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**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**

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

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

October 8, 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  
28 to my current assignment with responsibility for the Qwest region.

29 **II. SUMMARY OF TESTIMONY**

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31 **7 Q. PLEASE BRIEFLY SUMMARIZE YOUR TESTIMONY.**

32 **8 A.** While Covad and Qwest have worked in good faith from language supplied by  
33 both Covad and Qwest to resolve the vast majority of issues raised during the  
34 negotiations, Covad and Qwest have been unable to come to agreement on all  
35 terms, particularly certain terms relating to copper retirement, Qwest's legal  
36 obligations relating to commingling ~~and ratcheting~~, and billing time frames. As I  
37 discuss below, all of Covad's proposals should be accepted by the Commission,  
38 including the requirements that (1) where copper is retired and Qwest deploys  
39 hybrid copper-fiber loops, Qwest ensure that Covad can continue to provide  
40 service to existing customers at no increase in price and no degradation of service  
41 quality; (2) Covad's interpretation of certain of the ~~combination~~, commingling,  
42 ~~and ratcheting~~ provisions in the Triennial Review Order ("TRO") be accepted by  
43 the Commission; and (3) Qwest comply with Covad's proposed billing time  
44 frames.

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### III. ARBITRATION ISSUES

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

50 **3**

51 **Q. PLEASE PROVIDE SOME BACKGROUND ON THE COPPER RETIRE-**  
 52 **MENT ISSUE.**

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

64 **Q. HOW DOES THIS PLAY INTO COVAD'S BUSINESS OF PROVIDING**  
 65 **DSL SERVICE?**

66 **A.** Digital subscriber line (“DSL”) service works by breaking up data into chunks and  
 67 sending these chunks through 4 kHz “channels” on the local loop at frequencies  
 68 above that used for voice service. In the absence of placing cost-prohibitive  
 69 equipment at a mid-point on the copper loop (i.e., remote DSLAMs), the entire  
 70 span of the local loop from the CO to the end user must be copper if Covad wants  
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72 to provide any form of DSL service.<sup>1</sup> In other words, if Covad cannot access a  
73 local loop comprised completely of copper, then it cannot provide service to its  
74 end user customers.

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

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

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

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

95 **Q. PLEASE PROVIDE MORE DETAIL AROUND THIS NETWORK**  
96 **MODERNIZATION.**

<sup>1</sup> Covad provides several different "flavors" of DSL – ADSL, SDSL, IDSL and T1 service.

97 A. Certainly. Fiber, or fiber-optic lines, are strands of high-quality glass that carry  
98 digital data by way of light signals. Because of cost, competitive pressures, and  
99 regulatory advantages, all of the ILECs, including Qwest, are upgrading their  
100 networks to replace copper with fiber.

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

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

113 A. Absolutely. As I already mentioned, the size of the copper network to which  
114 Covad has access – and as a consequence the number of current and potential  
115 customers to whom we have access – is diminished daily. Looking at it from the  
116 perspective of new consumers looking for a service provider, they have no choice  
117 in providers where Qwest has retired copper and replaced it with fiber – the  
118 consumers' only option is to go with Qwest (or, perhaps, the incumbent cable  
119 company). And for consumers who have already opted to go with a competitor,  
120 when Qwest replaces copper with fiber, it forces that consumer to go with a  
121 provider that it does not and did not want as its service provider. Consequently,  
122 not only must the Commission decide how to manage copper retirement because

123 of the impact on competitors, but also it faces an important policy decision of how  
124 it will protect and preserve consumer choice.

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

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

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

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

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characteristics; circuit identification information; and cable and pair information.<sup>2</sup>

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?**

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<sup>2</sup> I will discuss Covad’s concerns regarding Qwest’s proposed copper retirement notices later in my testimony.

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

193 **Q. IS COVAD’S ADVOCACY ON COPPER RETIRMENT DRIVEN BY ITS**  
194 **CONCERNS ABOUT OBTAINING NEW CUSTOMERS SERVED ON A**  
195 **HYBRID LOOP WHO HAVE FIBER IN THEIR LOOP AS WELL AS**  
196 **EXISTING CUSTOMERS WHO ARE IMPACTED BECAUSE THE**  
197 **COPPER ON THEIR EXISTING LOOP IS BEING REPLACED BY**  
198 **FIBER?**

199 A. The sole issue we are addressing in this arbitration relative to copper retirement is  
200 how to address the impact on *existing* Covad customers whose copper loops are  
201 being replaced with a hybrid copper-fiber loop~~in whole or in part by fiber~~. In  
202 other words, the language we proposed, and which I set out above~~is provided~~  
203 ~~below~~, is strictly limited to impacts on existing customers, and is designed solely  
204 to allow those customers to continue to receive Covad service at no increase in  
205 price or decrease in service quality until the customer chooses to disconnect  
206 his/her Covad service.÷

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208 ~~9.2.1.2.3.1 — Continuity of Service During Copper~~  
209 ~~Retirement — This section will govern the retirement of~~  
210 ~~copper facilities which are serving CLEC served End User~~  
211 ~~Customers or CLEC at the time such retirement is~~  
212 ~~implemented, to the exclusion of any other section of this~~  
213 ~~Interconnection Agreement. Qwest shall adhere to all~~  
214 ~~regulatory and legal requirements pertaining to changes in~~  
215 ~~the Qwest network. Qwest will not retire copper facilities~~

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~~servicing 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.~~

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

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

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241 A.  
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Sure. - The concern, addressed by this issue, is limited in scope. The situation will only arise when Qwest finds it has a copper cable that has become a significant maintenance problem. It may be a 3600 pair *feeder* cable in Minnesota or Washington that consistently gets wet, year after year, during the rainy season. Or it may be a 4200 pair *feeder* in Arizona or New Mexico that has finally succumbed

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246 to many years of desert heat. These problems, brought on by the elements,  
247 <sup>1</sup> ultimately result in significant customer service degradation and a constant  
248 <sup>2</sup> increase in costs to Qwest for repair. In today's world, the final resolution is often  
249 <sup>3</sup> replacement of the entire copper *feeder* cable with fiber and the placement of fiber  
250 <sup>4</sup> fed digital loop carrier in the field. In these cases, the entire *feeder* cable must be  
251 <sup>5</sup> replaced, leaving no copper option for services currently in place. Under Qwest's  
252 <sup>6</sup> proposed language, in the case where Covad DSL customers are currently being  
253 <sup>7</sup> served by these copper facilities, the only option would be for Covad to disconnect  
254 <sup>8</sup> the services of these customers. Under the Covad proposal, for the impacted  
255 <sup>9</sup> customers – and let's say there are five -- those customers would continue to  
256 <sup>10</sup> receive Covad service at no increase in cost or decrease in service quality until  
257 <sup>11</sup> they choose to leave Covad.

258 <sup>12</sup> Covad's proposal allows it to retain those existing customers and,  
259 <sup>13</sup> importantly, it also preserves individual customer's choice in providers until that  
260 <sup>14</sup> customer changes providers. This is a particularly important point, because that  
261 <sup>15</sup> customer chose Covad and is not choosing to leave Covad at time of the copper  
262 <sup>16</sup> retirement. - The customer should not be forced to leave Covad – or any other DSL  
263 <sup>17</sup> provider -- before s/he otherwise chooses to do so simply because of acts of Qwest  
264 <sup>18</sup> over which neither the customer nor Covad have any control.

265 <sup>19</sup> **Q. DOESN'T THE USE OF GENERAL LANGUAGE LIKE "ALTERNATIVE**  
266 <sup>20</sup> **SERVICE" CREATE SOME CONFUSION ABOUT THE COVAD**  
267 <sup>21</sup> **PROPOSAL?**

268 <sup>22</sup> **A.** I don't know how it could. In the first place, Covad proposed this language  
269 <sup>23</sup> several months ago. Presumably, had Qwest found it at all confusing, it would

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270 have told Covad so, and proceeded to ask some questions in order to eliminate that  
271 <sup>1</sup> confusion or at least served some discovery to clarify any questions it might have.  
272 <sup>2</sup> Instead, Qwest made no comment on the Covad language and, in fact, refused to  
273 <sup>3</sup> discuss it at all. So, if there is any confusion whatsoever on Qwest’s part regarding  
274 <sup>4</sup> Covad’s copper retirement proposal, it is entirely of Qwest’s own doing either  
275 <sup>5</sup> because of its failure to negotiate this language or its failure to discuss or pursue  
276 <sup>6</sup> any questions it might have with Covad’s proposed language.

277 <sup>7</sup> Moreover, I am uncertain whether Qwest would even want further  
278 <sup>8</sup> additional specificity within the interconnection agreement itself. Because the  
279 <sup>9</sup> appropriate service option for each impacted end user customer may vary, I think  
280 <sup>10</sup> it would be unwise and fool-hardy to try and nail down one particular service  
281 <sup>11</sup> option. Such an approach might chain Qwest to one service option when another  
282 <sup>12</sup> service might prove to be a better alternative. Further, pinpointing one service  
283 <sup>13</sup> option as “the” alternative service that Qwest must provide ignores the fact that  
284 <sup>14</sup> technologies and products are changing and what might be available or work  
285 <sup>15</sup> today, might not work – or even be available as a product from Qwest --  
286 <sup>16</sup> tomorrow. Flexibility in identifying an alternative service is by far the better  
287 <sup>17</sup> approach given the product and technology changes our industry has seen to date.

288 <sup>18</sup> **Q. DOES COVAD HAVE ANY SPECIFIC IDEAS IN MIND REGARDING**  
289 <sup>19</sup> **THE ALTERNATIVE SERVICE THAT WOULD BE PROVIDED BY**  
290 <sup>20</sup> **QWEST?**

291 <sup>21</sup> **A. ~~We do, but had decided to use the “alternative service” language in order to~~**  
292 <sup>22</sup> **~~provide Qwest with the greatest flexibility possible in working with Covad rather~~**

<sup>23</sup>

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<sup>26</sup>



293 ~~than forcing Qwest into providing one particular kind of service when another type~~  
294 ~~of service would work just as well, if not better.~~

295 <sup>2</sup> Notwithstanding our desire to provide Qwest with as much flexibility as possible, one  
296 <sup>3</sup> service option that comes to my mind is one that Qwest already makes available  
297 <sup>4</sup> on a volume basis. Specifically, Qwest has a product offering out, called the  
298 <sup>5</sup> Qwest DSL Volume Plan Agreement --- or “VISP” service offering, which I have  
299 <sup>6</sup> attached to my testimony as Exhibit ~~KKMD-1~~<sup>1</sup>. With this product offering, a  
300 <sup>7</sup> CLEC is able to provide just broadband service (as opposed to the combined voice  
301 <sup>8</sup> and data product Qwest has proposed and which I discuss below) to customers  
302 <sup>9</sup> even where those customers are served over from a remote terminal (i.e. a hybrid  
303 <sup>10</sup> copper-fiber loop). Consequently, this is a product that most likely would meet  
304 <sup>11</sup> Covad’s service and product requirements (although not the pricing requirements,  
305 <sup>12</sup> given the pricing contained in the VISP agreement), and which has already been  
306 <sup>13</sup> developed, defined and implemented by Qwest.

307 <sup>14</sup> **Q. WHAT ABOUT POTENTIAL ALTERNATIVES QWEST HAS PROPOSED**  
308 <sup>15</sup> **IN OTHER INTERCONNECTION ARBITRATION PROCEEDINGS?**

309 <sup>16</sup> **A. As I understand Qwest’s testimony in prior arbitration proceedings, Qwest has**  
310 <sup>17</sup> **identified two products that potentially may serve as alternatives – the Qwest**  
311 <sup>18</sup> **Choice DSL product and the Qwest “naked DSL” product. As proposed by Qwest,**  
312 <sup>19</sup> **however, neither of these serves as a sufficient alternative.**

313 <sup>20</sup> Among many other reasons, resale of the Choice DSL product is not a  
314 <sup>21</sup> viable alternative to Covad because the Choice DSL product, by definition and  
315 <sup>22</sup> confirmed by Qwest in the Minnesota interconnection agreement arbitration, is the  
316 <sup>23</sup> provision of both analog voice and DSL service over the same line. In the first

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317 place, Covad is not an analog voice provide and is not equipped (from a network,  
318 expertise or contractual right perspective) to provide or support analog or  
319 residential voice service. Even more problematic, because the voice service would  
320 be a Covad branded voice service, Covad would have to first persuade the  
321 customer to change voice providers (from Qwest to Covad) before it would be  
322 capable of reselling the Choice DSL service. Obviously, this creates a significant  
323 barrier to use of the Choice DSL product because the customer may not want to  
324 change voice providers. Equally important, given the pricing packages that Qwest  
325 makes available when customers get both local and long distance service from  
326 Qwest, Covad could not match the Qwest service offering since it does not provide  
327 any type of analog or residential long distance service, and it certainly cannot  
328 match the local service rates Qwest can offer by virtue of the bundle. The net  
329 result is that there are insurmountable barriers to the successful use of the Choice  
330 DSL product –even without factoring in the price that Qwest wants Covad to pay  
331 for this service.

332 The “naked DSL” product is equally unsatisfactory as an alternative, albeit  
333 for different reasons or problems that exist at this moment. First, based on  
334 Qwest’s news releases, naked DSL is a “second line” product – meaning that it is  
335 not provided over the primary line, but must be provisioned on a dedicated,  
336 standalone, second line. As the Commission knows, a spare second line running to  
337 the premise is not always available, nor – particularly in a state like Utah – might  
338 that second line be capable of supporting broadband service. Beyond that,  
339 however, it is impossible to determine anything about the “naked DSL” product. I  
340 reviewed all of the DSL products Qwest advertises on it website for residential,

341 small business and enterprise-class customers. There is no information whatsoever  
342 on the “naked DSL” product, and the only information I could find on the Qwest  
343 website came in the form of newspaper articles in the Qwest news release  
344 archives. At this point in time, therefore, Qwest has made it impossible to  
345 determine to any degree of certainty whether such a product would ever work as  
346 an alternative service.

347 Based upon my experience with Covad products, I reasonably surmise that,  
348 at a minimum, the naked DSL product – if it is available in Utah, to a particular  
349 customer, or at all – would be much too costly for purposes of providing service to  
350 residential customers (who would generally be the class of customer impacted). It  
351 is beyond dispute that second or dedicated line DSL products are business class  
352 products, with the pricing to match. As a consequence, given what Qwest  
353 apparently wants to charge Covad should naked DSL even be available, there is no  
354 way that Covad could keep that customer because Covad would have to charge a  
355 price far higher than its current or even a remotely competitive price.

356 **Q. QWEST HAS COMPLAINED ELSEWHERE THAT THE COVAD**  
357 **PROPOSAL WILL FORCE QWEST TO INCUR SUBSTANTIAL, BUT**  
358 **COMPLETELY UNDEFINED AND UNQUANTIFIED COSTS. PLEASE**  
359 **RESPOND.**

360 **A.** Absolutely. Qwest has raised concerns elsewhere that the Covad proposal would  
361 result in Qwest incurring costs far beyond what it reasonably could or should be  
362 required to bear. As an initial matter, while Qwest has made this claim quite  
363 loudly, it also admitted in the Colorado arbitration that it had made no attempt to  
364 quantify these costs or undertake any kind of study to accurately or even

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365 adequately capture what these costs are, or what the magnitude of such costs might  
366 <sup>1</sup> be. In other words, while Qwest claims concern about costs, to date we haven't  
367 <sup>2</sup> seen any evidence of them or why or how Qwest would not recover its costs.

368 <sup>3</sup> Qwest also claims that providing any kind of alternative service would  
369 <sup>4</sup> result in Qwest sustaining additional costs in order to develop a product to meet  
370 <sup>5</sup> Covad's needs. Of course, as I discuss above, Qwest offers and supports a product  
371 <sup>6</sup> that very likely would meet Covad's needs (assuming the pricing conditions of no  
372 <sup>7</sup> increase in cost to Covad or its end user customer are met) so such costs just  
373 <sup>8</sup> wouldn't materialize.

374 <sup>9</sup> Finally, Qwest claims that the Covad proposal would force Qwest to  
375 <sup>10</sup> support the cost of maintaining two loops – the fiber feeder it has deployed as well  
376 <sup>11</sup> as copper facilities to support Covad's "alternative service." That cost, however,  
377 <sup>12</sup> would only be sustained by Qwest if it made an economically irrational decision.  
378 <sup>13</sup> By this I mean that Qwest certainly could interpret its requirement to provide an  
379 <sup>14</sup> alternative service as one that requires it to maintain copper loop plant that it  
380 <sup>15</sup> otherwise would have retired. Conversely, of course, Qwest could interpret it in a  
381 <sup>16</sup> number of other ways, which would meet Covad's needs and not require Qwest to  
382 <sup>17</sup> maintain copper plant it otherwise would have retired. That choice is Qwest's, and  
383 <sup>18</sup> it should not in any way be construed as a barrier to Qwest providing an alternative  
384 <sup>19</sup> service where and when it retires fiber feeder.

385 <sup>20</sup> ~~Q. YOU DISCUSS FIBER FEEDER. WOULDN'T THE COPPER~~  
386 <sup>21</sup> ~~RETIREMENT ISSUE ALSO APPLY TO FIBER TO THE HOME~~  
387 <sup>22</sup> ~~("FTTH") LOOPS?~~

<sup>23</sup>

<sup>24</sup>

<sup>25</sup>

<sup>26</sup>

388 A. ~~In theory, it certainly would. However, I think that the much more likely scenario~~  
389 ~~in which you would see copper retirement is the retirement of copper feeder and~~  
390 ~~replacement with fiber feeder. And the reason that I think you will rarely see any~~  
391 ~~type of copper replaced with an FTTH loop is simple economics. While it makes~~  
392 ~~financial sense to replace copper feeder with fiber, as I discuss above, the same~~  
393 ~~cannot be said about an all copper loop. Any kind of real deployment of FTTH~~  
394 ~~loops is extraordinarily costly and it certainly seems clear from recent news~~  
395 ~~articles that Qwest has no intention of deploying FTTH loops. Particularly when~~  
396 ~~one factors in the line loss and revenue challenges Qwest faces going forward, I~~  
397 ~~believe it is very unlikely that Qwest will be deploying FTTH loops in the near~~  
398 ~~future. My conviction is only reinforced by the facts surrounding Qwest's original~~  
399 ~~FTTH attempt in Omaha, which proved to be wholly unsuccessful.~~

400 **Q. WHY DOESN'T QWEST'S PROPOSAL ACHIEVE THE SAME**  
401 **OUTCOME THAT COVAD'S PROPOSAL ACCOMPLISHES?**

402 A. Well, as an initial matter, Qwest has made no proposal where fiber deployment  
403 results in hybrid fiber-copper loops. In other words, Qwest's commitment to  
404 keeping copper in the ground where technically feasible even when it deploys fiber  
405 as set forth in Section 9.2.1.2.3.2 apparently is limited to the situation in which  
406 Qwest deploys FTTH loops. To date, Qwest has refused to make a similar  
407 commitment to maintaining copper where technically feasible when Qwest  
408 deploys hybrid fiber-copper loops.

409 **Q. DOES QWEST'S REFUSAL TO COMMIT TO ANY KINDS OF**  
410 **PROVISIONS REGARDING MAINTENANCE OF COPPER WHERE**  
411 **FIBER FEEDER IS DEPLOYED CONCERN YOU?**

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412 A. It absolutely does. By refusing to extend its commitments to the situation in which  
413 hybrid  
414 ~~If copper is retired and replaced with copper, then the Qwest proposal does work.~~  
415 ~~But, with the more likely scenario—copper retirement and replacement with fiber~~  
416 ~~—the Qwest proposal in Section 9.2.1.2.3.2 is completely untenable.~~  
417 ~~In order for a proposal to be a workable solution, a carrier must *realistically* be~~  
418 ~~able to implement the proposal. Qwest claims that Covad can collocate a remote~~  
419 ~~DSLAM to serve the handful of customers that would be impacted by the~~  
420 ~~retirement of copper and replacement with fiber. That is ludicrous. Qwest~~  
421 ~~provided testimony in the Minnesota cost case<sup>3</sup> which purported to show that it~~  
422 ~~costs \$90,000 to collocate a DSLAM at the point where the fiber and copper meet.~~  
423 ~~This estimate doesn't even include other real and significant costs such as: (1) any~~  
424 ~~of the recurring costs to use any of the remote DSLAM network elements; or (2)~~  
425 ~~any of the costs to provision DSL loops served by such remote DSLAMs. It is~~  
426 ~~also unclear how Covad would get the service back to the central office from the~~  
427 ~~remote DSLAM. Given the obvious expense involved with attempting to serve a~~  
428 ~~handful of customers, Covad could not continue to provide service without~~  
429 ~~increasing by an enormous amount the rates those customers pay. Needless to say,~~  
430 ~~given the anticipated size of those rate increases, those customers would be forced~~  
431 ~~to change carriers even though they did not want to do so.~~  
432 ~~What we have here, then, is an illusory solution whereby Covad would spend~~  
433 ~~about \$20,000 per customer just to provide service for about two more years. No~~  
434 ~~telecommunications provider, incumbent or otherwise, can afford to waste capital~~

23 <sup>3</sup> Testimony of Georgeanne Weidenbach, Docket No. P-421/CI-01-1375, OAH Docket No. 12-2500-  
24 14490-2 (dated February 2, 2002).

435 in such a way. It is the concentration of existing customers that allows incumbents  
436 <sup>1</sup> such as Qwest to invest in remote DSLAMs (and even this investment is limited).  
437 <sup>2</sup> Neither Covad, nor any other CLEC, can expect to achieve that level of market  
438 <sup>3</sup> share.  
439 <sup>4</sup> — Furthermore, there are other reasons that the economics of the situation are far  
440 <sup>5</sup> different from Qwest than they would be for Covad. First, Qwest would not only  
441 <sup>6</sup> be able to allocate the cost of a remote DSLAM to its existing customers, but also  
442 <sup>7</sup> it could allocate those costs over new customer lines as well. Because, under the  
443 <sup>8</sup> TRO, Covad is not permitted to add new customers where that customer's loop is  
444 <sup>9</sup> hybrid fiber/copper, it cannot — which is reflected in the Covad proposal.  
445 <sup>10</sup> Therefore, the entirety of Covad's cost would be distributed only to the handful of  
446 <sup>11</sup> impacted customers. Second, Qwest can provide an array of services — voice, data,  
447 <sup>12</sup> and video — to which it can allocate costs. By contrast, Covad would be providing  
448 <sup>13</sup> only one service — DSL — to which the entirety of the cost in the form of increased  
449 <sup>14</sup> rates would have to be allocated. hybrid loops are deployed, Qwest is creating for  
450 <sup>15</sup> itself an opportunity to take (not win) customers that very specifically chose NOT  
451 <sup>16</sup> to have Qwest as their DSL provider. The possibility that Qwest might misuse its  
452 <sup>17</sup> fiber upgrades causes me a great deal of concern, particularly given the Qwest  
453 <sup>18</sup> pattern of conduct of delaying Covad market entry but expediting its own when  
454 <sup>19</sup> Covad was rolling out its line sharing network.

455 <sup>20</sup> Q. ~~YOU DISCUSS REMOTE COLLOCATION ABOVE.~~ WHAT HAPPENS  
456 <sup>21</sup> TO COVAD'S CENTRAL OFFICE-BASED COLLOCATION  
457 <sup>22</sup> EQUIPMENT WHEN QWEST DEPLOYS FIBER?  
458 <sup>23</sup>  
459 <sup>24</sup>  
460 <sup>25</sup>  
461 <sup>26</sup>

458 A. As more and more fiber feeder replaces copper, fewer and fewer potential  
459 1 customers will be in reach of Covad's central office based DSL, which will result  
460 2 in the progressive stranding of Covad's collocated investment. This is not an  
461 3 inconsequential point. Today, in order to collocate in a single ~~WashingtonUtah~~  
462 4 central office, Covad incurs between \*\*\* ~~BEGIN CONFIDENTIAL \$27,565.00~~  
463 5 ~~to \$51,542.81~~ ~~BEGIN CONFIDENTIAL \$22,500.00 and \$34,500.00~~ ~~END~~  
464 6 ~~CONFIDENTIAL~~ \*\*\* in non-recurring collocation costs and approximately \*\*\*  
465 7 ~~BEGIN CONFIDENTIAL \$876.00 to \$2,107.00~~ ~~BEGIN CONFIDENTIAL~~  
466 8 ~~\$371.00~~ ~~END CONFIDENTIAL~~ \*\*\* per month in ~~MRCs~~ recurring charges.<sup>4</sup> In  
467 9 addition, Covad will lose the benefit of the investment it made in placing its  
468 10 equipment in the CO to the tune of, on average, \*\*\* ~~BEGIN CONFIDENTIAL~~  
469 11 ~~\$30,864 to \$343,919.~~ ~~\$400,000 for a hub site and \$30,000 for a regular~~  
470 12 ~~collocation site.~~ ~~END CONFIDENTIAL~~ \*\*\* Additionally, Covad has ordered  
471 13 and paid for transport (approximately \*\*\* ~~BEGIN CONFIDENTIAL \$95.00 in~~  
472 14 ~~nonrecurring charges per DS1 and \$70.40 per month in recurring charges per~~  
473 15 ~~DS1; Covad has incurred approximately \$593.00 in nonrecurring charges per~~  
474 16 ~~DS3 and \$98.00 per month in recurring charges per DS3~~\*\*\* ~~BEGIN~~  
475 17 ~~CONFIDENTIAL \$240.00 in NRCs per DS1 and \$303.00 per DS3 NRC; E~~  
476 18 ~~\*\*\*~~ ~~END CONFIDENTIAL~~ \*\*\*~~1~~ and an average of \*\*\* ~~BEGIN~~  
477 19 ~~CONFIDENTIAL \$80.00 per DS1 MRC and \$846.00~~ ~~END CONFIDENTIAL~~  
478 20 ~~\*\*\* per DS3 MRC~~) and UNEs to provide service to those customers, all of which  
479 21 Covad will ultimately lose under the Qwest proposal.

480 Covad is not passively sitting around waiting for Qwest to force customers  
481 22 off of our network and to result in a stranding of our central office-based

482 23 <sup>4</sup> These are the current, commission-approved rates and the rates that Covad has received for over the past  
483 24 year when submitting collocation applications. These rates include special pricing via the Collocation  
484 25 Available Inventory Promotion.  
485 26



482 collocation spaces and equipment. To the contrary, Covad is working to develop  
483 <sup>1</sup> alternative ways to provide service to our customers. Notwithstanding these  
484 <sup>2</sup> efforts, it is not appropriate for Qwest to have the unilateral ability to disconnect  
485 <sup>3</sup> existing Covad customers under the guise of technological development.

486 <sup>4</sup> At the end of the day, while Qwest may complain about its supposed  
487 <sup>5</sup> investment disincentive (which, as I discuss below, is an illusory concern), it is  
488 <sup>6</sup> Covad that suffers the monetary harm because it loses the value of its central  
489 <sup>7</sup> office investment.

490 <sup>8</sup> **Q. IN DESCRIBING THE COVAD PROPOSAL IN ACTION, YOU STATED**  
491 <sup>9</sup> **THAT ONLY A HANDFUL OF CUSTOMERS WOULD BE IMPACTED.**  
492 <sup>10</sup> **HOW DO YOU ARRIVE AT THAT CONCLUSION?**

493 <sup>11</sup> A. By two different methods. First, Qwest is and has been replacing copper with  
494 <sup>12</sup> fiber. To date, those activities have not impacted Covad so we reasonably assume  
495 <sup>13</sup> that the impact will not be huge, just that there will be some impact. The second  
496 <sup>14</sup> way I arrive at that conclusion is based on our experience in other ILEC regions.  
497 <sup>15</sup> In the BellSouth region, which is of comparable size in terms of Covad's customer  
498 <sup>16</sup> base to the Qwest region, **\*\*\* BEGIN CONFIDENTIAL 61-61 EEND**  
499 <sup>17</sup> **CONFIDENTIAL \*\*\*** Covad customers have been impacted by copper  
500 <sup>18</sup> retirement with fiber replacement. Notably, BellSouth has been far more  
501 <sup>19</sup> aggressive than Qwest in replacing copper with fiber, and more than 40% of the  
502 <sup>20</sup> BellSouth remote terminals are served by fiber – whereas it appears that only  
503 <sup>21</sup> approximately 20% of Qwest's remote terminals are served by fiber. Importantly,  
504 <sup>22</sup> Covad filed copper retirement complaints in each of the BellSouth states where  
505 <sup>23</sup> customers were impacted, and was able to successfully settle those complaints in a

506 fashion that allowed those customers to continue to receive the same service they  
507 were receiving before the retirement.<sup>5</sup>

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

510 **A.** While four or five customers may be something Qwest is willing to ignore, Covad  
511 most certainly is not. Covad is committed to delivering to each and every one of  
512 its end users outstanding service. Covad’s commitment is not just to provide the  
513 service that the end user wants, but also to ensure that the end user’s entire  
514 experience with Covad, from ordering through disconnection, is a positive  
515 experience and that the end users get what they want – excellent service *from*  
516 *Covad*. Because of its commitment to service and end user satisfaction, Covad  
517 does not just dismiss the predicament of a few customers because they are just a  
518 few.

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

528  
529  
22  
23 <sup>5</sup> The precise terms of the settlements are confidential. However, Covad is permitted to disclose the fact that  
24 the complaints were settled successfully and that, as a result of the settlement, the customers continued to  
25 receive the same services they were receiving prior to the copper retirement.  
26

530 **Q. DOES THE COVAD PROPOSAL DISINCENT COVAD FROM**  
531 **INVESTING IN ITS OWN NETWORK?**

532 <sup>2</sup> A. No, it doesn't. As the Commission knows, Covad is a facilities-based provider.  
533 <sup>3</sup> As of August 2001, Covad had invested over \$1.4 billion to build out its  
534 <sup>4</sup> nationwide network, and since that time Covad has spent tens of millions of  
535 <sup>5</sup> dollars more to maintain and upgrade its already world-class network and  
536 <sup>6</sup> operating support systems ("OSS"). Covad collocates its own equipment in  
537 <sup>7</sup> numerous Qwest central offices in ~~Washington~~Utah and throughout six other states  
538 <sup>8</sup> in the Qwest region (Covad is Qwest's largest collocation customer). Covad relies  
539 <sup>9</sup> solely on its own equipment and network to provide service to customers in  
540 <sup>10</sup> ~~Washington~~Utah, except when it must utilize dedicated interoffice transport leased  
541 <sup>11</sup> from Qwest in some circumstances and as well as that quintessential bottleneck  
542 <sup>12</sup> facility, the local loop. Because of its business plan, Covad utilizes its own  
543 <sup>13</sup> network wherever and whenever the technological and economic circumstances  
544 <sup>14</sup> make it possible. But, because it makes no sense to invest in a remote DSLAM  
545 <sup>15</sup> simply to serve a handful of customers for a limited time period, Covad would not  
546 <sup>16</sup> make that investment decision.

547 <sup>17</sup> **Q. QWEST HAS SUGGESTED ELSEWHERE THAT COVAD'S PROPOSAL**  
548 <sup>18</sup> **WOULD REDUCE QWEST'S INCENTIVE TO DEPLOY FIBER**  
549 <sup>19</sup> **FACILITIES. DO YOU AGREE WITH THIS STATEMENT?**

550 <sup>20</sup> A. Absolutely not. The potential impact to Qwest, should Covad prevail on this issue,  
551 <sup>21</sup> would be so minimal that any possibility of impacting a multi-million dollar  
552 <sup>22</sup> investment decision is overstated, if not unfounded.

553 <sup>23</sup> **Q. PLEASE EXPLAIN.**

<sup>24</sup>

<sup>25</sup>

<sup>26</sup>

554 A. Covad is primarily a wholesale provider of DSL services. Our business partners,  
555 1 who provide the retail service, have a nationwide marketing focus. At times, the  
556 2 focus may be at a state level, but never at a wire center or neighborhood level (the  
557 3 neighborhood level is referred to by telecom providers as a distribution area, or  
558 4 DA). Because of this fact, many DAs will have few, if any, end user customers  
559 5 with Covad DSL service. Our customer base is not concentrated in any one DA,  
560 6 but instead, randomly distributed over all DAs served by wire centers where  
561 7 Covad is collocated. The likelihood of more than a handful of Covad end user  
562 8 customers being impacted by a fiber replacement is so highly remote that any  
563 9 attempt to argue that multi-million dollar investment decision would be made on  
564 10 this basis is suspect in my mind.

565 11 **Q. IF FIVE COVAD END USER CUSTOMERS WERE GOING TO BE**  
566 12 **IMPACTED BY A FIBER REPLACEMENT PROJECT, WHAT WOULD**  
567 13 **BE THE APPROXIMATE FINANCIAL IMPACT TO QWEST?**

568 14 A. Assuming an industry average churn rate (the length of time a typical customer  
569 15 retains their DSL service) of two years, the difference in price between Qwest  
570 16 wholesale and retail revenue is about \$100.00 per month for all 5 customers, the  
571 17 impact would be about \$2,400.00. This is hardly enough to impact a decision as to  
572 18 whether or not to deploy fiber to hundreds, if not thousands, of existing Qwest  
573 19 customers.

574 20 **Q. CAN YOU SEE ANY POSSIBLE WAY THAT COVAD'S PROPOSAL**  
575 21 **WOULD REDUCE QWEST'S INCENTIVE TO DEPLOY FIBER?**

576 22 A. Not in the least. Again, Covad's customers are so widely dispersed within the  
577 23 Qwest network that impacts will be minimal, and certainly not significant enough

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578 to discourage Qwest from deploying fiber cable. If Covad were a retail provider of  
579 <sup>1</sup> DSL, with established relationships with customers within a specific  
580 <sup>2</sup> neighborhood, higher concentrations of customers would be more likely.  
581 <sup>3</sup> However, unlike Qwest or the incumbent cable provider, Covad is not provided  
582 <sup>4</sup> this opportunity to target market to a specific neighborhood customer base.

583 <sup>5</sup> Moreover, as I discussed above, I can envision at least one way in which  
584 <sup>6</sup> Qwest could provide an alternative service over any of the facilities available to an  
585 <sup>7</sup> existing Covad end user customer that would not change in any respect Qwest's  
586 <sup>8</sup> investment calculation or result in Qwest incurring any costs over and above what  
587 <sup>9</sup> it would otherwise incur when it decided to retire copper feeder and replace it with  
588 <sup>10</sup> fiber. Nor would this method (the VISP product) require Qwest to maintain  
589 <sup>11</sup> copper it would not otherwise maintain, or provide any type of access to fiber  
590 <sup>12</sup> facility beyond that required to provide service to existing Covad customers until  
591 <sup>13</sup> they choose to disconnect their service. Of course, notwithstanding what I can  
592 <sup>14</sup> envision, Covad will commit to working with Qwest to developing an alternative  
593 <sup>15</sup> service for Covad's impacted existing customers that will not increase Qwest's  
594 <sup>16</sup> costs beyond the costs it would otherwise incur in deploying fiber feeder and the  
595 <sup>17</sup> associated electronics in the first place.

596 <sup>18</sup> **Q. EXPLAIN WHY COVAD'S PROPOSAL ACTUALLY BENEFITS QWEST.**

597 <sup>19</sup> A. Under Covad's proposal, Qwest continues to receive revenue from Covad as it  
598 <sup>20</sup> continues to provide service to the customer. If Covad is not allowed to retain that  
599 <sup>21</sup> customer, then Qwest is not assured of any revenue whatsoever from that  
600 <sup>22</sup> customer. In other words, if Qwest forces Covad to cut off service to its  
601 <sup>23</sup> customer, the customer then has the option of choosing Qwest for its broadband

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602 (and video) service, or choosing the cable company for broadband (and video)  
603 1 service. The customer is free to choose the cable company, and if he or she does  
604 2 so, Qwest will receive no revenue whatsoever. At least under Covad's proposal,  
605 3 Qwest will continue to recover its costs and make a reasonable profit without any  
606 4 additional expenses.

607 5 **Q. PLEASE EXPLAIN WHY THE DEPLOYMENT OF FIBER DOES NOT**  
608 6 **LEAD TO ANY CONSUMER BENEFIT IN THE COPPER RETIREMENT**  
609 7 **SCENARIO WITH WHICH COVAD IS CONCERNED.**

610 8 A. Fiber deployment does not necessarily result in any meaningful consumer benefit.  
611 9 In the first place, we are not talking about a situation in which the consumer does  
612 10 not already have broadband. To the contrary, in the copper retirement scenario we  
613 11 are talking about, the consumer already has broadband from Covad. The  
614 12 deployment of fiber thus doesn't result in any bridging of the "digital divide" since  
615 13 none exists in the scenario Covad is concerned about. This is an important point  
616 14 because, historically, the desire to incent broadband deployment (whether via  
617 15 copper or fiber) has been driven by the desire to provide all consumers with access  
618 16 to broadband. That traditional justification for creating a deployment incentive  
619 17 simply does not exist here. The consumer already has broadband from a provider  
620 18 of their choice.

621 19 More importantly, Qwest's fiber deployment has not been designed to  
622 20 actually facilitate the provision of broadband services – enhanced or otherwise. In  
623 21 fact, Qwest has deployed fiber in at least one state for no purpose other than to  
624 22 support voice service, as Exhibit KMD-2 shows. And to the extent that Qwest's  
625 23 fiber deployment is broadband capable, it appears to be the rare exception, rather

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626 than the rule that the fiber Qwest has deployed can provide any service other than  
627 what's already available over the all copper loop running between the customer  
628 premises and the central office. Finally, given DSL technology that will be  
629 available in 6-12 months, all copper loops will also be able to support video  
630 services, thereby eliminating entirely any service advantage that Qwest might gain  
631 (which is not a given, as I just explained) by virtue of its fiber deployment.

632 **Q. IN FACT, QWEST'S FIBER DEPLOYMENT WILL RESULT IN**  
633 **CONSUMER HARM, WON'T IT?**

634 ~~A. TAnd at heart, the only difference between the Qwest and Covad service offerings~~  
635 ~~in the copper retirement scenario we are discussing here is whether the consumer also~~  
636 ~~wants to receive video services from Qwest. While a consumer may make the value~~  
637 ~~judgment that they prefer broadband and video from Qwest over just broadband from~~  
638 ~~Covad, I do not believe that access to a non-essential form of entertainment qualifies as a~~  
639 ~~consumer benefit, at least not in the sense of a consumer welfare benefit.~~

640 ~~Second,~~ the deployment of fiber, if Covad's proposal is not adopted, will actually lead to  
641 consumer harm. The consumer has made his or her choice among providers and  
642 currently available service options. The choice to go with Covad should be  
643 honored until the consumer changes his or her mind, just as, if the consumer  
644 chooses to leave Covad ~~because of additional options or features (i.e. video)~~  
645 ~~available to him or her from Qwest as a result of its fiber deployment,~~ then that  
646 choice should be honored as well. Relatedly, of course, as consumers have fewer  
647 providers to choose from, their rates will go up as a result of the  
648 monopoly/duopoly service arrangement. At least under Covad's proposal, the  
649 consumer won't face an immediate jacking up of the price of the service he or she

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650 receives, because they have an alternative, lower-priced, and excellent service  
651 <sup>1</sup> option in Covad.

652 <sup>2</sup> **Q. DO YOU TAKE ISSUE WITH QWEST'S COPPER RETIREMENT**  
653 <sup>3</sup> **NOTICE PROCESS?**

654 <sup>4</sup> A. It is clear to us that Qwest's notice process is deficient.

655 <sup>5</sup> **Q. WHY IS THE QWEST NOTICE PROCESS DEFICIENT?**

656 <sup>6</sup> A. As I understand it, while Qwest will provide notice of all copper retirement  
657 <sup>7</sup> activity, including copper retirement resulting in hybrid fiber-copper loops, the  
658 <sup>8</sup> notice that Qwest is providing is inadequate to fully inform Covad that its  
659 <sup>9</sup> customers will be impacted. Right now, the Qwest notice simply lists the state, the  
660 <sup>10</sup> wire center, the planned retirement date, the DA number, the FDI address and the  
661 <sup>11</sup> replaced/replacing transmission media, as you can see from the attached Exhibit  
662 <sup>12</sup> KMD-3. This is absolutely insufficient to allow a CLEC to determine whether a  
663 <sup>13</sup> particular copper retirement will impact its customer base. Equally important,  
664 <sup>14</sup> there is nothing on the notification, whether in the form of a contact number or a  
665 <sup>15</sup> URL that would allow a CLEC to seek whatever additional information Qwest  
666 <sup>16</sup> might have relative to the impact of the copper retirement.

667 <sup>17</sup> **Q. WHAT KIND OF INFORMATION MUST QWEST PROVIDE IN ORDER**  
668 <sup>18</sup> **TO ALLOW COVAD (AND ANY OTHER CLEC) TO DETERMINE**  
669 <sup>19</sup> **WHETHER A COPPER RETIREMENT IS CUSTOMER IMPACTING?**

670 <sup>20</sup> A. Covad believes that the following information must be provided to Covad in order  
671 <sup>21</sup> for it to determine whether the copper retirement is customer impacting.  
672 <sup>22</sup> Importantly, while the primary impact of a copper retirement will be felt when  
673 <sup>23</sup> Qwest replaces copper feeder with fiber feeder, Covad's customer base also may

674 <sup>24</sup>

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674 be impacted when copper feeder is replaced by copper feeder with different  
675 transmission characteristics that may impact the speed of the service Covad  
676 provides or preclude its ability to provide service all together:

677 \*City and State

678 \*Wire center

679 \*Retirement Date

680 \*FDI address

681 \*Listing of all impacted addresses in the DA

682 \*Listing of all Covad customer impacted addresses

683 \*Old and new cable media, including transmission characteristics

684 \*Circuit identification number

685 \*Cable and pair information

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

688 **A. Absolutely. In the first place, with the exception of the FDI address and the cable**  
689 **transmission characteristics, we pulled this listing of information based on what**  
690 **BellSouth provides Covad every time it retires copper and there is an impact on**  
691 **Covad's existing customer base. If BellSouth can provide this information,**  
692 **certainly Qwest can as well. As for the two additional pieces of information, FDI**  
693 **address and the cable transmission characteristics, Qwest appears already to be**  
694 **able to provide that information so it should not be problematic at all to continue**  
695 **providing that information.**

696 Second, based on a recent copper retirement notification from Qwest, it  
697 appears that Qwest is equally capable of discerning whether there are any specific

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698 CLEC-customer impacts. Specifically, pursuant to a September 21, 2004 network  
699 notification, attached hereto as Exhibit KMD-4, Qwest was able to determine with  
700 a Colorado copper retirement that “there are no impacts to the CLEC community.”  
701 When asked by Covad how Qwest was able to make this determination, a Qwest  
702 representative responded that “cable counts impacted by the change were reviewed  
703 for working CLEC circuits.” See Exhibit KMD-5. Based on that communication,  
704 it appears clear that Qwest is more than capable of making an individualized  
705 finding of whether specific Covad customers would be impacted by a copper  
706 retirement. Despite that capability, Qwest is refusing to make it available to  
707 Covad. The result is an anti-competitive situation in which Qwest not only has the  
708 capability of targeting and taking Covad customers, but also rendering Covad  
709 unable to at least make the disconnection of its own customer a smooth experience  
710 for that customer.

711 ~~Qwest will not actually provide notice to the carrier whose customer base will be~~  
712 ~~impacted. Instead, Qwest is relying on some posting on its website. For such a customer~~  
713 ~~impacting process to actually work, carriers should be notified individually and directly of~~  
714 ~~any impact to their existing customer base, just as BellSouth does today. The mere~~  
715 ~~posting of a notice on the Qwest website is wholly insufficient, because it places the~~  
716 ~~burden on the CLEC to check daily to see whether Qwest will force the disconnection of~~  
717 ~~Covad’s customers. And because BellSouth can provide such direct and individual~~  
718 ~~notices, Qwest presumably is likewise capable of providing that same type of direct~~  
719 ~~notice.~~

720 ~~**Q. THE COVAD PROPOSAL IS CONSISTENT WITH THE TRO,**~~  
721 ~~**CORRECT?**~~

24

25

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722 A. ~~It is. The FCC's stated pre-condition for the right of an ILEC to retire copper is~~  
 723 ~~that any such retirement must not deny competitors access to loop facilities:~~

724 ~~Unless the copper retirement scenario suggests that~~  
 725 ~~competitors will be denied access to the loop facilities~~  
 726 ~~required under our rules, we will deem all such~~  
 727 ~~oppositions denied unless the Commission rules otherwise~~  
 728 ~~upon the specific circumstances of the case at issue within~~  
 729 ~~90 days of the Commission's public notice of the intended~~  
 730 ~~retirement.<sup>6</sup>~~

731 ~~In other words, there are two methods by which the FCC intended to~~  
 732 ~~prevent copper retirement. First, if the retirement will deny access to loop~~  
 733 ~~facilities as required by the FCC's rules (xDSL capable loops meet these criteria),~~  
 734 ~~then the ILEC may not use the copper retirement provisions of the *Triennial*~~  
 735 ~~*Review Order* at all. Second, the FCC may issue a ruling with respect to any~~  
 736 ~~objections filed within the ninety day period, in which case an ILEC "may not~~  
 737 ~~retire those copper loops or copper subloops at issue for replacement with fiber to-~~  
 738 ~~the home loops."~~

739 ~~The fact that the FCC was intent on precluding ILECs from retiring copper~~  
 740 ~~where such activity would negatively impact a CLEC's service to customers was~~  
 741 ~~reiterated by the FCC:~~

742 ~~We note that, with respect to network modifications that~~  
 743 ~~involve copper loop retirements, the rules we adopt herein~~  
 744 ~~differ in two respects from the notification rules that apply~~  
 745 ~~to other types of network modifications. **First, we establish**~~  
 746 ~~**a right for parties to object to the incumbent LEC's**~~  
 747 ~~**proposed retirement of its copper loops for both short-**~~  
 748 ~~**term and long-term notifications as outlined in Part 51**~~  
 749 ~~**of the Commission's rules. By contrast, our disclosure**~~  
 750 ~~**rules for other network modifications permit oppositions**~~  
 751 ~~**only for instances involving short-term notifications.<sup>7</sup>**~~

752 ~~The FCC's intent to protect xDSL capable loops in particular becomes~~  
 753 ~~clearer when read alongside the FCC's requirements for narrowband access to fiber~~  
 754 ~~loops. Because the FCC had already alleviated any concern regarding narrowband~~

755 <sup>6</sup> TRO, ¶ 282 (emphasis added).

756 <sup>7</sup> TRO, ¶ 283 (emphasis added).

755 ~~services by establishing specific access requirements for the provision of~~  
 756 ~~narrowband services by CLECs over newly deployed fiber loops,<sup>8</sup> the FCC could~~  
 757 ~~only have been referring to broadband services, including xDSL capable loops,~~  
 758 ~~when it discussed the "denial of access to loop facilities required under our rules."~~

759 ~~Additionally, with respect to the notification requirement, the FCC was~~  
 760 ~~very clear that notification must be given so that when copper is retired,~~  
 761 ~~"incumbent and competitive LECs can work together to ensure the competitive~~  
 762 ~~LECs maintain access to loop facilities."<sup>9</sup>—The interest in ensuring coordination~~  
 763 ~~of service to alternative facilities only makes sense if the FCC wanted to make~~  
 764 ~~sure that CLECs continued to have access to loop facilities in order to provide~~  
 765 ~~service to their existing customer base.~~

766 ~~———— It should also be noted that this Commission long ago established a specific~~  
 767 ~~obligation for incumbent carriers to provide unbundled access to loops, noting that~~  
 768 ~~such access is "in the public interest" and "essential" to competition.<sup>10</sup>—Any copper~~  
 769 ~~retirement activity that eliminates access to unbundled loops, such as Qwest's~~  
 770 ~~proposal, is contrary to longstanding Commission policy and findings and should~~  
 771 ~~be rejected.~~

772  
 773 **ISSUE 3: SHOULD QWEST BE REQUIRED TO FOLLOW THE FCC'S**  
 774 **DIRECTIVES REGARDING THE COMMINGLING OF**  
 775 **FACILITIES, COMBINATION OF UNEs, AND RATCHETING**  
 776 **ESTABLISHED IN THE TRO?**

777  
 778 **Q. PLEASE DESCRIBE THIS ISSUE.**

20 <sup>8</sup> See *Triennial Review Order*, ¶¶ 296-297; 47 C.F.R. § 51.319(a)(2)(iii).

21 <sup>9</sup> TRO, ¶ 281.

22 <sup>10</sup> Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints in  
 23 Part, in Docket No. UT-94464 (October 31, 1996), page 50 ("The record clearly establishes that unbundling  
 24 of the local loop is essential to the rapid geographic dispersion of competitive benefits to consumers and is  
 25 in the public interest. Unbundling allows customers greater opportunity to choose between a diversity of  
 26 products, services, and companies. Unbundling also allows for efficient use of the public switched network,  
 reduces the likelihood of inefficient network over-building, and ensures that competition is not held hostage  
 by being bundled with bottleneck functions.").

779 A.

780 <sup>1</sup> A This issue is a legal issue and because I am not testifying as an expert on legal  
781 <sup>2</sup> issues in this arbitration, I will simply state that the dispute between the parties  
782 <sup>3</sup> centers around the proper interpretation and application of the TRO provisions  
783 <sup>4</sup> addressing UNE combinations, commingling, and ratcheting.<sup>11</sup> At this point in  
784 <sup>5</sup> time, of the four sub-issues contained within Issue 3 (commingling; EEL eligibility  
785 <sup>6</sup> criteria; resale commingling; and ratcheting), only the definition and scope of  
786 <sup>7</sup> Qwest's commingling obligations (sub-issue 1) remains in dispute. It is my  
787 <sup>8</sup> understanding and expectation that this issue is best and properly addressed in  
788 <sup>9</sup> briefing by the parties following the hearings in this matter.

789 <sup>10</sup>

<sup>11</sup>

<sup>12</sup>

<sup>13</sup>

<sup>14</sup>

<sup>15</sup>

<sup>16</sup>

<sup>17</sup>

<sup>18</sup>

<sup>19</sup>

<sup>20</sup>

<sup>21</sup>

<sup>22</sup>

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<sup>23</sup> <sup>11</sup> The particular sections of the TRO that address the UNE combinations, commingling, and ratcheting issues (including issues related to EELs) are ¶¶ 135, 569-629, 655, and fn 1990.

<sup>24</sup>

<sup>25</sup>

<sup>26</sup>

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

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

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

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

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

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

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

808  
 809 5.4.1 Amounts payable for any invoice containing (1) line  
 810 splitting or loop splitting products, (2) a missing circuit ID, (3) a  
 811 missing USOC, or (4) new rate elements, new services, or new  
 812 features not previously ordered by CLEC (collectively "New

813 Products”) (items (1)-(4) hereinafter collectively referred to as  
814 “Exceptions”) are due and payable within forty-five (45) calendar  
815 Days after the date of invoice, or within twenty (20) calendar Days  
816 after receipt of the invoice, whichever is later (payment due date).  
817 With respect to the New Products Exception, the forty-five (45)  
818 Day time period shall apply for twelve (12) months. After twelve  
819 (12) months’ experience, such New Products shall be subject to the  
820 thirty (30) Day time frame hereinafter discussed. Any invoice that  
821 does not contain any of the above Exceptions are due and payable  
822 within thirty (30) calendar Days after the date of invoice, or within  
823 twenty (20) calendar Days after receipt of the invoice, whichever is  
824 later. If the payment due date is not a business day, the payment  
825 shall be due the next business day.

826 7  
827 5.4.2 One Party may discontinue processing orders for the failure  
828 of the other Party to make full payment for the relevant services,  
829 less any disputed amount as provided for in Section 5.4.4 of this  
830 Agreement, for the relevant services provided under this Agreement  
831 within sixty (60) calendar Days following the payment due date.  
832 The Billing Party will notify the other Party in writing at least ten  
833 (10) business days prior to discontinuing the processing of orders  
834 for the relevant services. If the Billing Party does not refuse to  
835 accept additional orders for the relevant services on the date  
836 specified in the ten (10) business days notice, and the other Party’s  
837 non-compliance continues, nothing contained herein shall preclude  
838 the Billing Party’s right to refuse to accept additional orders for the  
839 relevant services from the non-complying Party without further  
840 notice. For order processing to resume, the billed Party will be  
841 required to make full payment of all charges for the relevant  
842 services not disputed in good faith under this Agreement.  
843 Additionally, the Billing Party may require a deposit (or additional  
844 deposit) from the billed Party, pursuant to this section. In addition  
845 to other remedies that may be available at law or equity, the billed  
846 Party reserves the right to seek equitable relief including injunctive  
847 relief and specific performance.

848 18  
849 5.4.3 The Billing Party may disconnect any and all relevant  
850 services for failure by the billed Party to make full payment, less  
851 any disputed amount as provided for in Section 5.4.4 of this  
852 Agreement, for the relevant services within ninety (90) calendar  
853 Days following the payment due date. The billed Party will pay the  
854 applicable reconnect charge set forth in Exhibit A required to  
855 reconnect each resold End User Customer line disconnected  
856 pursuant to this paragraph. The Billing Party will notify the billed  
857 Party at least ten (10) business days prior to disconnection of the  
858 unpaid service(s). In case of such disconnection, all applicable

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859 undisputed charges, including termination charges, shall become  
 860 due. If the Billing Party does not disconnect the billed Party's  
 861 service(s) on the date specified in the ten (10) business days notice,  
 862 and the billed Party's noncompliance continues, nothing contained  
 863 herein shall preclude the Billing Party's right to disconnect any or  
 864 all relevant services of the non-complying Party without further  
 865 notice. For reconnection of the non-paid service to occur, the billed  
 866 Party will be required to make full payment of all past and current  
 867 undisputed charges under this Agreement for the relevant services.  
 868 Additionally, the Billing Party will request a deposit (or recalculate  
 869 the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed  
 870 Party, pursuant to this Section. Both Parties agree, however, that  
 871 the application of this provision will be suspended for the initial  
 872 three (3) Billing cycles of this Agreement and will not apply to  
 873 amounts billed during those three (3) cycles. In addition to other  
 874 remedies that may be available at law or equity, each Party reserves  
 875 the right to seek equitable relief, including injunctive relief and  
 876 specific performance.

877 As you can see, the primary difference is the change in the timing for these three  
 878 provisions. An additional change comes with the payment due date language,  
 879 where the standard for payment is thirty (30) days, except that Covad shall have  
 880 forty-five (45) days to make payment for any invoice containing: (1) line splitting  
 881 or loop splitting products, (2) a missing circuit ID, (3) a missing USOC, or (4) new  
 882 rate elements, new services, or new features not previously ordered by CLEC  
 883 (collectively "New Products").

884 **Q. WHAT IS THE CRUX OF THE DISAGREEMENT BETWEEN THE**  
 885 **PARTIES ON THE APPROPRIATE BILLING TIME FRAMES?**

886 **A.** In a nutshell, the questions are whether (1) CLECs are allowed 30 days to make  
 887 payment (except for the limited number of instances in which the due date is 45  
 888 days)~~45 days from the bill date to pay their bills~~ (as opposed to 30 days for the  
 889 entirety of the bill); ~~and~~ (2) whether Qwest must wait 690 days after the payment  
 890 date before an account is considered delinquent and, by extension Qwest can  
 891 discontinue processing orders (as opposed to 30 days); and (3) whether Qwest  
 892 must wait 90 days after the payment date before an account is considered



893 delinquent and, by extension Qwest can or ~~disconnection~~ services (as opposed to  
894 30 days).

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

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

- 901 • Failure to pay on time places a carrier at risk of incurring late  
902 payment charges. Late payment charges can result in significant  
903 costs to Covad;
- 904 • Failure to pay on time places a carrier at risk of having to provide a  
905 deposit, which Qwest estimates the deposit to equal charges for a  
906 two-month period; and
- 907 • Failure to pay on time can result in discontinuance of processing  
908 orders and disconnection of service.

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

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

917 Second, if Covad pays prematurely, it loses the benefit of any interest that  
918 would accrue on those funds from the time of payment, which of course is

919 important from Covad's financial perspective. Getting the money at some later,  
920 undefined point in time at which Qwest finally agrees its billing was in error does  
921 not actually remedy the lack of having the money available at the time when  
922 Covad had to make the payment. By contrast, Qwest benefits unfairly because it  
923 accrues interest for amounts it never should have received in the first place and  
924 enjoys the "float" available to it unless and until it decides to refund the money to  
925 Covad. Ultimately, the "pay now and deal later" mode of business would result in  
926 a game of "catch up" by Covad, as it does a post-hoc review in an abbreviated time  
927 frame to ensure that its billing claims are not precluded by other provisions of the  
928 Agreement.

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

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

940 **A.** Generally speaking, Covad receives its UNE, collocation, and transport bills from  
941 Qwest 5-8 days after the invoice date. Under Qwest's proposal, Covad has 20  
942 days at worst, or 25 days at best, to review all of those bills. This bill review is not  
943 an easy task. Covad's UNE bills fill 30 boxes every month. Collocation bills, of  
944 which Covad receives ten (10) every month from Qwest, run from 50-70 pages

945 long, for a total of 500-700 pages worth of collocation billing. Transport bills, of  
946 which Covad receives 17-18 every month from Qwest, also run from 50-70 pages,  
947 for a total of 850-1260 pages worth of transport billing. Monthly bill review,  
948 therefore, involves the review and evaluation of thousands and thousands of pages  
949 of billings.

950 **Q. QWEST SUGGESTS THAT, BECAUSE ITS BILLS ARE AVAILABLE**  
951 **ELECTRONICALLY, BILL REVIEW IS FAIRLY SIMPLE. WHY IS**  
952 **THAT NOT TRUE?**

953 **A.** Electronic billing does not make the burden of bill review so easy that the time  
954 frames proposed by Qwest do not impose a burden on Covad. Additionally, not all  
955 of the Qwest bills are available electronically. The nonrecurring portion of  
956 collocation bills for new collocation spaces or augments are not available in  
957 electronic format, and are only available in paper format such that the entire non-  
958 recurring bill review process is manual. Covad employees must review each  
959 charge from the paper invoice, load it manually into the billing system, wait for an  
960 exception printout, and then manually evaluate exceptions. Covad employees also  
961 must manually validate that the elements and quantities reflected in the invoices  
962 are correct and accurate. Additionally, any ICB – individual case basis -- charges  
963 on a collocation bill – of which there can be many,<sup>12</sup> must be reviewed  
964 individually by Covad employees.

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

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969 <sup>12</sup> Some examples of ICB charges are as follows: Construction Charges, Central Office Security  
970 Infrastructure Charge, Cageless Collocation Site Preparation Fee, Line Sharing Reclassification Charge,  
971 Expedite Charge and Cancellation Charge.

969                   UNE bills, while provided electronically, can be extremely difficult to  
 970                   process in the time frames Qwest wants included in the Agreement. First, a  
 971                   number of times, the Qwest UNE bills fail to provide a circuit identification  
 972                   number, providing instead a “unique identification number”, which is comprised  
 973                   of the customer’s billing telephone number (i.e., the telephone number that Qwest  
 974                   would call about a billing problem, rather than the telephone number associated  
 975                   with the actual circuit) and a unique code that Qwest generates and which Qwest  
 976                   assigns to that customer (we call this the BTN number and refer to this Qwest bill  
 977                   deficiency as the “BTN issue”). In the absence of a circuit identification number,  
 978                   however, Covad is utterly unable to confirm whether Qwest is billing Covad for a  
 979                   loop it has actually ordered. Covad relies on the provisioned circuit identification  
 980                   number to reconcile its bills because that number accurately reflects the line in  
 981                   question, removing uniquely generated numbers that may or may not be accurately  
 982                   generated and/or provided for by Qwest. The BTN, by contrast, may or may not  
 983                   be the actual circuit provisioned.

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

985 **A.** The scope of this problem is enormous. In the first ~~eight months~~ ~~five months~~ of  
 986 2004 alone, Qwest billed Covad over \*\*\* BEGIN CONFIDENTIAL ~~\$2.45~~  
 987 ~~million~~ ~~L \$1,687,000 (of which almost \$624,000 was allocated to Washington~~  
 988 ~~BANs)~~ END CONFIDENTIAL \*\*\* for loops for which no circuit ID was  
 989                   provided. On an annualized basis, the total amount that Qwest bills and which  
 990                   Covad must simply pay, having no way to validate the veracity of the billing, is  
 991                   \*\*\* BEGIN CONFIDENTIAL ~~\$3.4 million~~ ~~\$3.4 million~~ END  
 992                   CONFIDENTIAL \*\*\*. In the absence of additional time to resolve the circuit ID  
 993                   issue, Covad must simply pay these charges.

994 Quantified in a different way, currently, Covad has \*\*\* BEGIN  
 995 CONFIDENTIAL 5449-END CONFIDENTIAL \*\*\* total lines in service in this  
 996 state. Of those lines, \*\*\* BEGIN CONFIDENTIAL 3524- END  
 997 CONFIDENTIAL \*\*\* are line shared lines, reflecting 65% of Covad's total  
 998 customer base in Utah. As a consequence, Qwest is providing UNE bills to Covad  
 999 in the state of Utah for which a significant percentage are unreconcilable.

1000 **Q. PLEASE EXPAND ON WHY THIS IS SUCH A PROBLEM FOR COVAD.**

1001 **A.** Well, there is the first, most obvious problem that Qwest does not provide  
 1002 sufficient information to allow Covad to review its bills in a meaningful fashion.  
 1003 Covad thus pays on 65% of its customer base hoping, but not knowing for certain  
 1004 whether Qwest is billing appropriately and correctly. Second, and equally  
 1005 important, Qwest's billing deficiencies create a real problem for Covad in terms of  
 1006 demonstrating compliance with Sarbanes Oxley ("SOX"). As we all know just  
 1007 from reading the newspaper, a key focus of SOX is to ensure that the books and  
 1008 records of publicly traded companies are maintained in a fashion that ensures  
 1009 accurate, reliable, and GAAP compliant financial records. Because Covad cannot  
 1010 document, due to the deficiency in Qwest's bills, that it actually incurs a monthly  
 1011 liability for its line shared lines, Qwest unilaterally can create SOX compliance  
 1012 issues for Covad.

1013 **Q. DOES COVAD FACE THIS PROBLEM WITH ALL THE ILECS?**

1014 **A.** No. Only Qwest fails to provide this critical, circuit identification information.  
 1015 All the other ILECs, including their "subILECs" (e.g. SBC's "subILECs" are  
 1016 SWBT, Ameritech, PacBell and SNET) are capable and do include the circuit  
 1017 identification number for line shared lines. Qwest thus is out of step with the other  
 1018 ILECs and with industry norms surrounding the billing for line shared lines.

1019 **Q. HAS QWEST ATTEMPTED TO RESOLVE THIS ISSUE?**

1020 A. No. In March of 2003, Covad asked Qwest to include this information on its UNE  
1021 bills and was told, in no uncertain terms, that that information would not be  
1022 provided. At most, Qwest has suggested that Covad spend time and money to alter  
1023 its software billing systems to accommodate the fact that Qwest is out of sync with  
1024 industry billing norms. And even were Covad to attempt to implement Qwest's  
1025 suggestion about how to manually obtain circuit identification information via the  
1026 FOC or the CSR, it would require significant man hours to validate the billing  
1027 records even assuming that we would be able to do so with the information that  
1028 Qwest has provided. As is eminently clear, it is inappropriate, unfair and anti-  
1029 competitive to require Covad to incur the time and costs to develop a workaround  
1030 to resolve problems and deficiencies that are of Qwest's own making and decision.

1031 **Q. DOES QWEST HAVE ACCESS TO THE CIRCUIT IDENTIFICATION**  
1032 **NUMBER FOR LINE SHARED LINES?**

1033 A. It is Covad' belief and understanding that the circuit identification number resides  
1034 somewhere in Qwest's backend systems or databases. I state this after reviewing  
1035 line sharing billing information pulled from Covad's files in which it appears that  
1036 the circuit identification number is included in the "Circuit Detail Section" for two  
1037 line shared lines. I have attached Exhibit KMD-6 (which has both a confidential  
1038 and non-confidential version) which reflects this. For purposes of making it easier  
1039 to identify the information I am talking about, I have inserted an arrow on the  
1040 pages that appear to show circuit identification information.

1041 **Q. IS THIS PROBLEM LIMITED TO LINE SHARED LINES?**

1042 A. No. Qwest stated in the Minnesota arbitration that it fails and refuses to provide  
1043 circuit identification numbers on line split line billings as well as a result of a  
1044 decision it made with respect to the provisioning flow to which it assigned line  
1045 shared and line split lines. So the scope of this problem goes far beyond Covad,

1046 has a significantly negative impact on multiple competitors in the Qwest region,  
1047 and is solely attributable to Qwest's own decision-making.

1048 **Q. SINCE COVAD AND QWEST HAVE A COMMERCIAL LINE SHARING**  
1049 **AGREEMENT, DOESN'T THE BTN PROBLEM MOVE TO THAT**  
1050 **AGREEMENT?**

1051 A. No, it does not. Per the TRO, all line shared lines on the network as of October 2,  
1052 2004 are "grandfathered" in as UNEs and thus are subject to the terms and  
1053 conditions of our current interconnection agreement, and once approved by the  
1054 Commission, the interconnection agreement being arbitrated. Only those new  
1055 lines added on or after October 2, 2004 will be subject to the terms and conditions  
1056 of the commercial line sharing agreement.

1057 **Q. HAS COVAD ATTEMPTED TO USE THE CHANGE MANAGEMENT**  
1058 **PROCESS TO RESOLVE THIS ISSUE?**

1059 A. Originally we had not, based on Qwest's March 2003 unequivocal statement that  
1060 circuit identification numbers for line shared lines were not and would not be  
1061 included in our UNE bills. Further, Qwest denied a Covad provisioning change  
1062 request asking that the circuit identification number be provided as part of the  
1063 provisioning process. We reasonably assumed that if Qwest were not willing to  
1064 provide that information during one part of the process, it certainly would not do  
1065 so during the billing cycle, particularly since by that point Covad just simply has  
1066 to assume Qwest's billing is correct and pay for all line shared lines Qwest bills  
1067 for. Finally, over one month ago, Qwest took the novel and unprecedented  
1068 position that billing change requests are outside the scope of the CMP and would  
1069 not be a part of the prioritization or resource allocation process, rendering the  
1070 CMP ineffectual for implementing billing changes like the BTN issue.  
1071 Nonetheless, because Qwest has persisted in testifying that CMP is the avenue for

1072 resolution of these kinds of issues, Covad submitted a change request requesting  
1073 that the circuit identification number be provided on UNE bills for line splitting,  
1074 line sharing and loop splitting. Qwest has not yet provided its response to that  
1075 change request.

1076 **Q. PLEASE PROVIDE MORE DETAIL AROUND THE CMP**

1077 **A.** The CMP is the sole method by which CLECs can request that changes be made to  
1078 Qwest systems (interfaces, backend systems and databases), products, and  
1079 processes. I've attached hereto as Exhibit KMD-7 the governing CMP document  
1080 which spells out the scope and purpose of the CMP. Relevant to systems changes  
1081 in order to make changes to bill format and content, while the CMP governing  
1082 document clearly calls for Qwest to invoke prioritization when the resources  
1083 necessary to implement requested changes exceed a particular OSS release  
1084 capacity (see Exhibit KMD-7, section 10.0), Qwest has taken the position that  
1085 CLEC billing and/or maintenance and repair requests will be implemented 1) if  
1086 approved solely by Qwest with 2) no set implementation timeframes. In doing so,  
1087 Qwest determines unilaterally which CLEC initiated changes are implemented and  
1088 in what timeframe. Covad requested review of this issue by the Oversight  
1089 Committee because this process was designed to accommodate "out of scope"  
1090 conditions (not following the governing documented procedures).

1091 **Q. WOULD AN ORDER OUT OF THIS COMMISSION THAT REQUIRED**  
1092 **ANY KIND OF CHANGE TO A QWEST PRODUCT, PROCESS OR**  
1093 **SYSTEM SOMEHOW UNDERMINE THE CMP?**

1094 **A.** No. To the contrary, the CMP document clearly delineates and defines a specific  
1095 category of changes called "regulatory change requests." As defined in the CMP  
1096 document itself, a "regulatory CR" is "mandated by regulatory or legal entities,  
1097 such as the Federal Communications Commission (FCC), a state



1098 commission/authority, or state and federal courts. Regulatory changes are not  
1099 voluntary but are requisite to comply with newly passed legislation, regulatory  
1100 requirements, or court rulings”. Thus, the CMP clearly contemplates that  
1101 Commissions will order changes to Qwest processes, products and systems, and  
1102 that such changes will be effectuated via CMP. So, orders out of this Commission  
1103 that require changes by Qwest in no way undermines the CMP, but rather are  
1104 complementary to and a part of the CMP.

1105 **Q. YOU STATED EARILER IN YOUR TESTIMONY THAT QWEST’S**  
1106 **POSITION THAT BILLING CHANGE REQUESTS ARE OUTSIDE THE**  
1107 **SCOPE OF CMP WAS NOVEL AND UNPRECEDENTED. WHY IS**  
1108 **THAT?**

1109 **A. The CMP documentation is very clear. The CMP document defines OSS as**  
1110 **“[t]hroughout this document, OSS Interfaces are defined as existing or new**  
1111 **gateways (including application-to-application interfaces and Graphical User**  
1112 **Interfaces), connectivity and system functions that support or affect the pre-order,**  
1113 **order, provisioning, maintenance and repair, and billing capabilities for local**  
1114 **services (local exchange services) provided by CLECs to their end users”. Qwest**  
1115 **has now taken the position that billing change requests are outside the scope of**  
1116 **CMP because they impact backend systems. This is completely contrary to what**  
1117 **was expressly agreed to by Qwest in connection with its bid to re-enter the long**  
1118 **distance business via Section 271 of the Telecommunications Act of 1996 when it**  
1119 **had to redesign its CMP as documented in Exhibit KMD-7, as well as what is**  
1120 **explicitly stated in the CMP document itself.**

1121 Moreover, Qwest’s position is just nonsensical. Systems interfaces are  
1122 nothing more than a screen, or gateway, that confirms I’m an authorized user and  
1123 that the information I want to obtain from some backend system can be obtained.

1124 The interface itself only tells me I can get that information, but does not actually  
1125 give me the information or tell me what I want to know. Using an analogy to  
1126 make this clear and to demonstrate the hypocrisy of Qwest’s new position in CMP,  
1127 say I have an account at a bank, have deposited \$10,000 into my account, and as  
1128 part of my banking privileges, I can access automatic teller machines (“ATM”)  
1129 with my ATM card to conduct my banking business. If Qwest is taken at its word,  
1130 using my analogy, I can put my ATM card into the ATM, enter my PIN and  
1131 confirm that I am who I am and am the lawful owner of the account linked to my  
1132 name and PIN number. But, that’s it; I can’t use the ATM machine to withdraw  
1133 cash, deposit cash or check my account balance. In essence, then, my ATM  
1134 “banking privileges” are meaningless because they do not let me actually do  
1135 anything – which is precisely what Qwest is now saying. Per Qwest, CLECs can  
1136 ask that the ATM screen be change from blue to red and that Spanish be a  
1137 language option, but nothing else. Clearly, Qwest’s new position is not only  
1138 unfounded, but profoundly anti-competitive as well.

1139 **Q. ARE THERE ANY OTHER PROBLEMS OR DEFICIENCIES IN THE**  
1140 **QWEST BILL?**

1141 **A. Unfortunately, yes. A**

1142 ~~Second,~~ a number of times the Qwest UNE bills fail to contain USOCs (universal service  
1143 ordering codes). For example, if an installation option other than basic installation  
1144 is charged, Covad has to determine what installation option was charged for, (as  
1145 often a USOC is not provided) and if the charge was accurate. When this happens,  
1146 Covad must go back to Qwest to get the appropriate USOCs for each line item  
1147 charged. Only after Qwest provides that key information can Covad begin to  
1148 validate billing. Similarly, all “episodic” non-recurring charges must be  
1149 investigated manually because Qwest does not provide USOCs for those types of

1150 charges. For instance, if Qwest bills for labor and repair charges on a trouble  
1151 ticket, Covad must first determine what the charge is for, and then manually  
1152 review the order or repair history for a particular UNE to determine if the charge is  
1153 valid.

1154 **Q. WHY ARE USOCS SO IMPORTANT IF QWEST ALSO PROVIDES A**  
1155 **“PLAIN ENGLISH” DESCRIPTION OF A CHARGE?**

1156 **A. To use an analogy, USOCs are to bill validation what teeth are to chewing.**  
1157 **Covad’s billing software – like that of any other carrier in the industry using**  
1158 **standardized billing software – is keyed off of USOCs. That is, USOCs drive what**  
1159 **the appropriate rate should be and thus Covad validates its billing by comparing**  
1160 **the rate associated with a USOC on a bill and the rate associated with that USOC**  
1161 **in Covad’s billing databases. Covad’s software does not and cannot understand**  
1162 **“plain English” descriptions, which necessitate manual intervention by Covad**  
1163 **resources that are better allocated to more productive uses of time. So, in order to**  
1164 **remedy a clear Qwest deficiency, Covad must use manual resources despite having**  
1165 **poured millions into developing state of the art billing reconciliation software.**

1166 **Q. IS THERE ANYTHING IN THE COVAD BILLING VALIDATION**  
1167 **PROCESS THAT WOULD ALLOW IT TO GET AROUND THE LACK OF**  
1168 **USOCS?**

1169 **A. Unfortunately, no. While Covad does independently validate rates on a per circuit**  
1170 **basis, it must reconcile by USOCs as well in order to demonstrate for legal**  
1171 **purposes that it engages in appropriate bill validation such that its financial books**  
1172 **and records are deemed accurate, reliable and in compliance with governing law**  
1173 **(i.e., SOX). Absent this demonstration of individual element and USOC**  
1174 **validation, the integrity of Covad’s financial books and records could be put into**  
1175 **question.**

1176 **Q. WHAT OTHER DEFICIENCIES EXIST ON QWEST'S BILLS?**

1177 **A. \_\_\_\_\_**

1178 ~~Third~~<sup>2</sup>T, the applicable rate (whether non-recurring or recurring) charged by Qwest on  
 1179 <sup>3</sup> UNE bills may be incorrect. Even more problematic, Qwest may bill the correct  
 1180 <sup>4</sup> monthly recurring charges, but Covad must nonetheless undertake a manual  
 1181 <sup>5</sup> review of the rate because the USOC is the same even though the rate may differ.  
 1182 <sup>6</sup> For example, in ~~Washington~~<sup>7</sup>Utah there are ~~five~~<sup>8</sup>~~three~~four different zones with ~~four~~<sup>9</sup>~~four~~  
 1183 <sup>10</sup> different monthly recurring charges (“MRCs”) for UNE loops. Each DS0 loop  
 1184 <sup>11</sup> MRC is different for each zone, but the USOC for all zones is identical.  
 1185 <sup>12</sup> Consequently, additional time is spent tracking down appropriate rates for the  
 1186 <sup>13</sup> UNEs billed by Qwest.

1187 ~~Additionally~~<sup>14</sup>Fourth, all disconnects must be researched manually and  
 1188 <sup>15</sup> individually to make sure that the date on the disconnect is correct. This must be  
 1189 <sup>16</sup> done to ensure that Qwest does not bill for an entire month for a circuit that was  
 1190 <sup>17</sup> disconnected on day 1, day 7, day 22, etc. of the particular billing cycle. Given  
 1191 <sup>18</sup> current churn rates, Covad must manually investigate up to \*\*\*\* **BEGIN**  
 1192 <sup>19</sup> **CONFIDENTIAL 283 approximately 660 disconnected Washington circuits**  
 1193 <sup>20</sup> **disconnects** **END CONFIDENTIAL \*\*\*\*** every month.

1194 <sup>21</sup> ~~Further~~<sup>22</sup>Finally, as Covad partners more aggressively with other CLECs to  
 1195 <sup>23</sup> provide line split or loop split services, billing will become significantly more  
 1196 <sup>24</sup> difficult. As agreed upon by the parties, there is only one customer of record  
 1197 <sup>25</sup> (“COR”) for line split and loop split orders.<sup>13</sup> The COR receives all billings for  
 1198 <sup>26</sup> the line split or loop split order, including all the voice and the data charges.  
 1199 <sup>27</sup> However, in both line splitting and loop splitting situations, you have two CLECs  
 1200 <sup>28</sup> involved – one CLEC providing the voice and the other providing the data. So, if

<sup>13</sup> Qwest's ~~Washington~~<sup>29</sup>Utah Statement of Generally Available Terms (SGAT), ~~8th Revision~~<sup>30</sup>, Section 9.21.1.

1201 Covad is the COR, it will receive all of the voice billings, which it will have to  
 1202 send over to its voice CLEC partner, await its review of the voice portion of the  
 1203 billing, resolve any questions between the CLECs as to questions about the  
 1204 billings, and then incorporate any billing disputes as appropriate. Needless to say,  
 1205 this adds time and complication to the bill review process that Qwest's proposed  
 1206 time frames simply do not accommodate.

1207 Finally, Covad now provides three different business-class VoIP products.  
 1208 As a result of these new products, Qwest will bill Covad for rate elements it has  
 1209 never encountered before, and rates it has never had to previously validate.  
 1210 Further, the method in which Qwest bills Covad will also change substantially.  
 1211 For example, with just its data products, Covad never encountered and thus has no  
 1212 experience with validating rate elements that are billed on a minute of use basis, or  
 1213 that require the exchange of billing records. Now, with its VoIP products, Covad  
 1214 will address these billing arrangements for the first time and it is inevitable that a  
 1215 number of new billing issues with which Covad has no experience will crop up.  
 1216 Covad's absolute lack of experience in this area, in tandem with known and  
 1217 unknown deficiencies in the Qwest bills will make compliance with a thirty (30)  
 1218 day payment due date undoable, or only doable if Covad elects to skip or skimp on  
 1219 bill review and validation.

1220 **Q. YOU'VE IDENTIFIED A NUMBER OF PROBLEMS. WHAT IS THE**  
 1221 **MAGNITUDE OF THOSE PROBLEMS?**

1222 **A.** Unfortunately, it is significant. Performance measures such as the PIDs measure  
 1223 and document performance problems. BI-3A (Billing Accuracy – Adjustments for  
 1224 Errors) measures billing accuracy for resale and unbundled network elements  
 1225 (UNEs). The measure reports billing accuracy as the percentage of total amount  
 1226 billed that was not adjusted for Qwest billing errors. For example, if Qwest billed a

1227 CLEC a total of \$100,000 across all of its resale and UNE invoices in February  
 1228 and Qwest adjusted the CLEC's February invoices for \$5,000 of billing errors that  
 1229 Qwest made on earlier bills, Qwest would report 95% performance in February.

1230 The PAPs in Qwest's region have included BI-3A with a per measure cap  
 1231 of \$5,000/month. Thus, no matter how poor Qwest's billing is in a particular  
 1232 month, Qwest's liability is generally limited to \$5,000.<sup>14</sup> Even with such stringent  
 1233 caps in place, Qwest has acknowledged making significant billing errors in its  
 1234 reporting under BI-3A. The dollar value of these errors, even without the  
 1235 inclusion of billing errors not currently included in the measure (such as  
 1236 collocation billing errors), are quite troubling on their face. Qwest has reported  
 1237 results for BI-3A since April 2001. Over the three years since, Qwest has made  
 1238 and corrected over \$112 million dollars of billing errors. And for Covad  
 1239 specifically, over the past in just about a year and a half, Qwest has paid to Covad  
 1240 **\*\*\* BEGIN CONFIDENTIAL \$114,000 ~~-\$114,000~~ E END CONFIDENTIAL**  
 1241 **\*\*\*** because of billing errors, which reflect hundreds of thousands of dollars of  
 1242 amounts billed in error. Keep in mind that this issue is not just a Covad issue, but  
 1243 one of importance to the industry. As the FCC has made clear, accurate and timely  
 1244 wholesale billing is critical to the ability of CLECs to effectively compete:

1245  
 1246 Inaccurate or untimely wholesale bills can impede a  
 1247 competitive LEC's ability to compete in many ways. First, a  
 1248 competitive LEC must spend additional monetary and  
 1249 personnel resources reconciling bills and pursuing bill  
 1250 corrections. Second, a competitive LEC must show  
 1251 improper overcharges as current debts on its balance sheet  
 1252 until the charges are resolved, which can jeopardize its  
 1253 ability to attract investment capital. Third, competitive  
 1254 LECs must operate with a diminished capacity to monitor,

22 \_\_\_\_\_  
 23 <sup>14</sup> 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.

1255 predict and adjust expenses and prices in response to  
 1256 competition. Fourth, competitive LECs may lose revenue  
 1257 <sup>1</sup> because they generally cannot, as a practical matter, back-  
 1258 bill end users in response to an untimely wholesale bill from  
 1259 <sup>2</sup> an incumbent LEC.<sup>15</sup>  
 1260

1261 **Q. HAS COVAD ATTEMPTED TO REMEDY THE DEFICIENCIES IN**  
 1262 **QWEST'S BILLS THAT YOU HAVE IDENTIFIED?**  
 1263 <sup>5</sup>

1264  
 1265 <sup>6</sup> A. Yes, we have. Our request for an extension of the payment time frames is  
 1266 <sup>7</sup> basically a last resort. Our preference, by far, would be to receive bills that did not  
 1267 <sup>8</sup> contain these Qwest generated deficiencies; and to receive bills that we could  
 1268 <sup>9</sup> confidently, completely, and accurately review in a thirty day time frame.  
 1269 <sup>10</sup> However, that is not possible today. For each and every one of the problems I  
 1270 <sup>11</sup> have identified here, Covad has raised it either with Qwest billing personnel or  
 1271 <sup>12</sup> through change management. And, as of the filing date of this testimony, with the  
 1272 <sup>13</sup> exception of the USOCs for one time or episodic non-recurring charges, Qwest has  
 1273 <sup>14</sup> been unable to commit to any improvement or correction of the deficiencies and/or  
 1274 <sup>15</sup> errors in the bills it produces.<sup>16</sup>

1275 <sup>16</sup> ~~This inability to correct the deficiencies/errors in its bills is nowhere more~~  
 1276 <sup>17</sup> ~~true than with the circuit ID billing issue. Qwest stated in the Colorado arbitration~~  
 1277 <sup>18</sup> ~~that Covad had only first raised the circuit identification issue in change~~  
 1278 <sup>19</sup> ~~management at the May 2004 meeting. That is not accurate. Covad first raised the~~

20 <sup>20</sup> <sup>15</sup> Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., Verizon*  
 21 <sup>21</sup> *Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services*  
 22 <sup>22</sup> *Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC 01-138, (September  
 23 <sup>23</sup> 19, 2001) at ¶ 23 (footnotes omitted).

24 <sup>24</sup> <sup>16</sup> With respect to the non-recurring USOC issue, it is important to note that Qwest has already pushed out  
 25 <sup>25</sup> once the implementation of the fix that should correct this particular billing problem. Originally, Qwest had  
 26 <sup>26</sup> 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.

~~billing circuit identification issue in March of 2003 with Qwest billing personnel. Covad was told at that time that, due to system limitations, no circuit identification information could be provided on Covad's bills. This issue, relating to the use of the circuit ID in the UNE bills, is completely separate and different than the provisioning circuit ID issue that was raised by Covad in the May 2004 CMP meeting. The provisioning circuit ID issue relates to the way Qwest manages the provisioning of moved/migrated shared line services. Consequently, the May 2004 Covad CMP change request addresses provisioning problems, which are driven by different databases and systems than those involved in UNE bill generation. Resolution, if any, on that CR will not impact or correct Qwest's inability to provide a circuit ID for billing purposes on the Covad UNE bills.~~

**Q. QWEST CLAIMS THAT, DESPITE COVAD'S STELLAR PAYMENT RECORD, IT MUST ALSO TAKE INTO ACCOUNT OTHER CLECS WHEN EVALUATING WHETHER TO AGREE TO A PROPOSED TIME FRAME. PLEASE RESPOND.**

**A.** Qwest has discussed the problems of large uncollected balances with other CLECs as what appears to be its primary justification for its refusal to extend the billing time frames with Covad. Two facts are pertinent to Qwest's justification, and both demonstrate that the payment history of other CLECs is irrelevant here.

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



1303 Second, because the FCC eliminated “pick and choose” (the ability to pick  
1304 and choose terms from an approved interconnection agreement) and now requires  
1305 a CLEC to opt into the entirety of any interconnection agreement, Qwest’s  
1306 apparent primary concern about pick and choose is no longer a factor.  
1307 Importantly, Covad has agreed to a number of other billing provisions, such as  
1308 Section 5.4.5, which require a deposit when a CLEC has not demonstrated a  
1309 satisfactory payment history like Covad’s. Provisions like this will provide Qwest  
1310 with ample protection if another CLEC opts into the entirety of the Covad  
1311 interconnection agreement.

1312 **Q. PLEASE EXPLAIN WHY THE EXTENSIONS OF TIME SOUGHT BY**  
1313 **COVAD WILL NOT INCREASE QWEST’S LIABILITY AND EXPOSURE.**

1314 **A. I learned for the first time during the Minnesota proceedings that Qwest bills its**  
1315 **recurring UNE charges in advance.<sup>17</sup> So, if you look at Qwest’s proposed time**  
1316 **frames, you find the following things: (1) CLECs must pay for thirty (30) days**  
1317 **worth of services and UNEs on or before the 30<sup>th</sup> day; (2) Qwest has the right to**  
1318 **discontinue processing services if Covad fails to pay for thirty (30) days worth of**  
1319 **services on or before the 30<sup>th</sup> day; and (3) Qwest has the right to disconnect**  
1320 **existing lines if Covad fails to pay for thirty (30) days worth of services within**  
1321 **thirty (30) days of those services being provided.**

1322 **For the first two provisions, therefore, Qwest wants the monthly payment**  
1323 **in full from Covad on or before it even provides a full month’s worth of services.**  
1324 **That is the equivalent of *no* exposure at all. And with respect to the disconnection**  
1325 **time frames, Qwest wants the power to invoke that ultimate business sanction from**

1322 \_\_\_\_\_  
1323 <sup>17</sup> *In the Matter of the Petition of Covad Communications Company for Arbitration of an*  
1324 *Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b); OAH Docket*  
1325 *No. 3-2500-15908-4; MPUC Docket No. P-5692, 421/IC-04-549, Transcript of Hearings, Volume*  
*II, pp. 36-37, September 21, 2004.*

1326 which Covad likely cannot recover if payment for a full month's worth of services  
1327 is not received on or before thirty days after providing a full month of service.  
1328 Looked at it from this perspective, Qwest's proposed billing time frames are  
1329 eminently unreasonable and cannot withstand even a plain face test, even without  
1330 all the compounding problems that I have identified above.

1331 **Q. SINCE, ACCORDING TO QWEST, EVEN THE THIRTY DAYS OPENS IT**  
1332 **UP TO LIABILITY AND EXPOSURE, WHAT HAS QWEST DONE TO**  
1333 **ENSURE THAT IT IS PROTECTED IN THE EVENT OF NON-**  
1334 **PAYMENT?**

1335 **A. As I stated above, Qwest has little to no exposure. Setting that aside that**  
1336 **dispositive fact, Qwest has done absolutely nothing. Qwest complains that the**  
1337 **Covad time frames extend its liability and that, even under a thirty day regime, it**  
1338 **still is exposed unnecessarily to liability and exposure. However, when reflecting**  
1339 **upon Qwest's claims in this regard, I have come to the conclusion that Qwest is**  
1340 **simply posturing and is not really concerned about non-payment for one simple**  
1341 **reason. If some form of additional protection were necessary in order to insulate**  
1342 **Qwest from liability and exposure due non-payment, then Qwest certainly would**  
1343 **have attempted to negotiate into the agreement some additional form of protection.**  
1344 **The fact that Qwest did not speaks volumes about its actual view point on the mere**  
1345 **existence, let alone potential scope, of liability due to CLEC non-payment.**

1346 **Q. EXPLAIN WHY THE QWEST PROPOSED TIME FRAMES FOR**  
1347 **DISCONTINUANCE OF ORDER PROCESSING AND DISCONNECTION**  
1348 **OF SERVICE ARE LIKEWISE UNREASONABLE.**

1349 **A. Before I do that, it is important to know that Covad does not disagree at all with**  
1350 **the principle that, if Covad fails to pay Qwest, then Qwest should have a remedy.**  
1351 **Where the parties disagree is at what point Qwest should be able to invoke what**

1352 are, indisputably, draconian rights. The parties basically differ by a span of thirty  
 1353 (30) 60-days. Covad's proposals give it 3060 more calendar days than the Qwest  
 1354 proposals before Qwest can "pull the plug" on ordering and services, as well as  
 1355 when Covad may be considered repeatedly delinquent. ~~When it deems a CLEC~~  
 1356 ~~repeatedly delinquent, Qwest may charge Covad a compounded late charge~~  
 1357 ~~penalty for disputed amounts and demand a deposit from Covad in the amount of~~  
 1358 ~~two months worth of charges.~~ In addition, in order for Covad to reconnect a  
 1359 circuit that has been "pulled," Covad would have to pay a reconnect charge to  
 1360 Qwest.

1361 It is critical to understand that these provisions give to Qwest the power to  
 1362 destroy, if it so chooses, Covad's business in the state of ~~Washington~~Utah. There  
 1363 is no way for Covad to recover from any wide-spread or extended cessation of its  
 1364 ability to place orders or from any kind of wide-spread disconnection of its  
 1365 existing customers. That kind of disruption to a company's business can be fatal,  
 1366 and there is no amount of money that can compensate Covad for that kind of  
 1367 disruption -- not that such money would be available, given the limitations on  
 1368 liability in the agreement to be approved that are not disputed between the parties.  
 1369 While Qwest has every right to be concerned about receiving payment to which it  
 1370 is legitimately entitled, that concern pales in comparison to Covad's concern about  
 1371 protecting the viability of its business in the event of a billing dispute.

1372 **Q. DOES QWEST HAVE ANY BASIS TO BE CONCERNED ABOUT A LACK**  
 1373 **OF PAYMENT BY COVAD?**

1374 **A.** I don't think so. Qwest talks only in the abstract about what is right or wrong. I  
 1375 am unaware of any evidence that Qwest seeks its proposed billing time frames and  
 1376 the associated discontinuance and disconnection protections because Covad fails to  
 1377 pay undisputed amounts on time or because Qwest has encountered problems with

1378 Covad with respect to disputation of bills in order to avoid paying bills on time.  
1379 To the contrary, having worked closely with both Qwest and Covad billing  
1380 personnel over the past 20 months, it is my understanding that Qwest is very  
1381 pleased with our billing relationship. That being said, the current time frames  
1382 under which Covad operates place a significant burden on it, and Covad believes  
1383 that the short extension of time it requests is more than reasonable.

1384  
1385  
1386 **Q. IF THE BILLING PROCESS IS GOING FAIRLY SMOOTHLY, WHY**  
1387 **DOES COVAD SEEK A LONGER TIME PERIOD BEFORE QWEST CAN**  
1388 **DISCONTINUE PROCESSING ORDERS AND/OR DISCONNECT**  
1389 **SERVICES?**

1390 **A.** While Covad pays its bills on time, the billing time frames it currently operates  
1391 under necessarily cause it to “skimp” on its bill review, which is just not an  
1392 acceptable result. Equally important, Covad’s request is grounded in how Qwest  
1393 handles disputed billing claims – i.e., whether it considers a claim to be disputed --  
1394 and how it can take several months to have Qwest acknowledge, much less  
1395 resolve, billing disputes. A perfect example of this is Covad’s dispute of DS3  
1396 UDIT billing in the state of Arizona. In June of 2002, the Arizona Commission  
1397 (“ACC”) approved permanent rates for Qwest’s dedicated interoffice transport  
1398 product – or ~~UDIT~~ UDIT (the “permanent” rates). In December 2002, ACC  
1399 Staff and CLECs alerted the Commission that the rates approved for UDIT – both  
1400 DS1 and DS3 -- included entrance facilities as well as transport. In light of that  
1401 error, the ACC instructed the parties to relitigate the UDIT rates in a May 2003  
1402 hearing. In October 2003, the ACC ruled that the “new” DS3 UDIT rates should

1403 be set at the old UDIT rates and that the “new” rate should be effective as of June  
1404 1 2002.

1405 2 Approximately two months *after* the ACC concluded that there was an  
1406 3 error in the UDIT rates and had remanded the UDIT rates back to the  
1407 4 Administrative Law Judge for further proceedings, Covad received a demand from  
1408 5 Qwest to pay the true up amount for its DS3 UDITs in Arizona. The true up  
1409 6 amount was calculated by Qwest as the difference between the old, interim rates  
1410 7 and the then disputed “permanent” rates. Because the ACC had placed the  
1411 8 “permanent” DS3 UDIT rates at issue, Covad disputed the true up invoice on the  
1412 9 grounds that the true up claim was premature since the “permanent” rate was going  
1413 10 to be relitigated in May of 2003. Despite independently knowing full well that the  
1414 11 rate was not final and was likely to be changed or at least modified, and despite  
1415 12 being reminded of that fact by Covad in its notices of dispute, Qwest continued to  
1416 13 request payment of the true up amounts – even though Covad disputed the request  
1417 14 for payment of a true up every single month and provided the very same clear and  
1418 15 concise reason. It took over ten (10) months of disputing the true up invoice  
1419 16 before Qwest acknowledged the dispute and that any claim for payment would  
1420 17 await resolution by the ACC.

1421 18 Plainly, Qwest did not consider the amount to be disputed in light of its  
1422 19 repeatedly renewed request that Covad pay the true up amount. Under the Qwest  
1423 20 proposal, Covad’s legitimate reason for non-payment of the true up amount could  
1424 21 have resulted in Qwest discontinuing the processing of orders and/or actually  
1425 22 disconnecting circuits. Under its proposal, Qwest also could have demanded a  
1426 23 deposit from Covad and payment of a reconnect charge for those circuits that had

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1427 been disconnected. In light of the magnitude of Qwest's self-help remedies,  
1428 <sup>1</sup> Covad needs and deserves the protection it seeks here.

1429 <sup>2</sup> **Q. EXPLAIN WHY COVAD'S PROPOSED BILLING, ~~DELINQUENCY,~~**  
1430 <sup>3</sup> **ORDER DISCONTINUANCE, AND SERVICE DISCONNECTION**  
1431 <sup>4</sup> **PROVISIONS ARE REASONABLE AND SHOULD BE ADOPTED.**

1432 <sup>5</sup> A. In a nutshell, what is reasonable (and therefore should be included in the  
1433 <sup>6</sup> interconnection agreement) cannot be determined in the abstract. To the contrary,  
1434 <sup>7</sup> reasonableness must be evaluated against the task that Covad faces, and the  
1435 <sup>8</sup> severity of the consequences resulting from late payment, discontinuance of order  
1436 <sup>9</sup> processing, and disconnection of services. ~~and deposit requirements.~~ And as I  
1437 <sup>10</sup> discussed here, the Covad proposed billing time frames should be adopted given  
1438 <sup>11</sup> the tens of thousands of pages of bills that must be reviewed, the type and quantity  
1439 <sup>12</sup> of deficiencies/errors found in those bills that supposedly cannot be corrected by  
1440 <sup>13</sup> Qwest, the difficulties that can arise when trying to submit a billing dispute, and  
1441 <sup>14</sup> the power Qwest may be able to wield over Covad's business in this state.

1442 <sup>15</sup> It is important to keep in mind that the interconnection agreement must  
1443 <sup>16</sup> provide for safeguards that will allow Covad to work around situations that may  
1444 <sup>17</sup> benefit Qwest at Covad's expense. These safeguards are becoming ever more  
1445 <sup>18</sup> important as Qwest apparently is now attempting to modify its PAP obligations,  
1446 <sup>19</sup> and eliminate the industry forum dedicated to improvements in the performance  
1447 <sup>20</sup> measures (PIDs). Covad's proposed billing time frames provide that safeguard,  
1448 <sup>21</sup> and should be approved by the Commission.

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1449 **Q. TO WHAT END WOULD COVAD PUT THE ADDITIONAL TIME IT**  
1450 **SEEKS IN CONNECTION WITH THE DISCONTINUANCE OF ORDER**  
1451 **PROCESSING OR DISCONNECTION OF EXISTING LINES?**

1452 **A. Because of the devastating impact of these remedies on Covad's business, a top**  
1453 **priority for Covad if it had the additional time we request would be to determine**  
1454 **the appropriate course of action, and then prepare the appropriate documents**  
1455 **necessary to pursue relief at the individual state or commission level. As most**  
1456 **lawyers know, complaints and petitions generally cannot be put together**  
1457 **overnight, and where any type of injunctive relief is sought (which would be the**  
1458 **case if Covad were faced with a discontinuance of order processing or**  
1459 **disconnection of services) there is a tremendous amount of work and factual and**  
1460 **legal research that accompanies any kind of filing along these lines. In summary,**  
1461 **therefore, Covad would use its time to determine how best to protect its interest**  
1462 **and then take the legal/regulatory steps necessary to ensure that its business is**  
1463 **protected to the maximum extent possible.**

1464 **Q. EXPLAIN WHY THESE ISSUES WERE NOT RESOLVED DURING THE**  
1465 **SECTION 271 PROCEEDINGS.**

1466 **A. Qwest will undoubtedly claim that any and all billing issues were resolved during**  
1467 **the Section 271 proceedings and that that is the end of the matter. While that**  
1468 **provides an easy out for Qwest, the reality of Covad's billing relationship with**  
1469 **Qwest is far more difficult. As an initial matter, Covad did not participate in the**  
1470 **multi-state proceedings which addressed the terms and conditions of the SGATs of**  
1471 **a number of states, including Utah. Notwithstanding the fact that it did not**  
1472 **participate in those proceedings, s**Since the conclusion of the Section 271

1473 proceedings in this state, Covad has undertaken a massive review and revamping  
1474 <sup>1</sup> of its billing systems and processes, an effort in which I was involved. As a result  
1475 <sup>2</sup> of that effort, Covad is in a wholly different position now to evaluate, document  
1476 <sup>3</sup> and discuss in a regulatory proceeding the numerous billing problems we have  
1477 <sup>4</sup> with Qwest. And as I lay out above, there are numerous problems in Qwest's  
1478 <sup>5</sup> billings that not only necessitate, but also fully justify the relatively brief extension  
1479 <sup>6</sup> of the billing, delinquency, discontinuance and disconnection time frames that will  
1480 <sup>7</sup> be included in the Qwest-Covad interconnection agreement.

1481 <sup>8</sup> From a timing perspective, it is very easy to understand why Covad was  
1482 <sup>9</sup> unable to address in detail billing issues during 2002 in connection with the  
1483 <sup>10</sup> Section 271 proceedings in this state. Covad executed its original interconnection  
1484 <sup>11</sup> agreement with Qwest in this state on January 15, 1999~~February 25, 1998~~.  
1485 <sup>12</sup> Between that time and the conclusion of the SGAT proceeding in mid-2002,  
1486 <sup>13</sup> Covad was busy rolling out its network in this state, implementing the line sharing  
1487 <sup>14</sup> requirements and building out the line sharing network, and working on all the  
1488 <sup>15</sup> problems and barriers to providing service to end users and customers (which were  
1489 <sup>16</sup> documented and discussed during the Section 271 workshops).

1490 <sup>17</sup> It is no understatement to say that, in 1999, 2000, 2001, and into 2002,  
1491 <sup>18</sup> Covad was much more concerned about effectively, efficiently and successfully  
1492 <sup>19</sup> establishing and maintaining end users on the Covad network than any other  
1493 <sup>20</sup> element of its business. Since that time, of course, the parties have worked out a  
1494 <sup>21</sup> number of the key provisioning and repair issues, and Covad finally had the time  
1495 <sup>22</sup> to focus on the innumerable billing issues that existed in the Qwest bills. It's only  
1496 <sup>23</sup> because of that effort and subsequent experience in working through billing issues



1497 with Qwest on a business-to-business basis that we are now in a position to fully  
1498 <sup>1</sup> demonstrate why additional time is required in order to provide a fair and equitable  
1499 <sup>2</sup> billing process. I feel confident that if you asked any non-IXC CLEC  
1500 <sup>3</sup> representative that took part in the section 271 proceedings, that representative  
1501 <sup>4</sup> would tell a similar tale with respect to the “consensus” obtained on billing issues.

1502 <sup>5</sup> **Q. HOW DO YOU RESPOND TO THE QWEST CLAIM THAT ITS**  
1503 <sup>6</sup> **PROPOSED BILLING TIME FRAMES ARE STANDARD IN THE**  
1504 <sup>7</sup> **INDUSTRY?**

1505 <sup>8</sup> **A. The industry standard that Qwest talks about is really the standard that was**  
1506 <sup>9</sup> **developed for access products ordered and paid for by the large IXCs. And as the**  
1507 <sup>10</sup> **Commission well knows, the IXCs and the ILECs have had over twenty (20) years**  
1508 <sup>11</sup> **to correct errors and deficiencies in the billing media and format used for the**  
1509 <sup>12</sup> **billing of access services. There are industry standards and standard billing**  
1510 <sup>13</sup> **formats that have been in use for decades for companies ordering access services,**  
1511 <sup>14</sup> **and the years of experience and work by industry stake holders probably have**  
1512 <sup>15</sup> **resulted in a billing process that would allow adequate billing review within a**  
1513 <sup>16</sup> **thirty day time frame.**

1514 <sup>17</sup> Unfortunately, the wholesale competitive market place has not yet had the  
1515 <sup>18</sup> years “under its belt” to get to the same place and, consequently, additional time is  
1516 <sup>19</sup> required in order to permit adequate bill review. As it stands today, at least twelve  
1517 <sup>20</sup> (12) Covad employees have involvement in the review and verification of the  
1518 <sup>21</sup> monthly bills that we receive from Qwest, as well as employees of the independent  
1519 <sup>22</sup> contractor Covad has retained to investigate other Qwest and ILEC billing issues.

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1520 **Q. PLEASE EXPLAIN WHY A COMPARISON OF COVAD'S BILLING**  
1521 **POLICIES FOR ITS CUSTOMERS ARE IRRELEVANT TO THE TIME**  
1522 **FRAMES THAT SHOULD BE APPLIED FOR COVAD'S REVIEW OF**  
1523 **QWEST'S UNE, COLLOCATION AND TRANSPORT BILLS.**

1524 **A.** Qwest has suggested that Covad is being hypocritical in asking for more time to  
1525 review its bills from Qwest than Covad gives to its own customers. That argument  
1526 is nonsense. As you can see from the attached Exhibits ~~KMDKMD-8~~ 3 through  
1527 ~~KMDKMD-127~~, the bills Covad sends out for services are only two pages long, in  
1528 total. A two page bill, with just a few line items that clearly state the product and  
1529 product type for which the customer is being billed, are a far cry from the tens of  
1530 thousands of pages, comprising over 30 feet of bills, that Covad must review every  
1531 month. The Covad bills are much more like the Qwest residential phone bills, for  
1532 which Covad agrees that a 30 day time frame for payment is appropriate.

1533 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

1534 **A.** This concludes my Direct Testimony, however, I anticipate filing all responsive  
1535 testimony permitted by the Commission, and being presented for cross  
1536 examination at the hearing on the merits.

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