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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

**TABLE OF CONTENTS**

I. IDENTIFICATION OF WITNESS.....1

II. PURPOSE OF TESTIMONY.....1

III. ARBITRATION ISSUES

    ISSUE 1: COPPER RETIREMENT.....1

    ISSUE 10: BILLING TIME FRAMES.....14

IV. CONCLUSION.....21

**EXHIBITS**

- KMD-13
- KMD-14
- KMD-15
- KMD-16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
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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.<sup>1</sup> 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

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<sup>1</sup> *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](http://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...***<sup>2</sup>  
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

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<sup>2</sup> 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.*<sup>3</sup>

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.<sup>4</sup>  
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.<sup>5</sup>

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

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<sup>3</sup> Id. ¶ 17 (emphasis added).

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

<sup>5</sup> 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 ...".<sup>6</sup>

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."<sup>7</sup>

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

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<sup>6</sup> Id., ¶ 9 (emphasis added).

<sup>7</sup> 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.<sup>8</sup> 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**

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<sup>8</sup> 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.”<sup>9</sup>

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.”<sup>10</sup> Thus, far from having any inherent advantage over copper,  
204           fiber actually appears to be the less attractive option for broadband purposes over

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<sup>9</sup> Merrill Lynch, “Telecom Equipment,” October 8, 2004.

<sup>10</sup> 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.<sup>11</sup> 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 loops<sup>12</sup> 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."<sup>13</sup> 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.

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<sup>11</sup> Stewart Direct, p. 3-6.

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

<sup>13</sup> 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.<sup>14</sup> 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.

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<sup>14</sup> 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.<sup>15</sup> 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**

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<sup>15</sup> 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”<sup>16</sup> as well as the “reasonably  
328 foreseeable impact of the planned changes.”<sup>17</sup>

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

---

<sup>16</sup> 47 C.F.R. § 51.327(a)(4).

<sup>17</sup> 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)...<sup>18</sup>

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."<sup>19</sup> 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

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<sup>18</sup> 47 C.F.R. § 51.327(a)(5).

<sup>19</sup> 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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