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BEFORE THE PUBLIC SERVICE 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 INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Docket No. 04-2277-02**

DIRECT TESTIMONY OF

MICHAEL ZULEVIC

FILED ON BEHALF OF

DIECA COMMUNICATIONS, INC.,

D/B/A COVAD COMMUNICATIONS COMPANY

October 8, 2004

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I. QUALIFICATIONS

Q. MR. ZULEVIC, PLEASE INTRODUCE YOURSELF TO THE COMMISSION.

A. My name is Michael Zulevic and I am currently employed as a consultant by Covad Communications Company ("Covad"). Until July 12, 2004, I was employed by Covad as the Director of External Affairs for the Qwest region. My business address is 22801 Entwhistle Road E., Buckley, Washington 98321.

Q. MR. ZULEVIC, WOULD YOU PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR JOB RESPONSIBILITES AND EXPERIENCE?

A. Yes, Covad has retained me as a consultant to complete the work associated with the renegotiation of our Interconnection Agreement with Qwest Communications. While employed by Covad as Director of External Affairs, I was responsible for resolving business issues between Covad and its vendor, Qwest. This responsibility included driving resolution on operational, OSS, and billing problems, and negotiating with Qwest so that Covad can pursue meaningful business opportunities in this market. I worked with Qwest to resolve operational, OSS, and billing issues on a business-to-business level, in the change management process, at industry workshops, and in interconnection agreement negotiations. In working on these issues, I interfaced with internal Covad groups dedicated to provisioning Covad service, including services using stand-alone loops (2-wire analog and non-loaded loops and T-1 loops), line shared loops, and line split loops.

In my position immediately preceding my last role at Covad, my responsibilities included the deployment of Covad's line sharing equipment across the country. I was responsible for the architecture negotiations over the first-ever

line sharing agreement with U S WEST (or any ILEC, for that matter) in the country. During the architecture negotiations, I helped to design the network architecture that is now in place. I have also been involved with the network design negotiations with other ILECs, including BellSouth, Verizon, Sprint, and SBC.

Prior to joining Covad, I was employed by U S WEST (now Qwest) for 30 years, most recently as Manager, Depreciation and Analysis for the last few years I was employed by US WEST. Prior to that, I worked in Network and Technology Services ("NTS") for several years, providing technical support to U S WEST interconnection negotiation and implementation teams. While working in these two capacities, I provided testimony on technical issues in support of arbitration cases and/or cost dockets in Minnesota, Iowa, Montana, Washington, Oregon, Arizona, New Mexico, Nebraska, Utah, Wyoming, and Idaho. Prior to joining the NTS group, I was responsible for providing technical support for the U S WEST capital recovery program in the areas of switching, transport, and loop. I also worked as a Central Office Technician and Central Office Supervisor at U S WEST.

In addition to the extensive experience described above, I also have worked as a Switch and Transport Fundamental Planning Engineer, where I represented Fundamental Planning as a member of the ONA/Collocation Technical Team; Circuit Administration Trunk Engineer, specializing in switched access services; and Custom Network Design and Implementation Engineer working with the design and implementation of private networks for major customers.

II. INTRODUCTION: PURPOSE AND SUMMARY OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my Direct Testimony is to describe two of the issues that were not resolved during Covad's many hours of negotiations with Qwest. I note that as recently as late September one of the issues Covad filed in its Petition for Arbitration with Qwest – whether Covad is entitled to efficient collocation space assignment practices from Qwest (Issue 5) was resolved to the satisfaction of Covad. As a result, Covad is withdrawing this issue from its Petition. There are, however, additional issues that have not been resolved between the parties that are also the subject of this arbitration. Those issues, the issues not addressed by me, will be addressed in the testimony of Megan Doberneck.

The two issues I address in my Direct Testimony are issues I sincerely believe are critical to Covad's ability to compete in Utah. They are as follows:

1) Issue 6 - Should Qwest provide regeneration between CLEC collocations, and can Qwest charge Covad for regeneration costs resulting from inefficient design or placement of collocation facilities by Qwest?

2) Issue 8 - Should Qwest allow a single Local Service Request (LSR) to be submitted for migration of line split or loop split services?

Q. PLEASE DESCRIBE YOUR INVOLVEMENT IN THE NEGOTIATION OF THE NEW INTERCONNECTION AGREEMENT WITH QWEST.

A. I served as lead negotiator for Covad during the entirety of our negotiations with Qwest regarding our new interconnection agreement for the state of Utah. In my capacity as the lead negotiator, I served as our primary point of contact for Qwest for all issues and discussions around the negotiations, and also was responsible for

identifying and pulling together the necessary Covad internal resources to negotiate efficiently, effectively, and in good faith with Qwest.

Q. PLEASE PROVIDE A SUMMARY OF THE NEGOTIATIONS.

A. Covad initiated negotiations by a letter dated January 31, 2003. Since that time, Covad and Qwest have agreed to numerous extensions, agreeing that the negotiation request date for Utah would be November 18, 2003. From November 18, 2003, through today, Covad and Qwest have engaged in weekly, and at times twice a week, negotiations in an effort to arrive at a new interconnection agreement to replace the original agreement which has been in place since 1999. The majority of the negotiation sessions have been conducted via teleconference, however both negotiation teams did meet "face-to-face" on one occasion at the Covad Denver office and as recently in Minnesota during the arbitration hearing there. Additionally, some individual "face-to-face" meetings between subject matter experts did occur in an effort to move specific issues closer to resolution.

The original list of some 72 issues has now been reduced to less than eight (8), and both Covad and Qwest continue to meet, as necessary, in an attempt to resolve the remaining issues prior to the hearing in this arbitration. Many issues critical to the Covad business plan have been resolved. However, the parties have been unable to arrive at agreement on other issues.

Covad believes that both parties conducted negotiations in the spirit of mutual respect, and attempted in good faith to resolve every issue possible without having to resort to arbitration. The following issues were not negotiated to resolution and must therefore be submitted for arbitrated resolution.

III. ARBITRATION ISSUES

ISSUE 6 - REGENERATION: SHOULD QWEST PROVIDE REGENERATION BETWEEN CLEC COLLOCATIONS, AND SHOULD QWEST BE ALLOWED TO CHARGE COVAD FOR REGENERATION COSTS RESULTING FROM INEFFICIENT DESIGN OR PLACEMENT OF COLLOCATION FACILITIES BY QWEST?

(Sections 8.2.1.23.1.4, 8.3.1.9, and 9.1.10)

Q. PLEASE PROVIDE SOME CONTEXT FOR THE REGENERATION ISSUE.

A. Regeneration is, quite simply, the reconstruction or "boosting" of a digital signal so that it meets the ANSI standards for a particular type of loop or service. For example, if by the time a DS1 digital signal travels from one collocation space to another collocation space in the central office ("CO") it does not meet the DS1 signal requirements, then that DS1 signal must be boosted back to the appropriate level. So, in a nutshell, the regeneration issue deals with the situation in which a boosting of the signal is required in order to provision a high capacity circuit between two collocations spaces (either a single CLEC's two spaces or the collocation spaces of two different CLECs) *within* a Qwest CO. Importantly, for purposes of my testimony on this issue, the need for regeneration arises when the collocation spaces are so far apart in the CO that the signal must be boosted – or regenerated – so that it meets the applicable technical specifications when it reaches the second collocation space.

Q. WHAT THEN, SPECIFICALLY, IS THE PARTIES' DISAGREEMENT ON THIS REGENERATION ISSUE?

A. The parties' disagreement with respect to this issue is relatively clear. Covad believes it should be able to order regeneration of a CLEC-to-CLEC cross connect

on the same terms it is able to order regeneration for any other interconnection product (i.e., an ILEC-to-CLEC cross connect), such as an unbundled loop or transport circuit. Qwest believes it is not required to provide a wholesale regeneration product (as opposed to a retail tariff finished service) for CLEC-to-CLEC cross connects.

Q. WHY SHOULD QWEST BE REQUIRED TO PROVIDE REGENERATION AT NO CHARGE IN THIS CIRCUMSTANCE?

A. Ultimately, the requirement is driven by FCC rules and regulations. Because I am not a lawyer, I do not discuss any of the legal issues in detail, but will provide a summary of Covad's view on this issue.

Qwest controls central office space and determines how to allocate space to itself and collocators within the CO. Presumably, because Qwest makes these decisions, if regeneration is required, it is a result of a Qwest decision. Qwest, however, cannot make these allocation and placement decisions in any old way. The FCC's rules do not permit Qwest to engineer its central office collocation arrangements in a way that artificially increases a CLEC's costs. That is, if Qwest engineers CO space in a fashion that increases a CLEC's costs, without any simultaneous technical or cost benefit to itself, then Qwest is in violation of the FCC's collocation rules which require that Qwest use the most efficient collocation space allocation arrangements possible. So, for example, the FCC has made clear that ILECs "may not require competitors to use an intermediate interconnection arrangement in lieu of a direct connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a simultaneous benefit to

incumbents."[1] Nor is Qwest permitted to "utilize unreasonable segregation requirements to impose unnecessary additional costs on competitors."[2]

Further, 47 C.F.R. §51.323(h) states:

> An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the carriers to provide the requested connection for themselves… Where technically feasible, the incumbent LEC shall provide the connection using copper, dark fiber, lit fiber, or other transmission medium, as requested by the collocating telecommunications carrier.

Contrary to Qwest's assertions, this language does not create a "regeneration exception" but provides that Qwest may either permit CLECs to make their own cross connection arrangements, or it must provide the cross connection, upon request. In the case of cross connections requiring regeneration, it is often impossible for CLECs to provide this regeneration themselves, and usually would require an inefficient engineering configuration even if such regeneration were possible from existing collocation space.

Basically what this means to me is that Qwest should not be allowed to assert a "take it or leave it" cross-connect architecture on Covad (i.e., the connection between two of Covad's collocation spaces in a CO or a connection between a Covad collocation space and the collocation space of another CLEC), but instead must provide an appropriate and efficient (both from an engineering and economic perspective) cross-connection architecture. Inefficiency in design is exactly what the FCC rules prohibit, and Qwest is required to offer the lowest cost, most technically efficient cross-connect architecture possible. And that is precisely what Covad's proposed language requires.

[1] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-48 (1999), ¶ 42.
[2] Id.

Q. CAN YOU PROVIDE AN EXAMPLE OF WHAT YOU MEAN?

A. Sure. At the Minneapolis Downtown Central Office, the partner (another CLEC) that Covad was required to use for much of our transport was collocated on the 4th floor. Upon applying for our collocation space, I was shown space on the 5th floor, even though space was still available on the 4th floor where Covad's partner was collocated. When I asked to be collocated on the 4th floor so that Covad would be able to connect to its partner's collocation more efficiently, Qwest denied my request stating that it had been decided that all future collocations would be on the 5th floor. No other explanation was offered. The DS3 transport circuits between the Covad collocation and our partner's collocation all required regeneration. Although Covad has since replaced these circuits with Qwest UNE transport circuits, should the need ever arise again to use transport circuits provided by a CLEC partner collocated on the 4th floor, regeneration would again be required. It is Qwest's position that the CLEC should assume the costs associated with purchasing transport circuits from their tariff which would significantly increase our cost of providing competitive service. This is a totally unreasonable expectation based upon Qwest's inefficient use of central office space. If Qwest had no other options with respect to providing collocation space, which resulted in the need to provide regeneration between collocation arrangements, then it may be appropriate for Qwest to charge CLECs for regeneration. However, from my observations in handling most of the collocation build outs for Covad in the Qwest region, this situation would be the exception rather than the rule.

Q. DO YOU HAVE SIMILAR CONCERNS WITH CENTRAL OFFICES IN UTAH?

A. Yes. A similar situation may develop in several central offices in the Utah market where Covad already has collocated equipment on different floors. As space becomes less available, the greater the probability of having multiple floor collocations. And with the changing competitive and regulatory environment, the need to connect collocations within the same central office will also increase.

The net result in this scenario is that, rather than being able to buy a wholesale product at a cost-based TELRIC rate, if any such charge could even be assessed which appears to be impossible given prior Commission orders, Covad would have to purchase a much more expensive tariffed service that would greatly increase its cost of doing business to its detriment and the detriment of its customers to whom the excessive tariffed costs might flow.

Q. HOW COULD QWEST INCREASE COVAD'S COSTS IF IT PLACED COVAD IN A LOCATION FAR AWAY FROM ITS OTHER COLLOCATION LOCATION OR FROM ANOTHER CLEC'S COLLOCATION?

A. By way of background, the Commission should understand that there are two scenarios in which the CLEC to CLEC cross-connect regeneration issue arises. In the first scenario, Covad is connecting to the collocation space of another CLEC for purposes of handing off traffic from the Covad network to the other CLEC's network. More often than not, given differences in timing as to when each CLEC collocated and the type of collocation arrangement selected (caged, cageless, or virtual), the two CLEC's collocation spaces would not be contiguous and instead would be located in areas of the CO separated from each other as determined by Qwest when it assigned these collocation spaces.

The second scenario is one in which Covad collocated in a central office and, at some later date a few years down the road, determined it needed additional space. In this latter scenario, if no space contiguous to the original collocation is available, then the second Covad collocation space would be located at some distance, determined by Qwest, away from its original collocation space.

Under the Qwest proposal, should the subsequent Covad collocation space be located far away from the existing Covad collocation, or should either the original or subsequent Covad collocation spaces be located away from another CLEC it is doing business with, Covad (and/or the other CLEC) would need to order a "finished service" from the Qwest tariff or incur the cost of placing regeneration equipment either mid span or at both collocation arrangements, to boost the signal between the collocation arrangements.

Q. QWEST HAS STATED THAT CLECS CAN PERFORM ANY NEEDED REGENERATION FROM THEIR COLLOCATION ARRANGEMENTS. IS THIS AN EFFICIENT METHOD OF PERFORMING REGENERATION?

A. No. The most efficient placement of the regeneration equipment would be mid span, or at a point about half way between the two collocations. This is more efficient because only one regeneration unit could be used to boost the signal in both directions, rather than having to place one regeneration unit (which would double the costs) in each collocation arrangement to boost the signal toward the other collocation arrangement.

Q. HOW COULD A CLEC PERFORM ITS OWN MID SPAN REGENERATION?

A. For a CLEC to use this most efficient mid span regeneration point, it would likely have to order additional collocation space for placement of the regeneration unit which would add cost, and time to the provisioning of the CLEC to CLEC connection. As I testified earlier, Qwest is obligated, when it provisions the cross connection, to provide the connection using the transmission medium of the CLECs' choice. The obvious import of this language is that the chosen transmission medium would include the equipment necessary to make the medium work. Providing an inferior alternative is not acceptable, and is anti-competitive in nature.

Q. ARE THERE TECHNICAL CONSIDERATIONS THAT MAKE MID SPAN REGENERATION PREFERRABLE?

A. Yes. While Qwest may argue that there is no need to place mid span regeneration equipment and that the cross-connect signal could be regenerated or "boosted" from either or both ends of the connection, this argument is directly contradicted by the basic engineering and cost principles which I explained above. When a signal leaves a carrier's equipment, it is already being transmitted at an optimum signal strength. By using mid point regeneration, the signal strength remains much more constant, which enhances the capability of maintaining the integrity of the data being transmitted on the circuit. The less deviation from the optimum signal level the better the circuit quality. Just as one may be able to holler from their front steps to the neighbor, the communication will become much more clear and effective if you were to walk to the fence and speak to the neighbor with a normal voice. This fundamental physical principal underlies the ANSI standards.

Q. ISN'T IT TRUE THAT QWEST'S POSITION IN THE ARBITRATION IS DIRECTLY CONTRADICTORY TO ITS PRIOR, LONGSTANDING POSITION ON REGENERATION?

A. Yes, it is. At the first arbitration hearing in Colorado, Qwest explained that Qwest considers a CLEC-to-CLEC cross connect a wholesale product unless that cross connect requires regeneration. In that case, Qwest supposedly will provide a retail regeneration product, available under its access tariff, to provide the connection.

However, this position is entirely inconsistent with Qwest's prior positions and statements regarding regeneration. Not once prior to the Colorado arbitration did Qwest ever argue that any central office regeneration product provided to CLECs should be considered a finished service, or that Qwest had no obligation to provide regeneration, where necessary, under the Act. In fact, two years ago when it first addressed this issue, in response to a Change Request ("CR") submitted by Eschelon, Qwest provided detailed clarification of its CLEC-to-CLEC cross connection product, labeled COCC-X, and stated that the CLEC to CLEC cross-connect can and did include regeneration:

> The CLEC-to-CLEC Cross-Connection (COCC-X) offering is defined as the CLEC's capability to order a cross-connection from its Collocation in a Qwest Premises to its non-adjacent Collocation space or to another CLEC's Collocation within the same Qwest Premises at the Interconnection Distribution Frame (ICDF).
>
> …
>
> Given the possibility that total cable lengths from the Collocation spaces through the ICDF are longer than the [ANSI Standards] table allows, there is the opportunity for a CLEC to request regeneration by using a specific Network Channel Interface (NCI) code on their order. The NCI is chosen from Table 6-5 of Tech Pub 77386 using one that calls for regeneration.
>
> …
>
> Qwest, following receipt of the ASR will perform ICDF connections and regeneration functions. Equipment

> additions for regeneration (if no spares are available) will be initiated. Qwest completes these activities and conducts verification testing.

Exhibit MZ-1 at 1-3.

In addition to the response above, in June of 2003, Qwest proposed "updates" to Tech Pub 77386, including the deletion of the Chapter 15, addressing regeneration for interconnection. When Eschelon raised concerns that deletion of this chapter would eliminate the wholesale regeneration product, Qwest replied:

> Qwest is not eliminating DSX regeneration, but merely changing who is responsible for determining when regeneration is required. The changes in the Tech Pub were driven by this recent change in who is responsible for determining when regeneration is required. More specifically, **the CLEC's are no longer responsible for determining if regeneration is required, Qwest is now responsible for that determination. As a result of this change in responsibility, the tech pub is being updated to remove all statements and NC/NCI codes that indicate that the CLEC's need to order regeneration, or are responsible for determining when regeneration is required.**

Exhibit MZ-2.

Q. YOU STATED THAT QWEST'S POSITION IN THIS ARBITRATION IS THAT CLEC TO CLEC TIES REQUIRING REGENERATION MUST BE ORDERED AS A FINISHED SERVICE FROM THE TARIFF. DID QWEST TAKE THIS POSITION DURING NEGOTIATIONS PRIOR TO FILING FOR ARBITRATION?

A. I have to reiterate that the answer to that question is emphatically "No." In fact, Qwest never once mentioned during the 18 months of negotiations that CLEC to CLEC regeneration was only ordered and provided as a finished service. As I alluded to in my earlier testimony, Qwest first proffered this position in the prefiled Direct Testimony of Qwest witness Michael Norman in the Colorado

Arbitration. Until that time, it was my belief that the dispute involved whether or not Covad would be required to pay the SGAT/TELRIC based rates for regeneration. Covad does not believe we should have to pay for CLEC to CLEC regeneration at TELRIC rates. Having to order "finished services" is extremely unrealistic and appears to be a transparent attempt at circumventing very clear Commission orders prohibiting Qwest from charging for regeneration.

Q. ARE THERE SITUATIONS OTHER THAN CLEC TO CLEC CROSS-CONNECTIONS WHERE QWEST PROVIDES CENTRAL OFFICE REGENERATION?

A. Yes. Qwest provides regeneration, where it is required by ANSI standards, for interconnection to Qwest's unbundled network elements (i.e., ILEC-CLEC regeneration). For instance, if Covad were to order a dedicated transport circuit between two Qwest central offices, and regeneration were required between Qwest's frame and Covad's collocation in one of the central offices, Qwest currently provides that regeneration and it is called ILEC-CLEC regeneration.

Q. WHAT DOES QWEST CHARGE FOR THAT REGENERATION?

A. Qwest fought for the right to implement a separate charge for regeneration in Utah, and the Utah Commission rejected that request not once, but several times.[3] *In the*

[3] "14. Regeneration. The Commission denies recovery of this proposed regeneration charge and orders Qwest to provide regeneration whenever the signal transmitted to a CLEC's collocation facility is not technically acceptable for its intended use. The record shows that the distances involved in transmitting signals within Qwest's Utah central offices should be within the range where no significant signal degradation should occur. Qwest must deliver a technically acceptable signal within its central offices where collocation occurs.

"In the future, Qwest may petition the Commission for recovery of the costs of regeneration on an individual case basis. However, the showing is not that regeneration was required in a particular instance. Instead, Qwest must show that (1) no collocation location existed in the central office in question where a regeneration signal would not have been required, (2) that the cabling through which the signal is transmitted is routed in an efficient manner, and (3) that proper precautions were undertaken to protect the integrity of the signal. A failure to prove any of these three points will result in a rejection of the request for recovery of regeneration costs." *In the Matter of an Application by the Division of Public Utilities for Commission Determination of a Model and to Establish Rates For Collocation for QWEST*

Matter of the Application of QWEST CORPORATION, fka US WEST Communications, Inc., for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B), Docket No. 00-049-08, March 25, 2002.[4] The fundamental point of Covad's request in this arbitration is that both forms of regeneration should be priced and treated the same: if Qwest is not permitted to charge for regeneration in the context of providing access to network elements (required by the Act and FCC rules), it also should not charge for regeneration in the context of providing CLEC to CLEC cross-connections, which are also required by the Act and FCC rules. There is no justification for treating the two situations differently, and there is certainly no justification for the retail pricing of CLEC to CLEC regeneration that Qwest is now proposing.

Q. DOES QWEST'S POSITION ON REGENERATION CREATE ANTI-COMPETITIVE CONCERNS FOR CLECS?

A. Yes. Should Covad, or another CLEC, wish to use the transport facilities of another CLEC also collocated in the same Qwest central office, Qwest would first require that a "finished service" be ordered from their tariff just to get to the other collocation within the same central office. The cost for the "finished service" would then have to be added to the transport cost of the alternative transport

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CORPORATION, Docket No. 00-049-106, December 4, 2001. See also *In the Matter of the Application of QWEST CORPORATION, fka US WEST Communications, Inc., for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)*, Docket No. 00-049-08, March 25, 2002 ("C. Issues Decided Earlier in the Process - UNEs Generally Staff Report stated that the following issues had been resolved previously: LIS in the Definition of Finished Services, Marketing During Misdirected Calls, and Regeneration Charges. The Commission's earlier Orders in this Docket and in Docket Number 00-049-106 rejected the Staff's recommendation regarding regeneration charges; we make no changes in our policy with respect to regeneration in this Order. The Commission finds that when Qwest has fully implemented our (00-049-106) decision with regard to this issue Qwest will be in compliance on this issue.")

[4] Where Qwest has been authorized, in its 271 proceedings, to charge for such regeneration *at TELRIC rates*, and rates were set for wholesale regeneration, Qwest has chosen not to charge for regeneration between its equipment and CLEC equipment. Recently, it has proposed to delete the charge entirely from

provider which would then exceed the cost of continuing to purchase transport from Qwest. This would essentially eliminate the possibility of facilities-based competition among transport providers, a primary goal of the Act and the FCC.

Qwest's position likely also will result in discrimination against later in time collocators.

Q. PLEASE EXPLAIN.

A. Collocators that acquire space after many other CLECs have established their collocations will likely find that space is no longer available in the initial collocation area and will be placed in another area, often on another floor in the larger central offices. These late-comers may wish to connect to CLECs in the original collocation area. Should the distance require that circuits be regenerated, and if the Qwest position were to prevail, the "later in time collocators" would be required to incur the regeneration cost but the CLECs located in the original areas would be free to connect to one another without this added expense. This would create an unfair competitive advantage for early collocators.

Q. PLEASE ELABORATE ON WHY COVAD'S PROPOSAL MAKES SENSE.

A. At its most basic, Covad's proposed language makes sense because it creates a clear requirement in the interconnection agreement that Qwest comply with its obligations under FCC rules. Covad's proposed language further ensures, to the extent possible, that Qwest has an incentive to use efficient collocation practices as it has agreed to do in its interconnection agreement with Covad. I firmly believe that this language should be approved by the Commission because it confirms that

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its wholesale rate schedule, at least in Colorado, stating that it does not plan to charge for this service in the future. See Exhibit MZ-3.

Qwest should operate efficiently and in a fashion that does not disadvantage CLECs without some simultaneous technical or cost benefit to Qwest.

Q. IS THERE ANYTHING IN ANY OF THE DOCUMENTATION AVAILABLE TO CLECS THAT WOULD SUGGEST THAT CLEC TO CLEC REGENERATION IS ONLY AVAILABLE AS A FINISHED SERVICE?

A. Not at all. To the contrary, all of the documentation very clearly demonstrates that, until the Colorado arbitration, Qwest very clearly was providing CLEC to CLEC regeneration as a UNE.

ISSUE 8 - SINGLE LSR: SHOULD QWEST ALLOW A SINGLE LOCAL SERVICE REQUEST ("LSR") TO BE SUBMITTED FOR MIGRATION LINE SPLIT OR LOOP SPLIT SERVICES?

(Sections 9.21.1, 9.21.4.1.6, and 9.24.1)

Q. PLEASE PROVIDE SOME CONTEXT FOR THE SINGLE LOCAL SERVICE REQUEST (LSR) ISSUE.

A. Issue 8 addresses the present inability for Covad to transfer voice and data customers served by line splitting and loop splitting arrangements using a single LSR. Qwest has long had the capability to provision such services on a single service order, and its continued delay in fully implementing the capability for Covad is discriminatory.

Qwest does not use the LSR process, and creates only one record, a service order, to provision service to its retail customers. CLECs, like Covad, must use an intermediate system, IMA, to create a Local Service Record (LSR), which Qwest personnel then review and convert to a service order. Prior to August of 2003, Qwest did not have the capability in its service order system to provision service

based on a circuit identification number, and only provisioned service based on assigned telephone numbers. This limitation required Qwest to provision voice service to a given customer, either retail or wholesale, prior to beginning the provisioning process for data services, such as DSL.

In August of 2003, Qwest completed its upgrade of its service order system, allowing Qwest, but not CLECs, to provision voice/data customers on a single service order. CLECs, stuck using the IMA system that had not yet been upgraded, were still required to submit two LSRs to provision a voice/data customer. While CLECs have the capability of trying to tie the voice and data LSRs together there are no guarantees they will be included on the same service order, and two LSRs must still be completed by the CLEC, creating additional costs, and two LSRs must still be processed by Qwest, creating yet more additional costs.

So, in summary, Covad is now seeking the ability to order both voice and data services using a single LSR, rather than having to submit an individual LSR to establish the voice service, and then a second LSR to add the data. Having to submit separate LSRs adds both cost and time to the CLEC process and puts Covad at a competitive disadvantage, in other words, parity does not exist between Qwest and Covad. While now Qwest will allow both the voice and data LSRs to be submitted at the same time, and Qwest has now agreed to link them together for provisioning purposes, the multiple LSR process is still subject to failure because manual intervention is required.

Q. WHY ISN'T THE CHANGE MANAGEMENT PROCESS ("CMP') THE APPROPRIATE FORUM FOR DETERMINING QWEST'S OBLIGATIONS UNDER THE ACT?

A. There is no doubt that the CMP provides a useful forum for Qwest and its CLEC customers to discuss OSS issues, and to agree upon and prioritize upgrades.

However, the CMP is not, as Qwest insinuates, the ultimate forum for determining Qwest's obligations under the Act. In fact, the CMP has a specific process for implementing regulatory directives, such as a requirement issued by this Commission for a single LSR ordering capability:

> 4.0 TYPES OF CHANGE
>
> A Change Request must be within the scope of CMP and will fall into one of the following classifications. Types of Changes apply to Systems and Product/Process.
>
> 4.1 Regulatory Change
>
> A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may originate the Change Request.

Qwest Change Management Process (Exhibit G to the interconnection agreement being negotiated) at 23. Additional information regarding the CMP is provided in Ms. Doberneck's testimony in the Section relating to the billing time frame disputes.

Essentially the problem here is that Qwest is unwilling to truly commit to fully implementing the single LSR capability on a date certain, not to mention that that date, whatever it may turn out to be, will occur well over a year after the legal obligation arose.

"We're working on it" is hardly a firm commitment at all. Covad believes that it is time for this Commission to step in and order Qwest back to the parity standard. If Qwest cannot complete its IMA upgrade, it should be required to process the orders manually and within the provisioning intervals provided for electronic ordering.

Q. WHY, IF QWEST IS SUPPOSEDLY IMPLETING THIS SINGLE LSR CHANGE IN ITS IMA 16.O RELEASE, MUST THIS COMMISSION IMPOSE THIS PARITY REQUIREMENT?

A. As I alluded to above, this Commission must impose this parity requirement to ensure Qwest completes the necessary OSS changes. Qwest is already nearly a year behind in meeting its legal obligation to provide nondiscriminatory access. It has delayed implementation of its chosen electronic upgrades through two IMA releases. It is proper for this Commission to issue an order that effectively requires Qwest to provide nondiscriminatory access.

The FCC's rules require that

> the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.

47 C.F.R. § 51.313(b).

The FCC has specifically required ILECs to provide nondiscriminatory access to its OSS functions, and recently confirmed this requirement:

> Accordingly, we require incumbent LECs to continue to provide unbundled access to OSS. **This requirement includes an ongoing obligation on the incumbent LECs to make modifications to existing OSS as necessary to offer competitive carriers nondiscriminatory access** and to ensure that the incumbent LEC complies with all of its network element, resale and interconnection obligations in a nondiscriminatory manner-including any new obligations established in this Order.

Triennial Review Order, ¶ 562.

While this Commission has permitted Qwest to construct an intermediate OSS functionality (IMA), it has never permitted Qwest to create a discriminatory advantage for itself by upgrading its internal systems first, while delaying IMA

upgrades. That is precisely what Qwest continues to do with respect to the single LSR issue, in violation of the Act, FCC rules, and the FCC's latest statements on the matter.

Q. DESCRIBE WHY QWEST'S LINE SPLITTING PROCESSES GENERALLY ARE INADEQUATE AND DISCRIMINATORY.

A. Before a data CLEC can submit a UNE-P line splitting order with Qwest (i.e., the addition of data to the UNE-P), the corresponding voice order must also be submitted to Qwest. Unlike Qwest's Retail arm, competitors cannot bundle voice and data easily via line splitting because two (2) local service request orders must be submitted, rather than simply one (1) service order as Qwest does. Qwest's Retail arm, on the other hand, takes one order to manage the entire process, thus there is a lack of parity.

Q. ARE QWEST'S LOOP SPLITTING PROCESSES AND OSS ANY BETTER?

A. No. Just like UNE-P line splitting, the corresponding voice order must also be submitted separately to Qwest. Again, unlike Qwest's Retail arm, competitors cannot bundle voice and data easily via loop splitting because two (2) local service request orders must be submitted, rather than simply one (1) service order as Qwest does. Qwest's Retail arm, on the other hand, uses one service order to manage the entire process. Again, it is imperative that Qwest be required to correct these ordering and provisioning problems to allow CLECs to order loop splitting via a single order that provisions the voice and data simultaneously. CLECs must have this capability in order to compete successfully with Qwest in providing service to residential customers.

Q. DO THESE PROBLEMS APPLY TO BOTH NEW AND MIGRATION ORDERS?

A. With the IMA 15.0 released in April 2004, this issue was resolved for new orders.[5] Covad elected to skip this IMA release after performing a cost-benefit analysis which indicated that waiting for Qwest to finish the single LSR OSS work, which is "planned" for IMA release 16.0, was in our best interest. Covad incurs a significant cost to transition to new OSS releases and must be sure that its limited resources are used wisely. From the Covad perspective, because most of the line and loop splitting orders would be conversion – or migration orders – it made economic sense to delay transition to a new OSS release until the majority of order Covad places for line splitting would be impacted.

For migration orders, however, the problem still exists. A migration – or conversion – order is where an existing customer decides to change their service arrangement (from UNE-P line splitting to UNE-L loop splitting) or to migrate from one provider(s) to another provider(s). While the new order problems arguably are resolved, as I discuss below, the migration order issues remain.

Q. WON'T THE PENDING CHANGE REQUESTS ("CRs") ALLEVIATE THESE ORDERING ISSUES?

A. The IMA release (16.0) is expected to allow new Line Split or Loop Split services to be created from existing Line Shared, Qwest Retail voice/DSL, or Line Split/Loop Split services – in other words, migration orders -- will not be implemented until later this year, if at all.

[5] While Covad is currently on Qwest's Electronic Data Interface ("EDI")/IMA Release 14.0 with a scheduled migration to IMA 16.0 on November 13, 2004, that date is contingent on how well testing goes, which is scheduled to begin on or around October 18, 2004.

Q. WHY DO YOU SAY "IF AT ALL?"

A. First, it is an overstatement to say that Qwest has committed to including the single LSR migration changes into the October 2004 release, and here's why: originally, when Qwest initiated its CR to allow customers to order Qwest voice and data or line shared service on one LSR, it had included, because of the parity requirement, the single LSR for new line splitting and loop splitting orders as well. That CR was "committed to" being included in the August 2003 IMA 13.0 release. However, when push came to shove, Qwest only implemented the portion of the CR that benefited it – the ability to order and provision via one LSR or service order, line shared services or the Qwest bundled voice and data service. Qwest, pursuant to an "event notification", unilaterally delayed the implementation of the new order line split/loop split single LSR portion of the change. Consequently, until Qwest has actually implemented all of the single LSR features for migration line splitting and loop splitting orders, Qwest cannot be trusted to live up to its commitments, given the fact that it has already reneged once on that "commitment."

Second, Qwest informed CLECs at a change management forum late last year that it will only support 2 IMA releases this year (as opposed to three in years past) and that those releases were/will be issued in April and October 2004. Qwest also reduced by 50% the development hours allocated to the Wholesale IMA releases so that, instead of having 120,000 hours available, Qwest is only willing to allocate 60,000 hours. Although I agree that Change Management is a useful tool for working on OSS and Product and Process change requirements, it is

very clear that, barring issuance of a Regulatory Change Request, Qwest can reduce the hours available to whatever level it wants without obtaining any agreement from the CLEC community. Qwest also unilaterally determines the Level of Effort (LOE) for all proposed changes submitted by CLECs. CLECs have no visibility into this process. If Qwest were to further reduce the available hours, to say 20,000, Qwest could determine the LOE of a CLEC submitted CR to be 10,000 hours, thus taking up 50% of the release hours available. It would be very unlikely that this CR would receive enough votes to ever see it implemented, as very few resources would be left for other OSS needs.

The ramifications of Qwest's decision to reduce in number and size its IMA releases for 2004 are two-fold. First, as I already mentioned, it delayed the implementation date for the systems CR that would allow a CLEC to place voice and data for new UNE-P Line Splitting or Loop Splitting order simultaneously from October 2003 until April 2004. More problematically, the systems CR that would allow a CLEC to place voice and data orders for migration orders is scheduled for the release in October 2004, but as we've seen already, scheduled implementation and actual implementation may be very different things. So, in addition to whether the reduction in hours will result in this CR being excluded from any of the 2004 IMA releases, it did not make it into the April IMA release, and until 16.0 is implemented, nothing is certain.

Q. SO QWEST'S OSS WILL ENSURE THAT CLECS USING EITHER A UNE-P OR A UNE-L DELIVERY STRATEGY WILL BE AT A COMPETITIVE DISADVANTAGE TO QWEST?

A. Yes. The time delays and associated service disruptions that are inherent in the current migration UNE-P line splitting and UNE-L loop splitting OSS and processes will result in CLECs being a "day late and a dollar short."

Q. PLEASE DETAIL OTHER DISCRIMINATION ISSUES THAT EXIST WITH RESPECT TO THE NEED FOR A SINGLE LSR PROCESS FOR MIGRATIONS.

A. In the migration context, where a customer currently has line shared services, Qwest retail voice/DSL, UNE-P line split, or UNE-L loop split arrangement, it takes two LSRs to migrate that service to UNE-P line splitting or UNE-L loop splitting arrangements with a new carrier(s). But, where the customer has a UNE-P line split or UNE-L loop split arrangement, and that customer wishes to convert to either a line shared arrangement (Qwest voice and CLEC DSL) or Qwest voice and data, it only takes one LSR. So, as it currently stands, where a migration will result in Qwest getting either the voice or the voice and data from a customer, it takes only one LSR for that migration to occur. But, where those benefits don't exist, it takes two LSRs

Q. HAS QWEST OFFERED ANY INTERIM SOLUTIONS FOR CLECS TO USE WHILE THEY WORK ON THE OSS REQUIREMENTS?

A. During this period where volumes are still rather low, Qwest should have been willing to accept a faxed single LSR for purposes of manually provisioning orders, but no such offer was ever made.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. This concludes my Direct Testimony, however, I anticipate filing all Reply Testimony permitted by the Commission, and being presented for cross examination at the hearing on the merits.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of **DIECA COMMUNICATIONS, INC., D/B/A COVAD COMMUNICATIONS COMPANY'S DIRECT TESTIMONY OF MICHAEL ZULEVIC** was mailed by U.S. Mail, postage prepaid, and electronically mailed this 8th day of October, 2004 to the following:

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