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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) Docket No. 04-2277-02
RESOLVE ISSUES RELATING TO AN)
INTER-CONNECTION AGREEMENT)
WITH QWEST CORPORATION)

**REBUTTAL TESTIMONY OF
MEGAN DOBERNECK**

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

November 12, 2004

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I. IDENTIFICATION OF WITNESS

Q. ARE YOU THE SAME MEGAN DOBERNECK WHO PROVIDED DIRECT TESTIMONY IN THIS PROCEEDNG?

A. I am.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the testimony of Qwest witness Karen Stewart on Issue 1(copper retirement) and to Qwest witness William Easton on Issue 10 (billing time frames).

III. ARBITRATION ISSUES

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

Q. COVAD HAS RECENTLY REVISED ITS COPPER RETIREMENT PROPOSAL. PLEASE PROVIDE DETAIL AROUND COVAD’S REVISED PROPOSAL.

A. Certainly. As I stated in my Direct Testimony, Covad limited its copper retirement proposal to copper retirement resulting in something other than an FTTH loop and had proposed language for Sections 9.1.15.1-9.1.15.1.1 consistent with that revised position at pages 6-7 of my Direct Testimony. Since filing my Direct Testimony, the FCC issued its reconsideration order addressing fiber to the curb (“FTTC”) loops.¹ While the principle underlying Covad’s proposal has not changed, we believe that the language that should be incorporated into the interconnection agreement should reflect the fact that the FCC has accorded the same treatment to

¹ *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; CC Docket Nos. 01-338, 96-98 and 98-147, Order on Reconsideration (rel. Oct. 18, 2004), (“FTTC Reconsideration Order”).

27 FTTC loops as FTTH loops, and also made clear that such fiber deployment must
28 be for the purpose of actually providing enhanced broadband services to mass
29 market customers. Accordingly, I set out below Covad’s revised copper retirement
30 language. The underlined language reflects the language included as a result of
31 the FTTC Reconsideration Order:

32
33 9.1.15 In the event Qwest decides to retire a copper loop, copper
34 feeder, or copper Subloop and replaces it with fiber, Qwest will: (a)
35 provide notice of such planned retirement on its website
36 (www.qwest.com/disclosures); and (ii) provide e-mail notice of such
37 planned retirement to CLECs; and (iii) provide public notice of such
38 planned replacement to the FCC. The e-mail notice provided to each
39 CLEC shall include the following information: city and state; wire
40 center; planned retirement date; the FDI address; a listing of all
41 impacted addresses in the DA; a listing of all of CLEC’s customer
42 impacted addresses; old and new cable media, including transmission
43 characteristics; circuit identification information; and cable and pair
44 information.

45
46 9.1.15.1 Continuity of Service During Copper Retirement. This
47 section applies where Qwest retires copper feeder cable and the
48 resultant loop is comprised of either (1) mixed copper media (i.e.
49 copper cable of different gauges or transmission characteristics);
50 or (2) mixed copper and fiber media (i.e. a hybrid copper-fiber
51 loop) (collectively, “hybrid loops”). This section does not apply
52 where the resultant loop is a fiber to the home (FTTH) loop or a
53 fiber to the curb (FTTC) loop (a fiber transmission facility
54 connecting to copper distribution plant that is not more than 500
55 feet from the customer’s premises) serving mass market or
56 residential End User Customers.

57
58 9.1.15.1.1 When Qwest retires copper feeder for loops
59 serving CLEC-served End User Customers or the CLEC at
60 the time such retirement is implemented, Qwest shall adhere
61 to all regulatory and legal requirements pertaining to
62 changes in the Qwest network. Qwest will not retire copper
63 facilities serving CLEC’s End User Customers or CLEC, at
64 any time prior to discontinuance by CLEC or CLEC’s End
65 User Customer of the service being provided by CLEC,
66 without first provisioning an alternative service over any
67 available, compatible facility (i.e. copper or fiber) to CLEC
68 or CLEC End User Customer. Such alternative service shall
69 be provisioned in a manner that does not degrade the

70 service or increase the cost to CLEC or End User Customers
71 of CLEC. Disputes over copper retirement shall be subject
72 to the Dispute Resolution provisions of this Interconnection
73 Agreement.

74 **Q. PLEASE STATE WHY THE ENTIRETY OF MS. STEWART’S DIRECT**
75 **TESTIMONY IS INAPPOSITE TO THE COPPER RETIREMENT ISSUE.**

76 A. There are three primary reasons why Ms. Stewart’s testimony is inapposite. First,
77 the entirety of her testimony relative to Qwest’s legal rights and obligations
78 pertains solely to the copper retirement rules that apply where copper is retired and
79 an FTTH loop is deployed. Specifically, Ms. Stewart relies entirely on Paragraphs
80 271-284 of the TRO, which address the deployment of FTTH loops by ILECs and
81 any copper retirement activity that results from such FTTH deployment. Because
82 Covad’s copper retirement proposal does not apply in that scenario, Ms. Stewart’s
83 testimony is irrelevant.

84 Second, the FCC has made clear that there are two absolutely necessary
85 prerequisites that an ILEC must satisfy before it can take advantage of any copper
86 retirement policies and procedures created via the TRO. The first prerequisite is
87 that fiber loops deployed be capable and actually provide enhanced broadband
88 services. As the FCC stated numerous times in the FTTC Reconsideration Order:

89 We further specify that the fiber transmission facility in a FTTC
90 loop must connect to copper distribution plant at a serving area
91 interface from which every other copper distribution subloop also
92 is not more than 500 feet from the respective customer’s premises.
93 ***We do this to ensure that our unbundling relief is targeted to***
94 ***FTTC deployments that are designed to bring increased advanced***
95 ***services capability to users, rather than extend to other hybrid***
96 ***loop deployments...***²
97

98
99 Finally, in order to ensure that our new rules promote the goals of
100 section 706, we tailor unbundling relief ***to those FTTC***
101 ***deployments specifically designed to bring advanced services to***
102 ***users...*** . . . we provide those incumbents seeking to avail themselves

² Id., ¶10 (emphasis added).

103 of this unbundling relief an incentive *to reconfigure their network*
104 *to bring advanced services to the entire geographic area rather*
105 *than permitting them to obtain unbundling relief where, by*
106 *happenstance, there may be an existing loop with 500 feet or less*
107 *copper distribution.*³

108 To date, of course, Qwest has provided no evidence or testimony that its
109 fiber deployment is in any way designed to ensure the delivery of enhanced
110 broadband services. In fact, Qwest completely refused to answer data requests
111 posed by Covad that were designed to specifically elicit this information.⁴
112 Consequently, all the uncontroverted testimony and evidence points to the fact that
113 Qwest's fiber deployment is done solely for the purpose of network maintenance
114 or, more perniciously, to drive competitors off the network. This kind of activity
115 was not designed to be protected in any way, as the FCC made clear.

116 Lest there be any question, Qwest's highest ranking officer, Richard
117 Notebaert, just last week reiterated the fact that Qwest is not and will not engage in
118 any kind of fiber deployment designed to bring enhanced broadband services to
119 existing Utah consumers:

120
121 After failing to generate adequate returns by offering TV over fiber-
122 to-copper networks in Colorado and Arizona, the No. 4 Bell, Denver-
123 based Qwest Communications International, Inc. is sitting out the
124 current [fiber deployment] craze. CEO Richard C. Notebaert says
125 he's willing to install fiber only in new housing developments.
126 "When you go in to do a tear up or an overlay, the economics don't
127 work," he says.⁵

128 Consequently, while Qwest has notified carriers regularly about copper retirement
129 activity, none of these retirements appear to be resulting in the deployment of
130 additional advanced services to customers, and Qwest has made no pretense at
131 proving otherwise, because it cannot. As the FCC has made clear, maintenance

³ Id. ¶ 17 (emphasis added).

⁴ See Qwest's Responses to Covad Data Request Nos. 8-10, attached hereto as Exhibit KMD-13.

⁵ Catherine Yang, *Cable vs. Fiber: In the Titanic Battle to Control the Flow of Data to U.S. Households, the Bells Fight Back b Offering Video via Phone Lines*, Businessweek, November 1, 2004.

132 decisions like Qwest’s are not protected activity, and certainly should not trump
133 the FCC or this Commission’s directive to promote competition and the efficient
134 investment in advanced telecommunications services.

135 **Q. YOU MENTIONED THAT THERE WERE TWO PREREQUISITES TO**
136 **QWEST INVOKING THE PROTECTIONS ASSOCIATED WITH THE**
137 **TRO’S COPPER RETIREMENT RULES. WHAT WAS THE SECOND**
138 **PREREQUISITE?**

139 A. In the FTTC Reconsideration Order, the FCC made clear that its copper retirement
140 rules and associated unbundling relief were not to further deployment of facilities
141 to enterprise customers, but rather to mass market customers. The FTTC
142 Reconsideration Order makes a number of references to the fact that the
143 deployment incentive originally discussed in the TRO with respect to FTTH loops
144 and then extended to FTTC loops in the Reconsideration Order was granted in
145 order to ensure deployment of enhanced broadband capabilities to mass market
146 customers:

147
148 "Such a change in our rules is necessary to ensure that regulatory
149 disincentives for broadband deployment are removed for carriers
150 seeking to provide advanced services to *mass market customers*
151 ...".⁶

152
153 "We do not require incumbent LECs to provide unbundled access to
154 new *mass market* FTTC loops for either narrowband or broadband
155 services."⁷

156 FCC Chairman Powell in his concurring statement reiterated the fact that the
157 FCC’s TRO and associated reconsideration orders were designed to ensure that the
158 TRO and Reconsideration Order unbundling and copper retirement relief would
159 result in benefits to consumers, and not businesses -- “by limiting the unbundling

⁶ Id., ¶ 9 (emphasis added).

⁷ Id., ¶ 14 (emphasis added).

160 obligations of incumbents when they roll out deep fiber networks *to residential*
161 *customers*, we restore the market place incentives of carriers to invest in new
162 networks.”

163 Again, Qwest has provided no evidence or testimony that its fiber
164 deployment is in any way designed to ensure the delivery of enhanced broadband
165 services to mass market customers, and refused to answer Covad’s data requests
166 designed to elicit that information.⁸ To the contrary, all the uncontroverted
167 testimony and evidence points to the fact that Qwest’s fiber deployment is done
168 solely for the purpose of network maintenance or, more perniciously, to drive
169 competitors off the network. This kind of activity was not designed to be
170 protected in any way, as the FCC made clear.

171 **Q. THE FACT THAT QWEST’S COPPER RETIREMENT LANGUAGE**
172 **DOES NOT EVEN TAKE INTO ACCOUNT THESE TWO**
173 **REQUIREMENTS RENDERS IT FATALLY FLAWED, ISN’T THAT**
174 **ACCURATE?**

175 A. The answer to this question must be “yes.” Regardless of the ultimate outcome of
176 the underlying legal issue, Qwest’s current copper retirement proposal is overly
177 broad and overly inclusive of the retirement scenarios that the FCC intended to
178 protect. Because Qwest nowhere limits its proposal to FTTH (or FTTC)
179 deployment resulting in the actual provision of (1) enhanced broadband services to
180 (2) mass market customers, it cannot withstand legal or commission scrutiny.

181 **Q. QWEST ALSO HAS FAILED TO PROVIDE ANY EVIDENCE THAT ITS**
182 **FIBER DEPLOYMENT WILL PROVIDE SERVICES THAT REFLECT**

⁸ See Exhibit KMD-13.

183 **AN ENHANCEMENT OVER WHAT CAN BE PROVIDED OVER**
184 **COPPER, HASN'T IT?**

185 A. That is correct. Qwest has provided no evidence that its fiber deployment allows it
186 to provide any enhanced broadband services that aren't already available over an
187 all copper loop. As I stated in my Direct Testimony, there are new, copper-based
188 technologies that will allow carriers to provide video (along with voice and data)
189 over all-copper loops, which places copper on even footing with fiber with respect
190 to the array of broadband services that can be provided. And as Merrill Lynch
191 recently reported, “[d]espite the hoopla surrounding fiber all the way to the end
192 user premises (FTTP), we still believe the regional Bells will first exploit the
193 existing copper plant that supports DSL as much as possible for new services. The
194 adoption of new DSL flavors, such as ADSL. ADSL2+ and VDSL will increase
195 ASP.”⁹

196 The ongoing importance of copper, as a better source for enhanced
197 broadband services than fiber over at least the next few years was affirmed by the
198 New York Times, which noted that the “continued reliance on copper for the final
199 link to the homes of consumers makes sense to some experts, who say
200 improvements in software compression and Internet connection technology make
201 to-the-home fiber unnecessary [pointing] to companies in Japan and South
202 Korea that are already selling high speed internet connections and video over
203 copper networks.”¹⁰ Thus, far from having any inherent advantage over copper,
204 fiber actually appears to be the less attractive option for broadband purposes over

⁹ Merrill Lynch, “Telecom Equipment,” October 8, 2004.

¹⁰ Ken Belson, *Phone Line Alchemy: Copper to Fiber*, The New York Times, October 11, 2004.

205 at least the next few years and certainly the term of the parties' interconnection
206 agreement. As my testimony above indicates, Qwest seems to agree.

207 **Q. PLEASE CORRECT MS. STEWART'S MISUNDERSTANDING**
208 **REGARDING QWEST'S SUPPOSED UNRESTRICTED RIGHT TO**
209 **RETIRE COPPER LOOPS.**

210 A. Certainly. Ms. Stewart appears to espouse the position that Qwest is free to retire
211 copper loops without restriction.¹¹ That is just not correct. First, the copper
212 retirement rules discussed by the FCC and Ms. Stewart in her testimony address
213 copper retirement resulting in FTTH loops. Since Qwest isn't deploying those
214 types of loops¹² and the Covad proposal does not apply in that scenario, there
215 actually is no affirmative permission granted by the FCC to Qwest (or the other
216 ILECs) to retire copper. Moreover, because of the economic and consumer
217 impacts that flow from copper retirement (which I discussed in my Direct
218 Testimony), the Commission must carefully scrutinize these impacts to ensure that
219 consumers are not harmed by Qwest's unilateral retirement of copper feeder plant.
220 Finally, the FCC made clear that any and all state requirements pertaining to
221 copper retirement would continue to apply, regardless of the impact they might
222 have on federal policies encouraging the deployment of fiber -- "any state
223 requirements that currently apply to an incumbent LEC's copper loop or copper
224 subloop retirement practices will continue to apply."¹³ Thus, the FCC has made
225 clear that Utah's copper retirement rules and policies continue to apply,
226 notwithstanding the federal rules established by the FCC.

¹¹ Stewart Direct, p. 3-6.

¹² See Qwest's Responses to Covad Data Request Nos. 3-5, attached hereto as Exhibit KMD-14.

¹³ TRO, ¶ 271.

227 **Q. EXPLAIN WHY MS. STEWART IS INCORRECT IN ASSERTING, AT**
228 **PAGE 9 OF HER DIRECT TESTIMONY, THAT THE FCC HAS**
229 **REJECTED COVAD'S PROPOSAL.**

230 A. Ms. Stewart mistakenly suggests that Covad's copper retirement proposal was
231 already rejected by the FCC. That is just not correct. If you actually look at the
232 copper retirement proposals rejected by the FCC in the TRO, you will see that they
233 are very different than the proposal that Covad makes, and go far beyond what
234 Covad requests here. For example, the High Tech Broadband Coalition and the
235 Telecommunications Industry Association proposed that an ILEC be allowed to
236 retire copper if and only if the ILEC provided access to those fiber broadband
237 facilities for both new and existing customers via a voluntary agreement that
238 would be available on a non-discriminatory basis to other carriers.¹⁴ That is a far
239 cry from what Covad proposes here. Allegiance went even farther, arguing that
240 ILECs should not be allowed to retire copper loops at all. Clearly, Covad's
241 proposal is much more limited in scope, purpose, and duration. It has the
242 advantages of maintaining existing service and customer choice envisioned by the
243 FCC, without the drawbacks of the proposals discussed above, which may have
244 discouraged carriers' investment in next generation facilities. Because of the
245 consumer and competitive good inherent in the Covad proposal, it should be
246 adopted by the Commission.

¹⁴ See Comments of the High Tech Broadband Coalition, April 5, 2002, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, and 98-147, at pages 36-37; Comments of the Telecommunication Industry Association, April 5, 2002, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, and 98-147, at pages 17-18; Comments of Allegiance Telecom, Inc., April 5, 2002, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, and 98-147, at page 25.

247 **Q. PLEASE EXPLAIN WHY MS. STEWART’S SUPPOSED CONCERNS**
248 **REGARDING THE AMBIGUITY OF COVAD’S “ALTERNATIVE**
249 **SERVICE” PROPOSAL AT PAGE 13-14 OF HER DIRECT TESTIMONY**
250 **IS A RED HERRING.**

251 A. Qwest attacks Covad’s alternative service proposal, essentially on three grounds:
252 first, it has no legal basis (this issue is addressed above and in my Direct
253 Testimony); second, it is so vague that it gives no direction to Qwest as to how to
254 comply with its terms; and third, that it would deny Qwest the right to recover its
255 costs, as required by 252(d)(1). These arguments do not survive serious analysis.

256 Qwest’s second point, that the proposal is not properly defined, fails to take
257 into account that the two critical characteristics of any alternative service, service
258 quality and price stability, are clearly defined. Contrary to Qwest’s protestations
259 otherwise, clear and obvious metrics exist to determine whether a given
260 customer’s service is “degraded” by the move to an alternative service:
261 availability of the connection, and the speed of that connection, measured in
262 kilobits per second (kbps). Qwest’s professed ignorance as to what Covad’s
263 proposal means is questionable at best, given its adamant refusal to discuss any of
264 these terms and the multitude of situations in which language in interconnection
265 agreements has obvious, though not precisely explained implications.

266 One need not look far to find an example- Qwest’s own proposal regarding
267 copper retirement contains equally general language when it states that “Qwest and
268 CLEC will jointly coordinate the transition of current working facilities to the new
269 working facilities so that service interruption is held to a minimum.” This
270 language can be read to mean that Qwest will provide access to fiber feeder and
271 distribution facilities, even FTTH loops, or it can be read to mean that Qwest will
272 provide something less. Also, what constitutes “minimum” service disruption

273 under Qwest's proposal? This language is open to a certain level of interpretation,
274 perhaps even a greater level than Covad's proposed language.

275 **Q. WHAT ABOUT MS. STEWART'S CLAIM, AT PAGES 9-13 OF HER**
276 **DIRECT TESTIMONY, THAT COVAD'S ALTERNATIVE SERVICE**
277 **PROPOSAL WILL NOT ALLOW QWEST TO RECOVER ITS COSTS?**

278 A. Ms. Stewart claims that Covad's proposal fails to provide Qwest with a means of
279 recovering its costs for providing an alternative service. Implicit in this argument
280 is an assumption that whatever means Qwest uses to provide the service will be
281 more expensive than the current method of providing service to Covad. As an
282 example of this, Qwest compares the rate it is permitted to charge for line sharing
283 in Utah (\$0) to the more expensive (yet somehow still undefined) alternative
284 service. This is nothing more than a collateral attack on this Commission's rate for
285 line sharing.

286 Ms. Stewart's statements also ignore the fact that all of the rates for its
287 wholesale services are set on the basis of *average* costs. To the extent certain
288 alternative arrangements raise Qwest's actual costs, this is best addressed in a
289 review of Qwest's wholesale rates. Some specific arrangements may be more
290 expensive, some less expensive. Qwest's overly literal interpretation of section
291 252(d)(1) would logically lead to the conclusion that every wholesale arrangement
292 that, for whatever reason, falls below the average cost of providing that element
293 would violate the Act. Such an analysis would make it impossible for this
294 Commission to set wholesale rates at all.

295 More logical is Covad's proposal, which fundamentally stands for the
296 proposition that Qwest cannot unilaterally change its wholesale rates by re-
297 configuring its network. If Qwest believes there are benefits to such a
298 reconfiguration, it should be able to perform it, but allowing Qwest to shift costs of

299 reconfiguration onto its competitors will distort its decisions, and replace
300 marketplace thinking with regulatory calculations.

301 **Q. QWEST HAS ALSO SUGGESTED IN OTHER ARBITRATIONS THAT**
302 **COVAD CAN SIMPLY RESELL QWEST DSL WHEN IT'S COPPER**
303 **RETIREMENT ACTIVITIES PULL THE RUG OUT FROM**
304 **UNDERNEATH EXISTING COVAD CUSTOMERS. EXPLAIN WHY**
305 **THAT WILL NOT WORK.**

306 A. The answer is one of simple economics (discussed below and in my Direct
307 Testimony) and significant barriers to actual use (as discussed in my Direct
308 Testimony at page 11-13). With respect to the economics issue, as the FCC
309 apparently concluded in the TRO, a carrier providing ADSL service (which is the
310 service type that would be impacted by Qwest's copper retirement) earns \$18 in
311 revenue per customer.¹⁵ Based on my modification to a pricing exhibit that was
312 submitted in connection with the Minnesota interconnection agreement arbitration
313 proceeding and is attached hereto as KMD-Exhibit 15, there is only one resale
314 option available to Covad for which costs would not exceed revenue. And when
315 you tack on the cost of the ISP service – generally about \$8 -- (which is required in
316 order to surf the net but which is not included in the costs set out in Exhibit KMD-
317 15), none of the resale options Qwest purportedly makes available would allow
318 Covad to provide service without its costs exceeding its revenue by a significant
319 amount.

320 **Q. MS. STEWART ALSO APPEARS TO CLAIM AT PAGE 9 OF HER**
321 **DIRECT TESTIMONY THAT QWEST'S COPPER RETIREMENT**

¹⁵ TRO, n.807.

322 NOTICE IS LEGALLY SUFFICIENT. PLEASE EXPLAIN WHY IT IS
323 NOT.

324 A. 47 C.F.R. § 51.327 prescribes the “minimum” standards notices of network
325 changes. Qwest’s copper retirement notices do not meet these “minimum”
326 standards. For instance, notices must, according to the rule, include the
327 “location(s) at which the changes will occur”¹⁶ as well as the “reasonably
328 foreseeable impact of the planned changes.”¹⁷

329 Qwest chooses to read these requirements in an unreasonably narrow
330 fashion, and has declined to provide such vital information as what Covad
331 customers, if any, will be impacted by the retirement project. The vague notices
332 issued by Qwest (see Exhibit KMD-3, attached to my Direct Testimony) are useful
333 only as a starting point for a major research project to determine whether a given
334 retirement will impact Covad’s customers. In response to each and every notice of
335 a copper retirement project, Covad would have to determine whether any of its
336 customers would actually be affected and it is not even clear that, with the
337 information provided, that we can actually do that.

338 Any notice that can be read to comply with the FCC’s rules must
339 specifically inform competitive LECs whether the retirement threatens service to
340 its existing customers. The FCC rule clearly places the burden on ILECs to
341 determine the “reasonably foreseeable impact” of its retirements. Qwest’s
342 interpretation of this language, which would not require specific notice of the
343 customers affected, is so devoid of substance that it must be rejected as an
344 unreasonable interpretation of the rule.

345 Furthermore, the FCC’s rules regarding network modifications clearly
346 require

¹⁶ 47 C.F.R. § 51.327(a)(4).

¹⁷ 47 C.F.R. § 51.327(a)(6).

347 A description of the type of changes planned (Information
348 provided to satisfy this requirement must include, as
349 applicable, but is not limited to, references to technical
350 specifications, protocols, and standards regarding
351 transmission, signaling, routing, and facility assignment as
352 well as references to technical standards that would be
353 applicable to any new technologies or equipment, or that
354 may otherwise affect interconnection)...¹⁸

355 Covad's notice proposals embody this requirement, by specifying that
356 notices contain information regarding "old and new cable media, including
357 transmission characteristics; circuit identification information; and cable and pair
358 information."¹⁹ Covad believes the information it seeks, and which Qwest refuses
359 to provide, is clearly within the scope of the FCC rule. Not only is it within the
360 scope of the rule, it is necessary to lend any meaning whatsoever to the notice
361 requirement. And as I stated in my Direct Testimony, there is nothing burdensome
362 about requiring Qwest to provide the categories of information specified by
363 Covad. Qwest has this information in its possession; it just chooses not to share it.

364
365 **ISSUE 10: TIME FRAME FOR PAYMENT OF BILLS, DISCONTINUANCE**
366 **OF ORDERING, AND DISCONNECTION OF SERVICE**
367

368 **Q. MR. EASTON SUGGESTS THAT COVAD'S CONCERN ABOUT**
369 **BILLING AND PAYMENT TIME FRAMES IS NEITHER BALANCED**
370 **NOR RECIPROCAL. PLEASE EXPLAIN WHY BILLING TIME**
371 **FRAMES, AND THE ABILITY TO REVIEW THE ENTIRETY OF A BILL**
372 **BEFORE PAYING IT, ARE SO IMPORTANT TO COVAD.**

373 **A.** As I discussed in my Direct Testimony, Covad has a significant interest in the
374 terms governing payment for services rendered by Qwest. First, because of the
375 burden that the deficiencies in Qwest's bills place on Covad, the terms necessarily

¹⁸ 47 C.F.R. § 51.327(a)(5).

¹⁹ Covad Proposed Section 9.1.15.

376 dictate whether Covad has the time to undertake a meaningful and thorough bill
377 review. As I have explained, we do not.

378 Second, because non-payment creates significant, material exposure and
379 liability for Covad, the terms and conditions surrounding bill payment are critical
380 to its successful functioning as a competitor, and integral to a smooth working
381 relationship with Qwest.

382 Third, Covad loses its sole form of leverage when it simply pays a bill. In
383 theory, the parties are equal partners, one ordering services for which it pays, and
384 the other providing them. In reality, however, the party providing the services,
385 Qwest, is the only source for services that Covad cannot get anywhere else. So,
386 when Covad pays a bill and then tries to dispute a particular billed item, it has lost
387 any leverage it might otherwise have because it cannot take its business to another
388 vendor if the outcome of the billing dispute is not handled in an acceptable
389 fashion. No number of provisions in the interconnection agreement can change
390 that essential fact.

391 **Q. MR. EASTON ALSO CLAIMS THAT COVAD CAN DISPUTE THE BILL**
392 **APPARENTLY AT ANY TIME SUBSEQUENT TO THE PAYMENT DUE**
393 **DATE. IS THAT ACCURATE?**

394 A. I don't believe that statement is accurate. Based on the language of the proposed
395 IA, it appears to Covad that the only type of billing disputes that it can permissibly
396 raise beyond the fifteen days provided for in Section 5.4.4 are limited to billing
397 disputes relating to inaccuracies in rates billed. As the last sentence of Section
398 5.4.4 makes clear, "Nothing in this Section shall be construed to restrict the
399 Parties' right to recover amounts paid in excess of lawful charges, which shall be

400 subject to the time limits set forth in Section 5.18.5.” Consequently, for a number
401 of deficiencies/errors that lead to Covad bill disputes, these types of claims would
402 be barred, a belief which is reinforced by Qwest’s responses to certain of Covad’s
403 data requests, and attached hereto as Exhibit KMD-16.

404 Equally important, the procedural safeguards that surround the billing
405 dispute section appear to apply only to the disputes raised within fifteen days of
406 the payment due date. Without these safeguards or mechanisms, which are
407 designed to drive resolution, the ability to simply say “we dispute a bill”
408 accomplishes nothing. And use of other mechanisms, like the audit right
409 contained in the interconnection agreement or just blindly disputing billings in
410 order to buy time to review a bill, are relatively costly and time consuming for
411 both parties. By far the most effective way to ensure that Covad pays what it owes
412 and raises only legitimate billing disputes is to accord Covad more time to review
413 its bills.

414 **Q. MR. EASTON TRIES TO CHARACTERIZE THE ISSUES AS BEING**
415 **ABOUT PAYMENT RATHER THAN ABOUT TIMING AND THE**
416 **PROBLEMS COVAD DESCRIBES. WHY SHOULD THE COMMISSION**
417 **CONSIDER THE DEFICIENCIES IN THE QWEST BILLS WHEN**
418 **SETTING THE PAYMENT TIME FRAMES?**

419 A. There are a number of reasons. First, you need to take into account how long it
420 will take to review a bill. Because of the deficiencies in the Qwest bills, manual
421 effort on the part of Covad is required. It’s not that we can’t review the bills (at
422 least for the most part; there are some exceptions), it’s how long it takes given the
423 required manual intervention. So, our request for extended time frames is driven

424 by what a reasonable amount of time is for purposes of bill review, in light of the
425 deficiencies in the bills.

426 Second, Mr. Easton suggests that any problems Covad has can and should
427 be remedied in some forum outside of the arbitration or in a fashion other than by
428 extending the time frames. That is just not reasonable, in light of Covad's
429 experience and the positions Qwest has taken on allocating time to billing issues in
430 the CMP. And to the extent that a CMP resolution may be available (which is still
431 not entirely clear), CMP is not the panacea Qwest makes it out to be. While Covad
432 may be able in the future to submit change requests to remedy deficiencies in the
433 Qwest bills, submission of a CR does not mean it will be implemented. To the
434 contrary, Qwest can and regularly does deny CRs (including many submitted by
435 Covad) for a wide variety of reasons. For example, Qwest denied Covad's request
436 to get the collocation non-recurring bills in electronic rather than paper format.
437 Consequently, even if the opportunity to pursue these issues exists, it is not a given
438 that changes or corrections will actually be made. Qwest still has the ultimate say
439 over where or when any change request gets implemented.

440 **Q. CAN COVAD GET BILL DEFICIENCIES CORRECTED VIA THE**
441 **“DESIGNATED BILLING CONTACTS” AS MR. EASTON SUGGESTS AT**
442 **PAGE 10 OF HIS DIRECT TESTIMONY?**

443 **A.** No, we cannot. While the Qwest billing contacts may provide information or
444 explanations about why bills are formatted or fail to contain information, any
445 actual systems and/or process changes necessary to accurately reflect billing must
446 go through CMP.

447 **Q. MR. EASTON THEN GOES ON TO STATE AT PAGE 11 THAT, EVEN IN**
448 **LIGHT OF COVAD'S PAYMENT HISTORY, IT STILL NEEDS THE**

449 **“PROTECTION” PROVIDED BY THE QWEST PROPOSED TIME**
450 **FRAMES. WHY IS THAT NOT A LEGITIMATE CONCERN?**

451 A. Covad has already gone through bankruptcy. The fact that we remained current on
452 our bills, even while reorganizing the business, speaks volumes about how,
453 whether and will we pay on time in the future. Second, Mr. Easton ignores the
454 protections to which Covad has already agreed in the interconnection agreement.
455 If Covad fails to pay timely or its credit comes into question, Qwest has the right
456 to demand a deposit (Sections 5.4.5 and 5.4.7) to protect itself from any risk due to
457 non-payment. Finally, Mr. Easton’s concern is nothing more than a Chicken Little
458 redux. Qwest provides no facts whatsoever that cast into doubt Covad’s ability to
459 pay nor has he explained how the protections that Qwest itself negotiated into the
460 IA, and to which Covad agreed, do not mitigate any risk that may materialize
461 during the effective period of the interconnection agreement.

462 **Q. MR. EASTON ALSO SUGGESTS THAT BECAUSE ONE OTHER CLEC**
463 **RECENTLY AGREED TO THE LANGUAGE COVAD OPPOSES THAT**
464 **COVAD’S REQUEST FOR AN EXTENSION SHOULD BE REJECTED.**

465 A. I find that point to be poorly taken. In the first place, Mr. Easton focuses on a
466 CLEC with limited entry – at best -- into the local market in the Qwest region and
467 which has now withdrawn from the local market in this region. He makes no
468 mention of how, for CLECs that have significant and material entry into the local
469 market, the billing time frame issue is front and center both in CMP and in other
470 CLECs interconnection negotiations. Additionally, for the other CLECs that he
471 references but does not name, he makes no mention of whether they provide local

472 service or have even attempted to begin auditing their local market phone bills
473 from Qwest.

474 **Q. MR. EASTON DISMISSES THE NOTION THAT LINE OR LOOP**
475 **SPLITTING BILLING POLICIES SHOULD RESULT IN ANY**
476 **ACCOMODATION ON QWEST'S PART. PLEASE RESPOND.**

477 A. What's interesting about Mr. Easton's thinking in this particular section of his
478 testimony is that the billing mechanisms relating to line and loop splitting were set
479 up precisely to make it easier on Qwest and to keep Qwest out of the billing
480 relationship between the line/loop splitting CLECs. Yet, even as it accomplished
481 its goal of making line/loop splitting billing as easy as possible for itself, Qwest is
482 unwilling to take any steps to allow those CLECs to adequately review their bills
483 and to raise only legitimate billing claims. Covad and its business partners have
484 every incentive to have an efficient billing relationship between them because the
485 flow of revenue and expenses between the CLECs impacts them just as much as
486 the flow of revenue and expenses between and with Qwest. In other words, what
487 works best for the CLECs will ultimately result in the best result for Qwest –
488 timely payment and the raising only of legitimate billing disputes.

489 **Q. MR. EASTON REPEATS A NUMBER OF TIMES THE FACT THAT**
490 **COVAD HAS HAD SEVERAL YEARS OF EXPERIENCE AND SHOULD**
491 **NOT NEED MORE THAN THE 20+ DAYS AVAILABLE TO IT UNDER**
492 **QWEST'S PROPOSED PAYMENT DUE DATE. EXPLAIN WHY HE IS**
493 **WRONG.**

494 A. In the first place, Mr. Easton ignores the fact that Covad's business is constantly
495 evolving and we are always considering new products. Recently, Covad deployed

496 three new business-class VoIP services which will entail billings with which
497 Covad has no familiarity whatsoever. Mr. Easton ignores that fact. Equally
498 important, no amount of experience or expertise can overcome the fact that
499 Qwest's bills are deficient as I previously testified and, in some case, render
500 adequate reconciliation impossible because of those deficiencies. In this case, all
501 of Covad's experience and expertise is useless because of the Qwest-created
502 problems in our billings.

503 **Q. PLEASE STATE WHY QWEST'S POSITION ON DISCONTINUANCE OF**
504 **ORDERING PROCESSING IS UNREASONABLE.**

505 A. As I discussed in my Direct Testimony, Covad does not dispute Qwest's right to
506 discontinue processing orders, but only the time at which such discontinuance can
507 occur. In addition to what I explained in my Direct Testimony, it is critical to
508 understand that these provisions give to Qwest the power to destroy, if it so
509 chooses, Covad's business in the state of Utah. There is no way for Covad to
510 recover from any wide-spread or extended cessation of its ability to place orders or
511 from any kind of wide-spread disconnection of its existing customers. That kind
512 of disruption to a company's business can be fatal, and there is no amount of
513 money that can compensate Covad for that kind of disruption -- not that such
514 money would be available, given the limitations on liability in the agreement to be
515 approved that are not disputed between the parties. While Qwest has every right to
516 be concerned about receiving payment to which it is legitimately entitled, that
517 concern pales in comparison to Covad's concern about protecting the viability of
518 its business in the event of a billing dispute.

519 It is important to keep in mind that the interconnection agreement must
520 provide for safeguards that will allow Covad to work around situations that may
521 benefit Qwest at Covad's expense. These safeguards are becoming ever more
522 important as Qwest apparently is now attempting to modify its PAP obligations,
523 and eliminate the industry forum dedicated to improvements in the performance
524 measures (PIDs). Covad's proposed billing time frames provide that safeguard,
525 and should be approved by the Commission.

526 **Q. DOES THE SAME REASONING APPLY TO COVAD'S REQUEST FOR**
527 **AN EXTENSION OF THE TIME FRAMES FOR THE DISCONNECTION**
528 **OF SERVICES AND A DETERMINATION OF "REPEATED**
529 **DELINQUENCY" AS FOR DISCONTINUANCE OF ORDER**
530 **PROCESSING?**

531 A. Yes, it does. For all the reasons I described in my Direct Testimony (Qwest's
532 mixed motivations; the challenges of getting a billing dispute acknowledged) as
533 well as above (no concern about payment by Covad or any other CLECs; Qwest's
534 ability to destroy Covad's business; Qwest's chiseling away at the anti-backsliding
535 measures in place), Covad's proposed time frames for all of the billing provisions
536 at issue should be adopted.

537 **Q. DOES THIS CONCLUDE YOUR RESPONSE TESTIMONY?**

538 A. This concludes my Response Testimony, however, I anticipate filing any
539 additional testimony permitted by the Commission, and being presented for cross
540 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 RESPONSE TESTIMONY OF MEGAN DOBERNECK** was mailed by U.S. Mail, postage prepaid, and electronically mailed this 12th day of November, 2004 to the following:

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