the
426 Commission exercises authority are responsive to their customers. Just because
427 only a few consumers may be impacted does not mean that they do not deserve to
428 have choices. To suggest otherwise is simply repugnant. If anything, it is where
429 only a few of the “little guys” are impacted that customer choice is most important.

430 **Q. DOES THE COVAD PROPOSAL DISINCENT COVAD FROM**
431 **INVESTING IN ITS OWN NETWORK?**

432 A. No, it doesn't. As the Commission knows, Covad is a facilities-based provider.
433 As of August 2001, Covad had invested over \$1.4 billion to build out its
434 nationwide network, and since that time Covad has spent tens of millions of
435 dollars more to maintain and upgrade its already world-class network and
436 operating support systems (“OSS”). Covad collocates its own equipment in
437 numerous Qwest central offices in Utah and throughout six other states in the
438 Qwest region (Covad is Qwest's largest collocation customer). Covad relies solely
439 on its own equipment and network to provide service to customers in Utah, except
440 when it must utilize dedicated interoffice transport leased from Qwest in some
441 circumstances and as well as that quintessential bottleneck facility, the local loop.

442 Because of its business plan, Covad utilizes its own network wherever and
443 ¹ whenever the technological and economic circumstances make it possible. But,
444 ² because it makes no sense to invest in a remote DSLAM simply to serve a handful
445 ³ of customers for a limited time period, Covad would not make that investment
446 ⁴ decision.

447 ⁵ **Q. QWEST HAS SUGGESTED ELSEWHERE THAT COVAD'S PROPOSAL**
448 ⁶ **WOULD REDUCE QWEST'S INCENTIVE TO DEPLOY FIBER**
449 ⁷ **FACILITIES. DO YOU AGREE WITH THIS STATEMENT?**

450 ⁸ A. Absolutely not. The potential impact to Qwest, should Covad prevail on this issue,
451 ⁹ would be so minimal that any possibility of impacting a multi-million dollar
452 ¹⁰ investment decision is overstated, if not unfounded.

453 ¹¹ **Q. PLEASE EXPLAIN.**

454 ¹² A. Covad is primarily a wholesale provider of DSL services. Our business partners,
455 ¹³ who provide the retail service, have a nationwide marketing focus. At times, the
456 ¹⁴ focus may be at a state level, but never at a wire center or neighborhood level (the
457 ¹⁵ neighborhood level is referred to by telecom providers as a distribution area, or
458 ¹⁶ DA). Because of this fact, many DAs will have few, if any, end user customers
459 ¹⁷ with Covad DSL service. Our customer base is not concentrated in any one DA,
460 ¹⁸ but instead, randomly distributed over all DAs served by wire centers where
461 ¹⁹ Covad is collocated. The likelihood of more than a handful of Covad end user
462 ²⁰ customers being impacted by a fiber replacement is so highly remote that any
463 ²¹ attempt to argue that multi-million dollar investment decision would be made on
464 ²² this basis is suspect in my mind.

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465 **Q. IF FIVE COVAD END USER CUSTOMERS WERE GOING TO BE**
466 **IMPACTED BY A FIBER REPLACEMENT PROJECT, WHAT WOULD**
467 **BE THE APPROXIMATE FINANCIAL IMPACT TO QWEST?**

468 **A.** Assuming an industry average churn rate (the length of time a typical customer
469 retains their DSL service) of two years, the difference in price between Qwest
470 wholesale and retail revenue is about \$100.00 per month for all 5 customers, the
471 impact would be about \$2,400.00. This is hardly enough to impact a decision as to
472 whether or not to deploy fiber to hundreds, if not thousands, of existing Qwest
473 customers.

474 **Q. CAN YOU SEE ANY POSSIBLE WAY THAT COVAD'S PROPOSAL**
475 **WOULD REDUCE QWEST'S INCENTIVE TO DEPLOY FIBER?**

476 **A.** Not in the least. Again, Covad's customers are so widely dispersed within the
477 Qwest network that impacts will be minimal, and certainly not significant enough
478 to discourage Qwest from deploying fiber cable. If Covad were a retail provider of
479 DSL, with established relationships with customers within a specific
480 neighborhood, higher concentrations of customers would be more likely.
481 However, unlike Qwest or the incumbent cable provider, Covad is not provided
482 this opportunity to target market to a specific neighborhood customer base.

483 Moreover, as I discussed above, I can envision at least one way in which
484 Qwest could provide an alternative service over any of the facilities available to an
485 existing Covad end user customer that would not change in any respect Qwest's
486 investment calculation or result in Qwest incurring any costs over and above what
487 it would otherwise incur when it decided to retire copper feeder and replace it with
488 fiber. Nor would this method (the VISIP product) require Qwest to maintain

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489 copper it would not otherwise maintain, or provide any type of access to fiber
490 ¹ facility beyond that required to provide service to existing Covad customers until
491 ² they choose to disconnect their service. Of course, notwithstanding what I can
492 ³ envision, Covad will commit to working with Qwest to developing an alternative
493 ⁴ service for Covad's impacted existing customers that will not increase Qwest's
494 ⁵ costs beyond the costs it would otherwise incur in deploying fiber feeder and the
495 ⁶ associated electronics in the first place.

496 ⁷ **Q. EXPLAIN WHY COVAD'S PROPOSAL ACTUALLY BENEFITS QWEST.**

497 ⁸ A. Under Covad's proposal, Qwest continues to receive revenue from Covad as it
498 ⁹ continues to provide service to the customer. If Covad is not allowed to retain that
499 ¹⁰ customer, then Qwest is not assured of any revenue whatsoever from that
500 ¹¹ customer. In other words, if Qwest forces Covad to cut off service to its
501 ¹² customer, the customer then has the option of choosing Qwest for its broadband
502 ¹³ (and video) service, or choosing the cable company for broadband (and video)
503 ¹⁴ service. The customer is free to choose the cable company, and if he or she does
504 ¹⁵ so, Qwest will receive no revenue whatsoever. At least under Covad's proposal,
505 ¹⁶ Qwest will continue to recover its costs and make a reasonable profit without any
506 ¹⁷ additional expenses.

507 ¹⁸ **Q. PLEASE EXPLAIN WHY THE DEPLOYMENT OF FIBER DOES NOT**
508 ¹⁹ **LEAD TO ANY CONSUMER BENEFIT IN THE COPPER RETIREMENT**
509 ²⁰ **SCENARIO WITH WHICH COVAD IS CONCERNED.**

510 ²¹ A. Fiber deployment does not necessarily result in any meaningful consumer benefit.
511 ²² In the first place, we are not talking about a situation in which the consumer does
512 ²³ not already have broadband. To the contrary, in the copper retirement scenario we

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513 are talking about, the consumer already has broadband from Covad. The
514 ¹ deployment of fiber thus doesn't result in any bridging of the "digital divide" since
515 ² none exists in the scenario Covad is concerned about. This is an important point
516 ³ because, historically, the desire to incent broadband deployment (whether via
517 ⁴ copper or fiber) has been driven by the desire to provide all consumers with access
518 ⁵ to broadband. That traditional justification for creating a deployment incentive
519 ⁶ simply does not exist here. The consumer already has broadband from a provider
520 ⁷ of their choice.

521 ⁸ More importantly, Qwest's fiber deployment has not been designed to
522 ⁹ actually facilitate the provision of broadband services – enhanced or otherwise. In
523 ¹⁰ fact, Qwest has deployed fiber in at least one state for no purpose other than to
524 ¹¹ support voice service, as Exhibit KMD-2 shows. And to the extent that Qwest's
525 ¹² fiber deployment is broadband capable, it appears to be the rare exception, rather
526 ¹³ than the rule that the fiber Qwest has deployed can provide any service other than
527 ¹⁴ what's already available over the all copper loop running between the customer
528 ¹⁵ premises and the central office. Finally, given DSL technology that will be
529 ¹⁶ available in 6-12 months, all copper loops will also be able to support video
530 ¹⁷ services, thereby eliminating entirely any service advantage that Qwest might gain
531 ¹⁸ (which is not a given, as I just explained) by virtue of its fiber deployment.

532 ¹⁹ **Q. IN FACT, QWEST'S FIBER DEPLOYMENT WILL RESULT IN**
533 ²⁰ **CONSUMER HARM, WON'T IT?**

534 ²¹ **A.** The deployment of fiber, if Covad's proposal is not adopted, will actually lead to
535 ²² consumer harm. The consumer has made his or her choice among providers and
536 ²³ currently available service options. The choice to go with Covad should be

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537 honored until the consumer changes his or her mind, just as, if the consumer
538 ¹ chooses to leave Covad, then that choice should be honored as well. Relatedly, of
539 ² course, as consumers have fewer providers to choose from, their rates will go up as
540 ³ a result of the monopoly/duopoly service arrangement. At least under Covad's
541 ⁴ proposal, the consumer won't face an immediate jacking up of the price of the
542 ⁵ service he or she receives, because they have an alternative, lower-priced, and
543 ⁶ excellent service option in Covad.

544 ⁷ **Q. DO YOU TAKE ISSUE WITH QWEST'S COPPER RETIREMENT**
545 ⁸ **NOTICE PROCESS?**

546 ⁹ A. It is clear to us that Qwest's notice process is deficient.

547 ¹⁰ **Q. WHY IS THE QWEST NOTICE PROCESS DEFICIENT?**

548 ¹¹ A. As I understand it, while Qwest will provide notice of all copper retirement
549 ¹² activity, including copper retirement resulting in hybrid fiber-copper loops, the
550 ¹³ notice that Qwest is providing is inadequate to fully inform Covad that its
551 ¹⁴ customers will be impacted. Right now, the Qwest notice simply lists the state, the
552 ¹⁵ wire center, the planned retirement date, the DA number, the FDI address and the
553 ¹⁶ replaced/replacing transmission media, as you can see from the attached Exhibit
554 ¹⁷ KMD-3. This is absolutely insufficient to allow a CLEC to determine whether a
555 ¹⁸ particular copper retirement will impact its customer base. Equally important,
556 ¹⁹ there is nothing on the notification, whether in the form of a contact number or a
557 ²⁰ URL that would allow a CLEC to seek whatever additional information Qwest
558 ²¹ might have relative to the impact of the copper retirement.

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559 **Q. WHAT KIND OF INFORMATION MUST QWEST PROVIDE IN ORDER**
560 **TO ALLOW COVAD (AND ANY OTHER CLEC) TO DETERMINE**
561 **WHETHER A COPPER RETIREMENT IS CUSTOMER IMPACTING?**

562 **A.** Covad believes that the following information must be provided to Covad in order
563 for it to determine whether the copper retirement is customer impacting.
564 Importantly, while the primary impact of a copper retirement will be felt when
565 Qwest replaces copper feeder with fiber feeder, Covad's customer base also may
566 be impacted when copper feeder is replaced by copper feeder with different
567 transmission characteristics that may impact the speed of the service Covad
568 provides or preclude its ability to provide service all together:

- 569 *City and State
- 570 *Wire center
- 571 *Retirement Date
- 572 *FDI address
- 573 *Listing of all impacted addresses in the DA
- 574 *Listing of all Covad customer impacted addresses
- 575 *Old and new cable media, including transmission characteristics
- 576 *Circuit identification number
- 577 *Cable and pair information

578 **Q. DO YOU BELIEVE IT IS REASONABLE TO REQUIRE QWEST TO**
579 **PROVIDE THIS INFORMATION TO CLECS?**

580 **A.** Absolutely. In the first place, with the exception of the FDI address and the cable
581 transmission characteristics, we pulled this listing of information based on what
582 BellSouth provides Covad every time it retires copper and there is an impact on

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583 Covad's existing customer base. If BellSouth can provide this information,
584 ¹ certainly Qwest can as well. As for the two additional pieces of information, FDI
585 ² address and the cable transmission characteristics, Qwest appears already to be
586 ³ able to provide that information so it should not be problematic at all to continue
587 ⁴ providing that information.

588 ⁵ Second, based on a recent copper retirement notification from Qwest, it
589 ⁶ appears that Qwest is equally capable of discerning whether there are any specific
590 ⁷ CLEC-customer impacts. Specifically, pursuant to a September 21, 2004 network
591 ⁸ notification, attached hereto as Exhibit KMD-4, Qwest was able to determine with
592 ⁹ a Colorado copper retirement that "there are no impacts to the CLEC community."
593 ¹⁰ When asked by Covad how Qwest was able to make this determination, a Qwest
594 ¹¹ representative responded that "cable counts impacted by the change were reviewed
595 ¹² for working CLEC circuits." See Exhibit KMD-5. Based on that communication,
596 ¹³ it appears clear that Qwest is more than capable of making an individualized
597 ¹⁴ finding of whether specific Covad customers would be impacted by a copper
598 ¹⁵ retirement. Despite that capability, Qwest is refusing to make it available to
599 ¹⁶ Covad. The result is an anti-competitive situation in which Qwest not only has the
600 ¹⁷ capability of targeting and taking Covad customers, but also rendering Covad
601 ¹⁸ unable to at least make the disconnection of its own customer a smooth experience
602 ¹⁹ for that customer.

603 ²⁰ **ISSUE 3: SHOULD QWEST BE REQUIRED TO FOLLOW THE FCC'S**
604 **DIRECTIVES REGARDING THE COMMINGLING OF**
605 ²¹ **FACILITIES, COMBINATION OF UNES, AND RATCHETING**
606 **ESTABLISHED IN THE TRO?**

607 ²² **Q. PLEASE DESCRIBE THIS ISSUE.**
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608 A This issue is a legal issue and because I am not testifying as an expert on legal
609 1 issues in this arbitration, I will simply state that the dispute between the parties
610 2 centers around the proper interpretation and application of the TRO provisions
611 3 addressing UNE combinations, commingling, and ratcheting. At this point in
612 4 time, of the four sub-issues contained within Issue 3 (commingling; EEL eligibility
613 5 criteria; resale commingling; and ratcheting), only the definition and scope of
614 6 Qwest's commingling obligations (sub-issue 1) remains in dispute. It is my
615 7 understanding and expectation that this issue is best and properly addressed in
616 8 briefing by the parties following the hearings in this matter.

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618 **ISSUE 9: TIME FRAME FOR PAYMENT OF BILLS, DISCONTINUANCE**
 619 **OF ORDERING, AND DISCONNECTION OF SERVICE**

620 **Q. PLEASE PROVIDE THE CONTEXT FOR THESE ISSUES.**

621 A. The issues themselves are not complex, and the parties' disagreement centers
 622 solely on timing. As a reflection of Covad's continued willingness to negotiate
 623 and compromise on arbitration issues, Covad has revised its position (and its
 624 proposed interconnection language) on the time frames for (1) payment of bills;
 625 (2) discontinuation of order processing; and (3) disconnection of service, which I
 626 will discuss in greater detail below. Further, Qwest and Covad have reached
 627 agreement on the definition of repeated delinquency, thereby eliminating one of
 628 the billing sub-issues from this arbitration.

629 **Q. PLEASE PROVIDE COVAD'S REVISED POSITION ON THE BILLING**
 630 **TIME FRAME ISSUES.**

631 A. Certainly. I have set out below the Qwest position, the original Covad position,
 632 and the revised, compromise Covad position in chart format:

	Payment Due Date	Discontinuance of Order Processing	Disconnection of Services
Qwest	30	30	60
Covad Original Proposal	45	90	120
Covad Revised Proposal	30 (except some 45)	60	90

634 I also set out below the proposed language that reflects Covad's revised
 635 position:

636 5.4.1 Amounts payable for any invoice containing (1) line
 637 splitting or loop splitting products, (2) a missing circuit ID, (3) a
 638 missing USOC, or (4) new rate elements, new services, or new
 639 features not previously ordered by CLEC (collectively "New
 640 Products") (items (1)-(4) hereinafter collectively referred to as

641 “Exceptions”) are due and payable within forty-five (45) calendar
 642 Days after the date of invoice, or within twenty (20) calendar Days
 643 ~~1~~ after receipt of the invoice, whichever is later (payment due date).
 644 With respect to the New Products Exception, the forty-five (45)
 645 ~~2~~ Day time period shall apply for twelve (12) months. After twelve
 646 (12) months’ experience, such New Products shall be subject to the
 647 ~~3~~ thirty (30) Day time frame hereinafter discussed. Any invoice that
 648 does not contain any of the above Exceptions are due and payable
 649 ~~4~~ within thirty (30) calendar Days after the date of invoice, or within
 650 twenty (20) calendar Days after receipt of the invoice, whichever is
 651 ~~5~~ later. If the payment due date is not a business day, the payment
 652 shall be due the next business day.

653 5.4.2 One Party may discontinue processing orders for the failure
 654 ~~7~~ of the other Party to make full payment for the relevant services,
 655 less any disputed amount as provided for in Section 5.4.4 of this
 656 ~~8~~ Agreement, for the relevant services provided under this Agreement
 657 within sixty (60) calendar Days following the payment due date.
 658 ~~9~~ The Billing Party will notify the other Party in writing at least ten
 659 (10) business days prior to discontinuing the processing of orders
 660 ~~10~~ for the relevant services. If the Billing Party does not refuse to
 661 accept additional orders for the relevant services on the date
 662 ~~11~~ specified in the ten (10) business days notice, and the other Party's
 663 non-compliance continues, nothing contained herein shall preclude
 664 ~~12~~ the Billing Party's right to refuse to accept additional orders for the
 665 relevant services from the non-complying Party without further
 666 ~~13~~ notice. For order processing to resume, the billed Party will be
 667 required to make full payment of all charges for the relevant
 668 ~~14~~ services not disputed in good faith under this Agreement.
 669 Additionally, the Billing Party may require a deposit (or additional
 670 ~~15~~ deposit) from the billed Party, pursuant to this section. In addition
 671 to other remedies that may be available at law or equity, the billed
 672 ~~16~~ Party reserves the right to seek equitable relief including injunctive
 673 relief and specific performance.

674 5.4.3 The Billing Party may disconnect any and all relevant
 675 ~~18~~ services for failure by the billed Party to make full payment, less
 676 any disputed amount as provided for in Section 5.4.4 of this
 677 ~~19~~ Agreement, for the relevant services within ninety (90) calendar
 678 Days following the payment due date. The billed Party will pay the
 679 ~~20~~ applicable reconnect charge set forth in Exhibit A required to
 680 reconnect each resold End User Customer line disconnected
 681 ~~21~~ pursuant to this paragraph. The Billing Party will notify the billed
 682 Party at least ten (10) business days prior to disconnection of the
 683 ~~22~~ unpaid service(s). In case of such disconnection, all applicable
 684 undisputed charges, including termination charges, shall become
 685 ~~23~~ due. If the Billing Party does not disconnect the billed Party's
 686 service(s) on the date specified in the ten (10) business days notice,

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687 and the billed Party's noncompliance continues, nothing contained
688 herein shall preclude the Billing Party's right to disconnect any or
689 ¹ all relevant services of the non-complying Party without further
690 notice. For reconnection of the non-paid service to occur, the billed
691 ² Party will be required to make full payment of all past and current
692 undisputed charges under this Agreement for the relevant services.
693 ³ Additionally, the Billing Party will request a deposit (or recalculate
694 the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed
695 ⁴ Party, pursuant to this Section. Both Parties agree, however, that
696 the application of this provision will be suspended for the initial
697 ⁵ three (3) Billing cycles of this Agreement and will not apply to
698 amounts billed during those three (3) cycles. In addition to other
699 ⁶ remedies that may be available at law or equity, each Party reserves
700 the right to seek equitable relief, including injunctive relief and
701 ⁷ specific performance.

702 ⁸ As you can see, the primary difference is the change in the timing for these three
703 ⁹ provisions. An additional change comes with the payment due date language,
704 ¹⁰ where the standard for payment is thirty (30) days, except that Covad shall have
705 ¹¹ forty-five (45) days to make payment for any invoice containing: (1) line splitting
706 ¹² or loop splitting products, (2) a missing circuit ID, (3) a missing USOC, or (4) new
707 rate elements, new services, or new features not previously ordered by CLEC
708 ¹³ (collectively "New Products").

709 ¹⁴ **Q. WHAT IS THE CRUX OF THE DISAGREEMENT BETWEEN THE**
710 ¹⁵ **PARTIES ON THE APPROPRIATE BILLING TIME FRAMES?**

711 ¹⁶ **A.** In a nutshell, the questions are whether (1) CLECs are allowed 30 days to make
712 ¹⁷ payment (except for the limited number of instances in which the due date is 45
713 ¹⁸ days) (as opposed to 30 days for the entirety of the bill); (2) whether Qwest must
714 ¹⁹ wait 60 days after the payment date before an account is considered delinquent
715 ²⁰ and, by extension Qwest can discontinue processing orders (as opposed to 30
716 ²¹ days); and (3) whether Qwest must wait 90 days after the payment date before an
717 ²² account is considered delinquent and, by extension Qwest can disconnect services
718 ²³ (as opposed to 30 days).

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719 **Q. WHY DO THE PARTIES DISAGREE ON THE TIMING ISSUE?**

720 **A.** Timing is a critical issue when it comes to bill review. Regardless of what the
721 ultimate time frame is, Covad has a limited amount of time to review a bill,
722 determine whether to dispute any portion of that bill, and pay any undisputed
723 amounts owed. Importantly, a Covad failure to adhere to the billing timelines has
724 significant and negative consequences:

- 725 • Failure to pay on time places a carrier at risk of incurring late
726 payment charges. Late payment charges can result in significant
727 costs to Covad;
- 728 • Failure to pay on time places a carrier at risk of having to provide a
729 deposit, which Qwest estimates the deposit to equal charges for a
730 two-month period; and
- 731 • Failure to pay on time can result in discontinuance of processing
732 orders and disconnection of service.

733 **Q. WHY DOESN'T COVAD JUST PAY THE ENTIRETY OF A BILL AND**
734 **DEAL WITH ANY BILLING ERRORS LATER?**

735 **A.** A practice of “pay all and worry about disputes and overpayments later” is just not
736 an acceptable response or solution. First, it is money out of Covad’s pocket and
737 Covad is deprived of having that money available to it for other uses. Given the
738 current economic environment and known constraints under which Covad is
739 operating in light of significant regulatory uncertainty, access to ready capital is
740 key.

741 Second, if Covad pays prematurely, it loses the benefit of any interest that
742 would accrue on those funds from the time of payment, which of course is
743 important from Covad’s financial perspective. Getting the money at some later,
744 undefined point in time at which Qwest finally agrees its billing was in error does

745 not actually remedy the lack of having the money available at the time when
746 Covad had to make the payment. By contrast, Qwest benefits unfairly because it
747 accrues interest for amounts it never should have received in the first place and
748 enjoys the “float” available to it unless and until it decides to refund the money to
749 Covad. Ultimately, the “pay now and deal later” mode of business would result in
750 a game of “catch up” by Covad, as it does a post-hoc review in an abbreviated time
751 frame to ensure that its billing claims are not precluded by other provisions of the
752 Agreement.

753 Finally, and perhaps most importantly, Covad loses its sole form of
754 leverage when it simply pays a bill. In theory, the parties are equal partners, one
755 ordering services for which it pays, and the other providing them. In reality,
756 however, the party providing the services, Qwest, is the only source for services
757 that Covad cannot get anywhere else. So, when Covad pays a bill and then tries to
758 dispute a particular billed item, it has lost any leverage it might otherwise have
759 because it cannot take its business to another vendor if the outcome of the billing
760 dispute is not handled in an acceptable fashion. No number of provisions in the
761 interconnection agreement can change that essential fact.

762 **Q. PLEASE EXPLAIN WHY THE TIME FRAMES PROPOSED BY QWEST**
763 **ARE PROBLEMATIC AND UNREASONABLE.**

764 **A.** Generally speaking, Covad receives its UNE, collocation, and transport bills from
765 Qwest 5-8 days after the invoice date. Under Qwest’s proposal, Covad has 20
766 days at worst, or 25 days at best, to review all of those bills. This bill review is not
767 an easy task. Covad’s UNE bills fill 30 boxes every month. Collocation bills, of
768 which Covad receives ten (10) every month from Qwest, run from 50-70 pages
769 long, for a total of 500-700 pages worth of collocation billing. Transport bills, of
770 which Covad receives 17-18 every month from Qwest, also run from 50-70 pages,

771 for a total of 850-1260 pages worth of transport billing. Monthly bill review,
 772 therefore, involves the review and evaluation of thousands and thousands of pages
 773 of billings.

774 **Q. QWEST SUGGESTS THAT, BECAUSE ITS BILLS ARE AVAILABLE**
 775 **ELECTRONICALLY, BILL REVIEW IS FAIRLY SIMPLE. WHY IS**
 776 **THAT NOT TRUE?**

777 **A.** Electronic billing does not make the burden of bill review so easy that the time
 778 frames proposed by Qwest do not impose a burden on Covad. Additionally, not all
 779 of the Qwest bills are available electronically. The nonrecurring portion of
 780 collocation bills for new collocation spaces or augments are not available in
 781 electronic format, and are only available in paper format such that the entire non-
 782 recurring bill review process is manual. Covad employees must review each
 783 charge from the paper invoice, load it manually into the billing system, wait for an
 784 exception printout, and then manually evaluate exceptions. Covad employees also
 785 must manually validate that the elements and quantities reflected in the invoices
 786 are correct and accurate. Additionally, any ICB – individual case basis -- charges
 787 on a collocation bill – of which there can be many,⁵ must be reviewed individually
 788 by Covad employees.

789 Transport bills, while provided electronically, also require manual review
 790 of portions to confirm non-recurring charges. Additionally, because of the method
 791 by which transport is billed (variable recurring and fixed recurring), the variable
 792 recurring charges must be manually validated each and every month.

793 UNE bills, while provided electronically, can be extremely difficult to
 794 process in the time frames Qwest wants included in the Agreement. First, a

⁵ Some examples of ICB charges are as follows: Construction Charges, Central Office Security
 Infrastructure Charge, Cageless Collocation Site Preparation Fee, Line Sharing Reclassification Charge,
 Expedite Charge and Cancellation Charge.

795 number of times, the Qwest UNE bills fail to provide a circuit identification
796 number, providing instead a “unique identification number”, which is comprised
797 of the customer’s billing telephone number (i.e., the telephone number that Qwest
798 would call about a billing problem, rather than the telephone number associated
799 with the actual circuit) and a unique code that Qwest generates and which Qwest
800 assigns to that customer (we call this the BTN number and refer to this Qwest bill
801 deficiency as the “BTN issue”). In the absence of a circuit identification number,
802 however, Covad is utterly unable to confirm whether Qwest is billing Covad for a
803 loop it has actually ordered. Covad relies on the provisioned circuit identification
804 number to reconcile its bills because that number accurately reflects the line in
805 question, removing uniquely generated numbers that may or may not be accurately
806 generated and/or provided for by Qwest. The BTN, by contrast, may or may not
807 be the actual circuit provisioned.

808 **Q. WHAT IS THE SCOPE OF THE BTN ISSUE?**

809 **A.** The scope of this problem is enormous. In the first eight months of 2004 alone,
810 Qwest billed Covad over ***** CONFIDENTIAL INFORMATION ***** for loops
811 for which no circuit ID was provided. On an annualized basis, the total amount
812 that Qwest bills and which Covad must simply pay, having no way to validate the
813 veracity of the billing, is ***** CONFIDENTIAL INFORMATION *****. In the
814 absence of additional time to resolve the circuit ID issue, Covad must simply pay
815 these charges.

816 Quantified in a different way, currently, Covad has ***** CONFIDENTIAL**
817 **INFORMATION ***** total lines in service in this state. Of those lines, *******
818 **CONFIDENTIAL INFORMATION ***** are line shared lines, reflecting 65% of
819 Covad’s total customer base in Utah. As a consequence, Qwest is providing UNE

820 bills to Covad in the state of Utah for which a significant percentage are
821 unreconcilable.

822 **Q. PLEASE EXPAND ON WHY THIS IS SUCH A PROBLEM FOR COVAD.**

823 **A.** Well, there is the first, most obvious problem that Qwest does not provide
824 sufficient information to allow Covad to review its bills in a meaningful fashion.
825 Covad thus pays on 65% of its customer base hoping, but not knowing for certain
826 whether Qwest is billing appropriately and correctly. Second, and equally
827 important, Qwest's billing deficiencies create a real problem for Covad in terms of
828 demonstrating compliance with Sarbanes Oxley ("SOX"). As we all know just
829 from reading the newspaper, a key focus of SOX is to ensure that the books and
830 records of publicly traded companies are maintained in a fashion that ensures
831 accurate, reliable, and GAAP compliant financial records. Because Covad cannot
832 document, due to the deficiency in Qwest's bills, that it actually incurs a monthly
833 liability for its line shared lines, Qwest unilaterally can create SOX compliance
834 issues for Covad.

835 **Q. DOES COVAD FACE THIS PROBLEM WITH ALL THE ILECS?**

836 **A.** No. Only Qwest fails to provide this critical, circuit identification information.
837 All the other ILECs, including their "subILECs" (e.g. SBC's "subILECs" are
838 SWBT, Ameritech, PacBell and SNET) are capable and do include the circuit
839 identification number for line shared lines. Qwest thus is out of step with the other
840 ILECs and with industry norms surrounding the billing for line shared lines.

841 **Q. HAS QWEST ATTEMPTED TO RESOLVE THIS ISSUE?**

842 **A.** No. In March of 2003, Covad asked Qwest to include this information on its UNE
843 bills and was told, in no uncertain terms, that that information would not be
844 provided. At most, Qwest has suggested that Covad spend time and money to alter
845 its software billing systems to accommodate the fact that Qwest is out of sync with

846 industry billing norms. And even were Covad to attempt to implement Qwest's
847 suggestion about how to manually obtain circuit identification information via the
848 FOC or the CSR, it would require significant man hours to validate the billing
849 records even assuming that we would be able to do so with the information that
850 Qwest has provided. As is eminently clear, it is inappropriate, unfair and anti-
851 competitive to require Covad to incur the time and costs to develop a workaround
852 to resolve problems and deficiencies that are of Qwest's own making and decision.

853 **7 Q. DOES QWEST HAVE ACCESS TO THE CIRCUIT IDENTIFICATION**
854 **8 NUMBER FOR LINE SHARED LINES?**

855 **9 A.** It is Covad's belief and understanding that the circuit identification number resides
856 somewhere in Qwest's backend systems or databases. I state this after reviewing
857 line sharing billing information pulled from Covad's files in which it appears that
858 the circuit identification number is included in the "Circuit Detail Section" for two
859 line shared lines. I have attached Exhibit KMD-6 (which has both a confidential
860 and non-confidential version) which reflects this. For purposes of making it easier
861 to identify the information I am talking about, I have inserted an arrow on the
862 pages that appear to show circuit identification information.

863 **16 Q. IS THIS PROBLEM LIMITED TO LINE SHARED LINES?**

864 **17 A.** No. Qwest stated in the Minnesota arbitration that it fails and refuses to provide
865 circuit identification numbers on line split line billings as well as a result of a
866 decision it made with respect to the provisioning flow to which it assigned line
867 shared and line split lines. So the scope of this problem goes far beyond Covad,
868 has a significantly negative impact on multiple competitors in the Qwest region,
869 and is solely attributable to Qwest's own decision-making.

870 **Q. SINCE COVAD AND QWEST HAVE A COMMERCIAL LINE SHARING**
871 **AGREEMENT, DOESN'T THE BTN PROBLEM MOVE TO THAT**
872 **AGREEMENT?**

873 A. No, it does not. Per the TRO, all line shared lines on the network as of October 2,
874 2004 are “grandfathered” in as UNEs and thus are subject to the terms and
875 conditions of our current interconnection agreement, and once approved by the
876 Commission, the interconnection agreement being arbitrated. Only those new
877 lines added on or after October 2, 2004 will be subject to the terms and conditions
878 of the commercial line sharing agreement.

879 **Q. HAS COVAD ATTEMPTED TO USE THE CHANGE MANAGEMENT**
880 **PROCESS TO RESOLVE THIS ISSUE?**

881 A. Originally we had not, based on Qwest’s March 2003 unequivocal statement that
882 circuit identification numbers for line shared lines were not and would not be
883 included in our UNE bills. Further, Qwest denied a Covad provisioning change
884 request asking that the circuit identification number be provided as part of the
885 provisioning process. We reasonably assumed that if Qwest were not willing to
886 provide that information during one part of the process, it certainly would not do
887 so during the billing cycle, particularly since by that point Covad just simply has
888 to assume Qwest’s billing is correct and pay for all line shared lines Qwest bills
889 for. Finally, over one month ago, Qwest took the novel and unprecedented
890 position that billing change requests are outside the scope of the CMP and would
891 not be a part of the prioritization or resource allocation process, rendering the
892 CMP ineffectual for implementing billing changes like the BTN issue.
893 Nonetheless, because Qwest has persisted in testifying that CMP is the avenue for
894 resolution of these kinds of issues, Covad submitted a change request requesting
895 that the circuit identification number be provided on UNE bills for line splitting,

896 line sharing and loop splitting. Qwest has not yet provided its response to that
897 change request.

898 **Q. PLEASE PROVIDE MORE DETAIL AROUND THE CMP**

899 **A.** The CMP is the sole method by which CLECs can request that changes be made to
900 Qwest systems (interfaces, backend systems and databases), products, and
901 processes. I've attached hereto as Exhibit KMD-7 the governing CMP document
902 which spells out the scope and purpose of the CMP. Relevant to systems changes
903 in order to make changes to bill format and content, while the CMP governing
904 document clearly calls for Qwest to invoke prioritization when the resources
905 necessary to implement requested changes exceed a particular OSS release
906 capacity (*see* Exhibit KMD-7, section 10.0), Qwest has taken the position that
907 CLEC billing and/or maintenance and repair requests will be implemented 1) if
908 approved solely by Qwest with 2) no set implementation timeframes. In doing so,
909 Qwest determines unilaterally which CLEC initiated changes are implemented and
910 in what timeframe. Covad requested review of this issue by the Oversight
911 Committee because this process was designed to accommodate "out of scope"
912 conditions (not following the governing documented procedures).

913 **Q. WOULD AN ORDER OUT OF THIS COMMISSION THAT REQUIRED**
914 **ANY KIND OF CHANGE TO A QWEST PRODUCT, PROCESS OR**
915 **SYSTEM SOMEHOW UNDERMINE THE CMP?**

916 **A.** No. To the contrary, the CMP document clearly delineates and defines a specific
917 category of changes called "regulatory change requests." As defined in the CMP
918 document itself, a "regulatory CR" is "mandated by regulatory or legal entities,
919 such as the Federal Communications Commission (FCC), a state
920 commission/authority, or state and federal courts. Regulatory changes are not
921 voluntary but are requisite to comply with newly passed legislation, regulatory

922 requirements, or court rulings”. Thus, the CMP clearly contemplates that
923 Commissions will order changes to Qwest processes, products and systems, and
924 that such changes will be effectuated via CMP. So, orders out of this Commission
925 that require changes by Qwest in no way undermines the CMP, but rather are
926 complementary to and a part of the CMP.

927 **Q. YOU STATED EARLIER IN YOUR TESTIMONY THAT QWEST’S**
928 **POSITION THAT BILLING CHANGE REQUESTS ARE OUTSIDE THE**
929 **SCOPE OF CMP WAS NOVEL AND UNPRECEDENTED. WHY IS**
930 **THAT?**

931 **A.** The CMP documentation is very clear. The CMP document defines OSS as
932 “[t]hroughout this document, OSS Interfaces are defined as existing or new
933 gateways (including application-to-application interfaces and Graphical User
934 Interfaces), connectivity and system functions that support or affect the pre-order,
935 order, provisioning, maintenance and repair, and billing capabilities for local
936 services (local exchange services) provided by CLECs to their end users”. Qwest
937 has now taken the position that billing change requests are outside the scope of
938 CMP because they impact backend systems. This is completely contrary to what
939 was expressly agreed to by Qwest in connection with its bid to re-enter the long
940 distance business via Section 271 of the Telecommunications Act of 1996 when it
941 had to redesign its CMP as documented in Exhibit KMD-7, as well as what is
942 explicitly stated in the CMP document itself.

943 Moreover, Qwest’s position is just nonsensical. Systems interfaces are
944 nothing more than a screen, or gateway, that confirms I’m an authorized user and
945 that the information I want to obtain from some backend system can be obtained.
946 The interface itself only tells me I can get that information, but does not actually
947 give me the information or tell me what I want to know. Using an analogy to

948 make this clear and to demonstrate the hypocrisy of Qwest’s new position in CMP,
949 say I have an account at a bank, have deposited \$10,000 into my account, and as
950 part of my banking privileges, I can access automatic teller machines (“ATM”)
951 with my ATM card to conduct my banking business. If Qwest is taken at its word,
952 using my analogy, I can put my ATM card into the ATM, enter my PIN and
953 confirm that I am who I am and am the lawful owner of the account linked to my
954 name and PIN number. But, that’s it; I can’t use the ATM machine to withdraw
955 cash, deposit cash or check my account balance. In essence, then, my ATM
956 “banking privileges” are meaningless because they do not let me actually do
957 anything – which is precisely what Qwest is now saying. Per Qwest, CLECs can
958 ask that the ATM screen be change from blue to red and that Spanish be a
959 language option, but nothing else. Clearly, Qwest’s new position is not only
960 unfounded, but profoundly anti-competitive as well.

961 **Q. ARE THERE ANY OTHER PROBLEMS OR DEFICIENCIES IN THE**
962 **QWEST BILL?**

963 **A.** Unfortunately, yes. A number of times the Qwest UNE bills fail to contain
964 USOCs (universal service ordering codes). For example, if an installation option
965 other than basic installation is charged, Covad has to determine what installation
966 option was charged for, (as often a USOC is not provided) and if the charge was
967 accurate. When this happens, Covad must go back to Qwest to get the appropriate
968 USOCs for each line item charged. Only after Qwest provides that key
969 information can Covad begin to validate billing. Similarly, all “episodic” non-
970 recurring charges must be investigated manually because Qwest does not provide
971 USOCs for those types of charges. For instance, if Qwest bills for labor and repair
972 charges on a trouble ticket, Covad must first determine what the charge is for, and

973 then manually review the order or repair history for a particular UNE to determine
974 if the charge is valid.

975 **Q. WHY ARE USOCS SO IMPORTANT IF QWEST ALSO PROVIDES A**
976 **“PLAIN ENGLISH” DESCRIPTION OF A CHARGE?**

977 **A.** To use an analogy, USOCs are to bill validation what teeth are to chewing.
978 Covad’s billing software – like that of any other carrier in the industry using
979 standardized billing software – is keyed off of USOCs. That is, USOCs drive what
980 the appropriate rate should be and thus Covad validates its billing by comparing
981 the rate associated with a USOC on a bill and the rate associated with that USOC
982 in Covad’s billing databases. Covad’s software does not and cannot understand
983 “plain English” descriptions, which necessitate manual intervention by Covad
984 resources that are better allocated to more productive uses of time. So, in order to
985 remedy a clear Qwest deficiency, Covad must use manual resources despite having
986 poured millions into developing state of the art billing reconciliation software.

987 **Q. IS THERE ANYTHING IN THE COVAD BILLING VALIDATION**
988 **PROCESS THAT WOULD ALLOW IT TO GET AROUND THE LACK OF**
989 **USOCS?**

990 **A.** Unfortunately, no. While Covad does independently validate rates on a per circuit
991 basis, it must reconcile by USOCs as well in order to demonstrate for legal
992 purposes that it engages in appropriate bill validation such that its financial books
993 and records are deemed accurate, reliable and in compliance with governing law
994 (*i.e.*, SOX). Absent this demonstration of individual element and USOC
995 validation, the integrity of Covad’s financial books and records could be put into
996 question.

997 **Q. WHAT OTHER DEFICIENCIES EXIST ON QWEST’S BILLS?**

998 A. The applicable rate (whether non-recurring or recurring) charged by Qwest on
999 + UNE bills may be incorrect. Even more problematic, Qwest may bill the correct
1000 2 monthly recurring charges, but Covad must nonetheless undertake a manual
1001 3 review of the rate because the USOC is the same even though the rate may differ.
1002 4 For example, in Utah there are three different zones with four different monthly
1003 5 recurring charges (“MRCs”) for UNE loops. Each DS0 loop MRC is different for
1004 6 each zone, but the USOC for all zones is identical. Consequently, additional time
1005 7 is spent tracking down appropriate rates for the UNEs billed by Qwest.

1006 8 Additionally, all disconnects must be researched manually and individually
1007 9 to make sure that the date on the disconnect is correct. This must be done to
1008 10 ensure that Qwest does not bill for an entire month for a circuit that was
1009 11 disconnected on day 1, day 7, day 22, etc. of the particular billing cycle. Given
1010 12 current churn rates, Covad must manually investigate up to ***
1011 13 **CONFIDENTIAL INFORMATION ***** every month.

1012 14 Further, as Covad partners more aggressively with other CLECs to provide
1013 15 line split or loop split services, billing will become significantly more difficult. As
1014 16 agreed upon by the parties, there is only one customer of record (“COR”) for line
1015 17 split and loop split orders.⁶ The COR receives all billings for the line split or loop
1016 18 split order, including all the voice and the data charges. However, in both line
1017 19 splitting and loop splitting situations, you have two CLECs involved – one CLEC
1018 20 providing the voice and the other providing the data. So, if Covad is the COR, it
1019 21 will receive all of the voice billings, which it will have to send over to its voice
1020 22 CLEC partner, await its review of the voice portion of the billing, resolve any
1021 23 questions between the CLECs as to questions about the billings, and then
1022 24 incorporate any billing disputes as appropriate. Needless to say, this adds time and

⁶ Qwest’s Utah Statement of Generally Available Terms (SGAT), Section 9.21.1.

1023 complication to the bill review process that Qwest's proposed time frames simply
1024 do not accommodate.

1025 Finally, Covad now provides three different business-class VoIP products.
1026 As a result of these new products, Qwest will bill Covad for rate elements it has
1027 never encountered before, and rates it has never had to previously validate.
1028 Further, the method in which Qwest bills Covad will also change substantially.
1029 For example, with just its data products, Covad never encountered and thus has no
1030 experience with validating rate elements that are billed on a minute of use basis, or
1031 that require the exchange of billing records. Now, with its VoIP products, Covad
1032 will address these billing arrangements for the first time and it is inevitable that a
1033 number of new billing issues with which Covad has no experience will crop up.
1034 Covad's absolute lack of experience in this area, in tandem with known and
1035 unknown deficiencies in the Qwest bills will make compliance with a thirty (30)
1036 day payment due date undoable, or only doable if Covad elects to skip or skimp on
1037 bill review and validation.

1038 **Q. YOU'VE IDENTIFIED A NUMBER OF PROBLEMS. WHAT IS THE**
1039 **MAGNITUDE OF THOSE PROBLEMS?**

1040 **A.** Unfortunately, it is significant. Performance measures such as the PIDs measure
1041 and document performance problems. BI-3A (Billing Accuracy – Adjustments for
1042 Errors) measures billing accuracy for resale and unbundled network elements
1043 (UNEs). The measure reports billing accuracy as the percentage of total amount
1044 billed that was not adjusted for Qwest billing errors. For example, if Qwest billed a
1045 CLEC a total of \$100,000 across all of its resale and UNE invoices in February
1046 and Qwest adjusted the CLEC's February invoices for \$5,000 of billing errors that
1047 Qwest made on earlier bills, Qwest would report 95% performance in February.

1048 The PAPs in Qwest's region have included BI-3A with a per measure cap
 1049 of \$5,000/month. Thus, no matter how poor Qwest's billing is in a particular
 1050 month, Qwest's liability is generally limited to \$5,000.⁷ Even with such stringent
 1051 caps in place, Qwest has acknowledged making significant billing errors in its
 1052 reporting under BI-3A. The dollar value of these errors, even without the
 1053 inclusion of billing errors not currently included in the measure (such as
 1054 collocation billing errors), are quite troubling on their face. Qwest has reported
 1055 results for BI-3A since April 2001. Over the three years since, Qwest has made
 1056 and corrected over \$112 million dollars of billing errors. And for Covad
 1057 specifically, over the past year and a half, Qwest has paid to Covad ***
 1058 **CONFIDENTIAL INFORMATION ***** because of billing errors, which reflect
 1059 hundreds of thousands of dollars of amounts billed in error. Keep in mind that this
 1060 issue is not just a Covad issue, but one of importance to the industry. As the FCC
 1061 has made clear, accurate and timely wholesale billing is critical to the ability of
 1062 CLECs to effectively compete:

1063
 1064 Inaccurate or untimely wholesale bills can impede a
 1065 competitive LEC's ability to compete in many ways. First, a
 1066 competitive LEC must spend additional monetary and
 1067 personnel resources reconciling bills and pursuing bill
 1068 corrections. Second, a competitive LEC must show
 1069 improper overcharges as current debts on its balance sheet
 1070 until the charges are resolved, which can jeopardize its
 1071 ability to attract investment capital. Third, competitive
 1072 LECs must operate with a diminished capacity to monitor,
 1073 predict and adjust expenses and prices in response to
 1074 competition. Fourth, competitive LECs may lose revenue
 1075 because they generally cannot, as a practical matter, back-

21
 22
 23 ⁷ Two PAPs (Minnesota and Colorado) have severity escalations. Under these PAPs, extremely poor Qwest
 24 billing in one month could result in as much as a three-fold multiplier of the base PAP payment. The
 25 Minnesota Wholesale Service Quality Standards, which also include BI-3A, have a similar severity
 26 escalation; however, the payment cap for BI-3A is \$10,000/month.

1076 bill end users in response to an untimely wholesale bill from
1077 an incumbent LEC.⁸

1078 ~~1~~

1079 ~~2~~ **Q. HAS COVAD ATTEMPTED TO REMEDY THE DEFICIENCIES IN**
1080 ~~3~~ **QWEST’S BILLS THAT YOU HAVE IDENTIFIED?**

1081

1082 ~~4~~ A. Yes, we have. Our request for an extension of the payment time frames is
1083 ~~5~~ basically a last resort. Our preference, by far, would be to receive bills that did not
1084 ~~6~~ contain these Qwest generated deficiencies; and to receive bills that we could
1085 ~~7~~ confidently, completely, and accurately review in a thirty day time frame.
1086 ~~8~~ However, that is not possible today. For each and every one of the problems I
1087 ~~9~~ have identified here, Covad has raised it either with Qwest billing personnel or
1088 ~~10~~ through change management. And, as of the filing date of this testimony, with the
1089 ~~11~~ exception of the USOCs for one time or episodic non-recurring charges, Qwest has
1090 ~~12~~ been unable to commit to any improvement or correction of the deficiencies and/or
1091 ~~13~~ errors in the bills it produces.⁹

1092 ~~14~~ **Q. QWEST CLAIMS THAT, DESPITE COVAD’S STELLAR PAYMENT**
1093 ~~15~~ **RECORD, IT MUST ALSO TAKE INTO ACCOUNT OTHER CLECS**
1094 ~~16~~ **WHEN EVALUATING WHETHER TO AGREE TO A PROPOSED TIME**
1095 ~~17~~ **FRAME. PLEASE RESPOND.**

1096 ~~18~~ A. Qwest has discussed the problems of large uncollected balances with other CLECs
1097 ~~19~~ as what appears to be its primary justification for its refusal to extend the billing

~~20~~ ⁸ Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC 01-138, (September 19,
~~21~~ 2001) at ¶ 23 (footnotes omitted).

~~22~~ ⁹ With respect to the non-recurring USOC issue, it is important to note that Qwest has already pushed out
~~23~~ once the implementation of the fix that should correct this particular billing problem. Originally, Qwest had
committed to implementing the USOC change in June of 2004. Via unilateral notification, Qwest
announced that it would not implement this change until December 2004. Like the single LSR issue
discussed by Mr. Zulevic in his testimony, I am concerned that Qwest will continue to push out its
“commitments,” rather than use its resources to benefit its wholesale customers.

~~24~~

~~25~~

~~26~~

1098 time frames with Covad. Two facts are pertinent to Qwest's justification, and both
 1099 demonstrate that the payment history of other CLECs is irrelevant here.

1100 First, the large receivables Qwest complains about resulted from Qwest
 1101 ignoring the current 30 day time frame and *voluntarily* extending payment time
 1102 frames for the CLECs at issue. Thus, even the most stringent of billing time
 1103 frames, and those that Qwest is advocating here, fail to protect it from the
 1104 problems it identified.

1105 Second, because the FCC eliminated "pick and choose" (the ability to pick
 1106 and choose terms from an approved interconnection agreement) and now requires
 1107 a CLEC to opt into the entirety of any interconnection agreement, Qwest's
 1108 apparent primary concern about pick and choose is no longer a factor.

1109 Importantly, Covad has agreed to a number of other billing provisions, such as
 1110 Section 5.4.5, which require a deposit when a CLEC has not demonstrated a
 1111 satisfactory payment history like Covad's. Provisions like this will provide Qwest
 1112 with ample protection if another CLEC opts into the entirety of the Covad
 1113 interconnection agreement.

1114 **Q. PLEASE EXPLAIN WHY THE EXTENSIONS OF TIME SOUGHT BY**
 1115 **COVAD WILL NOT INCREASE QWEST'S LIABILITY AND EXPOSURE.**

1116 **A.** I learned for the first time during the Minnesota proceedings that Qwest bills its
 1117 recurring UNE charges in advance.¹⁰ So, if you look at Qwest's proposed time
 1118 frames, you find the following things: (1) CLECs must pay for thirty (30) days
 1119 worth of services and UNEs on or before the 30th day of those services being
 1120 provided; (2) Qwest has the right to discontinue processing orders if Covad fails to

1121
 1122
 1123 ¹⁰ *In the Matter of the Petition of Covad Communications Company for Arbitration of an*
 1124 *Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*; OAH Docket
 1125 No. 3-2500-15908-4; MPUC Docket No. P-5692, 421/IC-04-549, Transcript of Hearings, Volume
 1126 II, pp. 36-37, September 21, 2004.

1121 pay for thirty (30) full days worth of services on or before the 30th day after which
1122 a full month's service has been provided; and (3) Qwest has the right to disconnect
1123 existing lines if Covad fails to pay for thirty (30) days worth of services on or
1124 before the sixtieth (60) day after which a full month's service has been provided.

1125 For the first provision, therefore, Qwest wants the monthly payment in full
1126 from Covad on or before it even provides a full month's worth of services. That is
1127 the equivalent of *no* exposure at all. For discontinuance of order processing,
1128 Qwest wants to invoke a severe business sanction from which Covad will be
1129 challenged to recover if payment for a full month's worth of services is not
1130 received on or before thirty days after providing a full month of service. And with
1131 respect to the disconnection time frames, Qwest wants the power to invoke that
1132 ultimate business sanction from which Covad likely cannot recover if payment for
1133 a full month's worth of services is not received on or before sixty days after
1134 providing a full month of service. Looked at it from this perspective, Qwest's
1135 proposed billing time frames are eminently unreasonable and cannot withstand
1136 even a plain face test, even without all the compounding problems that I have
1137 identified above.

1138 **Q. SINCE, ACCORDING TO QWEST, EVEN THE THIRTY DAYS OPENS IT**
1139 **UP TO LIABILITY AND EXPOSURE, WHAT HAS QWEST DONE TO**
1140 **ENSURE THAT IT IS PROTECTED IN THE EVENT OF NON-**
1141 **PAYMENT?**

1142 **A.** As I stated above, Qwest has little to no exposure. Setting that aside that
1143 dispositive fact, Qwest has done absolutely nothing. Qwest complains that the
1144 Covad time frames extend its liability and that, even under a thirty day regime, it
1145 still is exposed unnecessarily to liability and exposure. However, when reflecting
1146 upon Qwest's claims in this regard, I have come to the conclusion that Qwest is

1147 simply posturing and is not really concerned about non-payment for one simple
1148 ¹ reason. If some form of additional protection were necessary in order to insulate
1149 ² Qwest from liability and exposure due non-payment, then Qwest certainly would
1150 ³ have attempted to negotiate into the agreement some additional form of protection.
1151 ⁴ The fact that Qwest did not speaks volumes about its actual view point on the mere
1152 ⁵ existence, let alone potential scope, of liability due to CLEC non-payment.

1153 ⁶ **Q. EXPLAIN WHY THE QWEST PROPOSED TIME FRAMES FOR**
1154 ⁷ **DISCONTINUANCE OF ORDER PROCESSING AND DISCONNECTION**
1155 ⁸ **OF SERVICE ARE LIKEWISE UNREASONABLE.**

1156 ⁹ A. Before I do that, it is important to know that Covad does not disagree at all with
1157 ¹⁰ the principle that, if Covad fails to pay Qwest, then Qwest should have a remedy.
1158 ¹¹ Where the parties disagree is at what point Qwest should be able to invoke what
1159 ¹² are, indisputably, draconian rights. The parties basically differ by a span of thirty
1160 ¹³ (30) days. Covad's proposals give it 30 more calendar days than the Qwest
1161 ¹⁴ proposals before Qwest can "pull the plug" on ordering and services, as well as
1162 ¹⁵ when Covad may be considered repeatedly delinquent. In addition, in order for
1163 ¹⁶ Covad to reconnect a circuit that has been "pulled," Covad would have to pay a
1164 ¹⁷ reconnect charge to Qwest.

1165 ¹⁸ It is critical to understand that these provisions give to Qwest the power to
1166 ¹⁹ destroy, if it so chooses, Covad's business in the state of Utah. There is no way
1167 ²⁰ for Covad to recover from any wide-spread or extended cessation of its ability to
1168 ²¹ place orders or from any kind of wide-spread disconnection of its existing
1169 ²² customers. That kind of disruption to a company's business can be fatal, and there
1170 ²³ is no amount of money that can compensate Covad for that kind of disruption --
1171 ²⁴ not that such money would be available, given the limitations on liability in the
1172 ²⁵ agreement to be approved that are not disputed between the parties. While Qwest
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1173 has every right to be concerned about receiving payment to which it is
1174 1 legitimately entitled, that concern pales in comparison to Covad’s concern about
1175 2 protecting the viability of its business in the event of a billing dispute.

1176 3 **Q. DOES QWEST HAVE ANY BASIS TO BE CONCERNED ABOUT A LACK**
1177 4 **OF PAYMENT BY COVAD?**

1178 5 A. I don’t think so. Qwest talks only in the abstract about what is right or wrong. I
1179 6 am unaware of any evidence that Qwest seeks its proposed billing time frames and
1180 7 the associated discontinuance and disconnection protections because Covad fails to
1181 8 pay undisputed amounts on time or because Qwest has encountered problems with
1182 9 Covad with respect to disputation of bills in order to avoid paying bills on time.
1183 10 To the contrary, having worked closely with both Qwest and Covad billing
1184 11 personnel over the past 20 months, it is my understanding that Qwest is very
1185 12 pleased with our billing relationship. That being said, the current time frames
1186 13 under which Covad operates place a significant burden on it, and Covad believes
1187 14 that the short extension of time it requests is more than reasonable.

1188 14 **Q. IF THE BILLING PROCESS IS GOING FAIRLY SMOOTHLY, WHY**
1189 15 **DOES COVAD SEEK A LONGER TIME PERIOD BEFORE QWEST CAN**
1190 16 **DISCONTINUE PROCESSING ORDERS AND/OR DISCONNECT**
1191 17 **SERVICES?**

1192 18 A. While Covad pays its bills on time, the billing time frames it currently operates
1193 19 under necessarily cause it to “skimp” on its bill review, which is just not an
1194 20 acceptable result. Equally important, Covad’s request is grounded in how Qwest
1195 21 handles disputed billing claims – i.e., whether it considers a claim to be disputed --
1196 22 and how it can take several months to have Qwest acknowledge, much less
1197 23 resolve, billing disputes. A perfect example of this is Covad’s dispute of DS3

1198 UDIT billing in the state of Arizona. In June of 2002, the Arizona Commission
1199 ¹ (“ACC”) approved permanent rates for Qwest’s dedicated interoffice transport
1200 ² product – or UDIT -- (the “permanent” rates). In December 2002, ACC Staff and
1201 ³ CLECs alerted the Commission that the rates approved for UDIT – both DS1 and
1202 ⁴ DS3 -- included entrance facilities as well as transport. In light of that error, the
1203 ⁵ ACC instructed the parties to relitigate the UDIT rates in a May 2003 hearing. In
1204 ⁶ October 2003, the ACC ruled that the “new” DS3 UDIT rates should be set at the
1205 ⁷ old UDIT rates and that the “new” rate should be effective as of June 2002.

1206 ⁸ Approximately two months *after* the ACC concluded that there was an
1207 ⁹ error in the UDIT rates and had remanded the UDIT rates back to the
1208 ¹⁰ Administrative Law Judge for further proceedings, Covad received a demand from
1209 ¹¹ Qwest to pay the true up amount for its DS3 UDITs in Arizona. The true up
1210 ¹² amount was calculated by Qwest as the difference between the old, interim rates
1211 ¹³ and the then disputed “permanent” rates. Because the ACC had placed the
1212 ¹⁴ “permanent” DS3 UDIT rates at issue, Covad disputed the true up invoice on the
1213 ¹⁵ grounds that the true up claim was premature since the “permanent” rate was going
1214 ¹⁶ to be relitigated in May of 2003. Despite independently knowing full well that the
1215 ¹⁷ rate was not final and was likely to be changed or at least modified, and despite
1216 ¹⁸ being reminded of that fact by Covad in its notices of dispute, Qwest continued to
1217 ¹⁹ request payment of the true up amounts – even though Covad disputed the request
1218 ²⁰ for payment of a true up every single month and provided the very same clear and
1219 ²¹ concise reason. It took over ten (10) months of disputing the true up invoice
1220 ²² before Qwest acknowledged the dispute and that any claim for payment would
1221 ²³ await resolution by the ACC.

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1222 Plainly, Qwest did not consider the amount to be disputed in light of its
1223 1 repeatedly renewed request that Covad pay the true up amount. Under the Qwest
1224 2 proposal, Covad's legitimate reason for non-payment of the true up amount could
1225 3 have resulted in Qwest discontinuing the processing of orders and/or actually
1226 4 disconnecting circuits. Under its proposal, Qwest also could have demanded a
1227 5 deposit from Covad and payment of a reconnect charge for those circuits that had
1228 6 been disconnected. In light of the magnitude of Qwest's self-help remedies,
1229 7 Covad needs and deserves the protection it seeks here.

1230 8 **Q. EXPLAIN WHY COVAD'S PROPOSED BILLING, ORDER**
1231 9 **DISCONTINUANCE, AND SERVICE DISCONNECTION PROVISIONS**
1232 10 **ARE REASONABLE AND SHOULD BE ADOPTED.**

1233 11 A. In a nutshell, what is reasonable (and therefore should be included in the
1234 12 interconnection agreement) cannot be determined in the abstract. To the contrary,
1235 13 reasonableness must be evaluated against the task that Covad faces, and the
1236 14 severity of the consequences resulting from late payment, discontinuance of order
1237 15 processing, and disconnection of services. And as I discussed here, the Covad
1238 16 proposed billing time frames should be adopted given the tens of thousands of
1239 17 pages of bills that must be reviewed, the type and quantity of deficiencies/errors
1240 18 found in those bills that supposedly cannot be corrected by Qwest, the difficulties
1241 19 that can arise when trying to submit a billing dispute, and the power Qwest may be
1242 20 able to wield over Covad's business in this state.

1243 21 It is important to keep in mind that the interconnection agreement must
1244 22 provide for safeguards that will allow Covad to work around situations that may
1245 23 benefit Qwest at Covad's expense. These safeguards are becoming ever more

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1246 important as Qwest apparently is now attempting to modify its PAP obligations,
1247 ¹ and eliminate the industry forum dedicated to improvements in the performance
1248 ² measures (PIDs). Covad's proposed billing time frames provide that safeguard,
1249 ³ and should be approved by the Commission.

1250 ⁴ **Q. TO WHAT END WOULD COVAD PUT THE ADDITIONAL TIME IT**
1251 ⁵ **SEEKS IN CONNECTION WITH THE DISCONTINUANCE OF ORDER**
1252 ⁶ **PROCESSING OR DISCONNECTION OF EXISTING LINES?**

1253 ⁷ A. Because of the devastating impact of these remedies on Covad's business, a top
1254 ⁸ priority for Covad if it had the additional time we request would be to determine
1255 ⁹ the appropriate course of action, and then prepare the appropriate documents
1256 ¹⁰ necessary to pursue relief at the individual state or commission level. As most
1257 ¹¹ lawyers know, complaints and petitions generally cannot be put together
1258 ¹² overnight, and where any type of injunctive relief is sought (which would be the
1259 ¹³ case if Covad were faced with a discontinuance of order processing or
1260 ¹⁴ disconnection of services) there is a tremendous amount of work and factual and
1261 ¹⁵ legal research that accompanies any kind of filing along these lines. In summary,
1262 ¹⁶ therefore, Covad would use its time to determine how best to protect its interest
1263 ¹⁷ and then take the legal/regulatory steps necessary to ensure that its business is
1264 ¹⁸ protected to the maximum extent possible.

1265 ¹⁹ **Q. EXPLAIN WHY THESE ISSUES WERE NOT RESOLVED DURING THE**
1266 ²⁰ **SECTION 271 PROCEEDINGS.**

1267 ²¹ A. Qwest will undoubtedly claim that any and all billing issues were resolved during
1268 ²² the Section 271 proceedings and that that is the end of the matter. While that
1269 ²³ provides an easy out for Qwest, the reality of Covad's billing relationship with

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1270 Qwest is far more difficult. As an initial matter, Covad did not participate in the
1271 ¹ multi-state proceedings which addressed the terms and conditions of the SGATs of
1272 ² a number of states, including Utah. Notwithstanding the fact that it did not
1273 ³ participate in those proceedings, since the conclusion of the Section 271
1274 ⁴ proceedings in this state, Covad has undertaken a massive review and revamping
1275 ⁵ of its billing systems and processes, an effort in which I was involved. As a result
1276 ⁶ of that effort, Covad is in a wholly different position now to evaluate, document
1277 ⁷ and discuss in a regulatory proceeding the numerous billing problems we have
1278 ⁸ with Qwest. And as I lay out above, there are numerous problems in Qwest's
1279 ⁹ billings that not only necessitate, but also fully justify the relatively brief extension
1280 ¹⁰ of the billing, delinquency, discontinuance and disconnection time frames that will
1281 ¹¹ be included in the Qwest-Covad interconnection agreement.

1282 ¹² From a timing perspective, it is very easy to understand why Covad was
1283 ¹³ unable to address in detail billing issues during 2002 in connection with the
1284 ¹⁴ Section 271 proceedings in this state. Covad executed its original interconnection
1285 ¹⁵ agreement with Qwest in this state on January 15, 1999. Between that time and
1286 ¹⁶ the conclusion of the SGAT proceeding in mid-2002, Covad was busy rolling out
1287 ¹⁷ its network in this state, implementing the line sharing requirements and building
1288 ¹⁸ out the line sharing network, and working on all the problems and barriers to
1289 ¹⁹ providing service to end users and customers (which were documented and
1290 ²⁰ discussed during the Section 271 workshops).

1291 ²¹ It is no understatement to say that, in 1999, 2000, 2001, and into 2002,
1292 ²² Covad was much more concerned about effectively, efficiently and successfully
1293 ²³ establishing and maintaining end users on the Covad network than any other

1294 element of its business. Since that time, of course, the parties have worked out a
 1295 ¹ number of the key provisioning and repair issues, and Covad finally had the time
 1296 ² to focus on the innumerable billing issues that existed in the Qwest bills. It's only
 1297 ³ because of that effort and subsequent experience in working through billing issues
 1298 ⁴ with Qwest on a business-to-business basis that we are now in a position to fully
 1299 ⁵ demonstrate why additional time is required in order to provide a fair and equitable
 1300 ⁶ billing process. I feel confident that if you asked any non-IXC CLEC
 1301 ⁷ representative that took part in the section 271 proceedings, that representative
 1302 ⁸ would tell a similar tale with respect to the "consensus" obtained on billing issues.

1303 ⁹ **Q. HOW DO YOU RESPOND TO THE QWEST CLAIM THAT ITS**
 1304 ¹⁰ **PROPOSED BILLING TIME FRAMES ARE STANDARD IN THE**
 1305 ¹¹ **INDUSTRY?**

1306 ¹² **A.** The industry standard that Qwest talks about is really the standard that was
 1307 ¹³ developed for access products ordered and paid for by the large IXCs. And as the
 1308 ¹⁴ Commission well knows, the IXCs and the ILECs have had over twenty (20) years
 1309 ¹⁵ to correct errors and deficiencies in the billing media and format used for the
 1310 ¹⁶ billing of access services. There are industry standards and standard billing
 1311 ¹⁷ formats that have been in use for decades for companies ordering access services,
 1312 ¹⁸ and the years of experience and work by industry stake holders probably have
 1313 ¹⁹ resulted in a billing process that would allow adequate billing review within a
 1314 ²⁰ thirty day time frame.

1315 ²¹ Unfortunately, the wholesale competitive market place has not yet had the
 1316 ²² years "under its belt" to get to the same place and, consequently, additional time is
 1317 ²³ required in order to permit adequate bill review. As it stands today, at least twelve

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1318 (12) Covad employees have involvement in the review and verification of the
1319 ~~1~~ monthly bills that we receive from Qwest, as well as employees of the independent
1320 ~~2~~ contractor Covad has retained to investigate other Qwest and ILEC billing issues.

1321 ~~3~~ **Q. PLEASE EXPLAIN WHY A COMPARISON OF COVAD'S BILLING**
1322 ~~4~~ **POLICIES FOR ITS CUSTOMERS ARE IRRELEVANT TO THE TIME**
1323 ~~5~~ **FRAMES THAT SHOULD BE APPLIED FOR COVAD'S REVIEW OF**
1324 ~~6~~ **QWEST'S UNE, COLLOCATION AND TRANSPORT BILLS.**

1325 ~~7~~ A. Qwest has suggested that Covad is being hypocritical in asking for more time to
1326 ~~8~~ review its bills from Qwest than Covad gives to its own customers. That argument
1327 ~~9~~ is nonsense. As you can see from the attached Exhibits KMD-8 through KMD-12,
1328 ~~10~~ the bills Covad sends out for services are only two pages long, in total. A two
1329 ~~11~~ page bill, with just a few line items that clearly state the product and product type
1330 ~~12~~ for which the customer is being billed, are a far cry from the tens of thousands of
1331 ~~13~~ pages, comprising over 30 feet of bills, that Covad must review every month. The
1332 ~~14~~ Covad bills are much more like the Qwest residential phone bills, for which Covad
1333 ~~15~~ agrees that a 30 day time frame for payment is appropriate.

1334 ~~16~~ **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

1335 ~~17~~ A. This concludes my Direct Testimony, however, I anticipate filing all responsive
1336 ~~18~~ testimony permitted by the Commission, and being presented for cross
1337 ~~19~~ examination at the hearing on the merits.
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