

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

KAREN A. STEWART

FOR

QWEST CORPORATION

(Issue 1: Retirement of Copper Facilities)

October 8, 2004

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION AND PURPOSE OF TESTIMONY	1
II. ISSUE 1: RETIREMENT OF COPPER FACILITIES (Sections 9.2.1.2.3, 9.2.1.2.3.1, and 9.2.1.2.3.2).....	3
III. CONCLUSION	15

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Karen A. Stewart. I am a Director in the Qwest Services Corporation
5 Regulatory Compliance Organization. My office is located at 421 SW Oak Street,
6 Portland, Oregon.

7 **Q. PLEASE REVIEW YOUR EDUCATION, WORK EXPERIENCE AND**
8 **PRESENT RESPONSIBILITIES.**

9 A. I received a Bachelor of Science degree in Business Administration from Portland State
10 University in 1980, and a Masters degree in Business Administration from the
11 University of Oregon in July, 1994. I have been employed by Qwest and its
12 predecessor companies since 1981. I have held a variety of positions in Qwest,
13 including sales, product management, regulatory affairs, issues management, and E911
14 project management and technical design.

15 I am currently a member of the Qwest Regulatory Compliance organization and have
16 represented Qwest in a number of 271 workshops related to Qwest's provisioning of
17 unbundled network elements ("UNEs").

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED?**

1 A. Yes. I have testified in the states of Arizona, Colorado, Idaho, Iowa, New Mexico,
2 Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah,
3 Washington, and Wyoming.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. My testimony addresses Issue 1, as set forth in Covad's Petition for Arbitration. In
6 particular, I focus on Qwest's and Covad's competing ICA language relating to the
7 FCC's ruling in the *Triennial Review Order* ("*TRO*")¹ confirming the right of
8 incumbent local exchange carriers ("ILECs") to retire the copper loops that are
9 currently used in their networks. Qwest and Covad have agreed that they will address
10 the other issues relating to the *TRO* (Issues 2 and 4) in their post-hearing briefs, and I
11 therefore do not address those issues in my testimony.

12 My testimony relating to copper retirement demonstrates that Covad is seeking to
13 impose obligations on Qwest that the FCC and the courts have rejected. I show that
14 Qwest's proposed ICA language relating to copper retirement more accurately
15 incorporates the rights and obligations established by FCC rules than Covad's
16 language and demonstrate that the Commission should adopt Qwest's language.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*,
18 FCC Rcd. 16978 ¶ 195 (2003), *aff'd in part and rev'd and vacated in part*, *U.S. Telecom*
Association v. FCC, 359 F.3d 554 (D.C. Cir. 2004).

1 **II. ISSUE 1: RETIREMENT OF COPPER FACILITIES**
2 **(Sections 9.2.1.2.3, 9.2.1.2.3.1, and 9.2.1.2.3.2).**

3 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE RELATING TO THE**
4 **RETIREMENT OF COPPER FACILITIES.**

5 A. As Qwest and other carriers have increasingly moved from copper to fiber facilities, it
6 has become a common practice of carriers to retire copper facilities in many
7 circumstances when fiber facilities are deployed. The ability to retire copper facilities
8 is important from a cost perspective, since, without that ability, carriers would be
9 required to incur the costs of maintaining two networks. If carriers were faced with that
10 duplicative cost, they would have reduced financial ability to deploy facilities to
11 replace copper and, therefore, reduced ability to deploy facilities that can support
12 advanced services. Accordingly, in the *TRO*, the FCC confirmed the right of ILECs to
13 retire copper loops and copper subloops that they are replacing with fiber facilities
14 without obtaining regulatory approval before doing so.² The only retirement conditions
15 that the FCC established are that the ILEC provide notice of its intent to retire specific
16 copper facilities so that, in some cases, CLECs can object to the FCC.

² *TRO* at ¶ 271.

1 The dispute relating to this issue arises from Covad's attempt to condition Qwest's
2 right to retire copper facilities on onerous conditions that the FCC did not adopt and
3 that, if adopted, would reduce Qwest's ability to replace copper facilities with more
4 advanced technologies. Specifically, in section 9.2.2.3.1 of its proposed ICA, Covad
5 attempts to condition the retirement of copper facilities on Qwest providing an
6 "alternative service" over a "compatible facility" to Covad or its end-user. This
7 alternative service would be required to not "degrade the service or increase the cost"
8 to Covad or its end-user. These ambiguous conditions are nowhere to be found in the
9 *TRO*.

10 Qwest's proposed language for sections 9.2.1.2.3.1 and 9.2.1.2.3.2, by contrast, is not
11 only consistent with the *TRO*, it also provides significant protections to Covad that
12 are not required by the *TRO*. Thus, in addition to including the retirement notice
13 requirements established by the *TRO*, Qwest's language establishes that Qwest (1)
14 will leave copper loops and subloops in service where it is technically feasible to do
15 so and (2) will coordinate with Covad the transition of new facilities "so that service
16 interruption is held to a minimum."

17 **Q. WHAT IS MEANT BY THE TERM "RETIRING" COPPER FACILITIES?**

18 A. As used in this context, "retiring" means to take facilities out of service. In some cases,
19 such as with aerial facilities, taking them out of service can mean actually removing
20 wire and cable from telephone poles. In other cases, facilities can be taken out of

1 service by being deactivated or deleted from network inventory systems but not
2 physically removed. In either case, the retirement of the facility eliminates the need to
3 maintain it.

4 **Q. UNDER THE FCC'S RULING CONFIRMING THE ILECS' RIGHT TO**
5 **RETIRE COPPER FACILITIES, IS IT NECESSARY FOR ILECS TO OBTAIN**
6 **REGULATORY APPROVAL BEFORE RETIRING COPPER LOOPS AND**
7 **SUBLOOPS?**

8 A. No. The *TRO* confirms the ILECs' right to retire copper loops and subloops that are
9 being replaced with fiber, which is a ruling that advances the FCC's objective of
10 increasing economic incentives for carriers to deploy fiber facilities.³ Specifically, in
11 paragraph 271 of the *TRO*, the FCC stated that it "decline[s] to prohibit incumbent
12 LECs from retiring copper loops or subloops that they have replaced with fiber." The
13 FCC explained that the retirement of copper loops being replaced with fiber is
14 permissible and that, in appropriate cases, ILECs must provide notice of such
15 retirements pursuant to the FCC's network modification disclosure requirements:
16 "[W]e reiterate that our section 251(c)(5) network modification disclosure requirements
17 . . . apply to the retirement of copper loops and copper subloops."⁴ In addition, in
18 granting ILECs the right to retire copper loops that are being replaced with fiber, the

³ *TRO* at ¶ 281.

⁴ *TRO* at ¶ 271.

1 FCC rejected CLEC proposals that would have required ILECs to obtain regulatory
2 approval before retiring retiring copper facilities.⁵

3 **Q. HAS THE FCC ESTABLISHED COPPER RETIREMENT RULES THAT ARE**
4 **SPECIFIC TO SITUATIONS IN WHICH AN ILEC IS REPLACING COPPER**
5 **LOOPS WITH FIBER-TO-THE-HOME ("FTTH") LOOPS?**

6 A. Yes. As noted above, in paragraph 271 of the *TRO*, the FCC established the general
7 rule that ILECs have a right to "retir[e][] copper loops or copper subloops that they
8 have replaced with fiber." After confirming this general rule, the FCC then established
9 notice requirements that are specific to the situation where an ILEC is replacing a
10 copper loop or subloop with a FTTH loop. Specifically, ILECs must provide notice of
11 such planned retirements to the FCC and, after receiving notice from the FCC of an
12 ILEC's intent to retire a copper facility, a CLEC is permitted to object to the retirement
13 in a filing with the FCC. Unless the FCC affirmatively allows the objection, it is
14 deemed denied 90 days after the FCC's issuance of the retirement notice.⁶
15 Significantly, the FCC made it clear that these unique notice requirements "apply only

⁵ *TRO* at ¶ 281

⁶ *TRO* at ¶ 282. The *TRO* does not preempt evaluations by state commissions of whether loop retirements comply with state law. *Id.* at ¶ 284.

1 to the retirement of copper loops and copper subloops, but not to the retirement of
2 copper feeder plant."⁷

3 **Q. DOES QWEST'S PROPOSED ICA LANGUAGE COMPLY WITH THESE FCC**
4 **RULINGS RELATING TO THE RETIREMENT OF COPPER FACILITIES?**

5 A. Yes. Qwest's language complies with and goes beyond the requirements in the *TRO*.
6 First, pursuant to section 9.1.15 of the ICA – a recently added section that the parties
7 have agreed upon – Qwest will provide notice of *all* planned copper retirements,
8 including notices relating to the retirement of copper feeder in addition to notices for
9 the retirement of copper loops and subloops. Second, under section 9.1.15, Qwest will
10 provide notice not just when it is replacing a copper facility with a FTTH loop, but
11 whenever a copper facility is being replaced with any fiber facility. Third, consistent
12 with the *TRO*, Qwest's proposed section 9.2.1.2.3 of the ICA establishes that in addition
13 to complying with the FCC's notice requirements, Qwest will comply with any
14 applicable state requirements. Fourth, while the FCC rule relating to notice of network
15 modifications permits an ILEC to provide notice by *either* filing a public notice with
16 the FCC *or* by providing notice through industry publications or an Internet site, Qwest
17 has committed in sections 9.1.15 and 9.2.1.2.3 to provide three different types of
18 notice: (1) through postings on its website; (2) by a public filings with the FCC; and (3)
19 through e-mail notices that Qwest will send to CLECs. Qwest provides the website

⁷ *TRO* at ¶ 281 & n.829.

1 notice on its "disclosure website" at <http://www.qwest.com/disclosures>. This
2 disclosure website has been used for other disclosures in recent years, and CLECS are
3 familiar with it location and use.

4 The information Qwest provides in its notices includes the state and wire center
5 where the facility is located, the specific location of the facility within the wire
6 center, the anticipated date that the facility will be retired, and a description of the
7 immediate effect of the retirement.

8 **Q. ALTHOUGH IT IS NOT NECESSARY FOR QWEST TO OBTAIN**
9 **REGULATORY APPROVAL BEFORE RETIRING COPPER FACILITIES,**
10 **DOES QWEST NEVERTHELESS TAKE INTO CONSIDERATION THE**
11 **NEEDS OF CLECS BEFORE RETIRING THESE FACILITIES?**

12 A. Yes. First, before deciding to retire copper loops that are serving Qwest and/or CLEC
13 end-users, Qwest routinely evaluates whether it is technically feasible to leave the
14 copper loops in place. Second, when it retires copper loops that a CLEC is using to
15 provide DSL service, Qwest gives the CLEC the option of continuing to provide DSL
16 service to the end-users through the use of CLEC-owned remote digital subscriber loop
17 access multiplexers ("DSLAMs"). The CLEC can use Qwest remote collocation space
18 to collocate a DSLAM and to continue providing DSL service to its customers. Third,
19 Qwest coordinates circuit changes with CLECs to ensure that transitions from copper
20 facilities to new fiber facilities are orderly and involve minimal disruptions of local

1 exchange service. Fourth, when Qwest replaces copper facilities with new copper
2 facilities, it jointly coordinates the transition to the new facilities with CLECs to
3 minimize service disruptions.

4 **Q. DOES THE *TRO* PROVIDE SUPPORT FOR THE CONDITIONS COVAD**
5 **SEEKS TO IMPOSE ON QWEST?**

6 A. No. In fact, the FCC considered and rejected this type of condition. Several CLECs
7 proposed that ILECs should not be permitted to retire any copper facilities without
8 taking affirmative steps to avoid effects on CLEC service.⁸ For example, one party to
9 the FCC's *TRO* proceeding proposed that ILECs should not be permitted to retire
10 copper loops unless they permit CLECs access to their broadband facilities. The FCC
11 rejected this and other proposals, concluding that its notice rules "serve as adequate
12 safeguards."⁹ There is no suggestion – and certainly no requirement – anywhere in the
13 *TRO* that an ILEC can retire a copper facility only if, as Covad proposes, it provides an
14 "alternative service" that neither "degrades service" nor "increases the cost" to Covad or
15 its customers.

16 **Q. IF QWEST WERE REQUIRED TO PROVIDE ALTERNATIVE SERVICE**
17 **OVER COMPATIBLE FACILITIES, AS COVAD PROPOSES, WHAT EFFECT**
18 **COULD THAT HAVE ON QWEST'S DECISIONS WHETHER TO DEPLOY**

⁸ *TRO* at ¶ 281 & n.822.

1 **THE FIBER FACILITIES THAT SUPPORT ADVANCED**
2 **TELECOMMUNICATION SERVICES?**

3 A. Imposing Covad's requirements would reduce Qwest's economic incentive and ability
4 to deploy fiber facilities, since compliance with those requirements would force Qwest
5 to consider all such costs in any investment decision concerning whether to deploy
6 fiber. If Qwest is faced with costs of providing an "alternative service" over
7 "compatible facilities" (as defined by Covad) each time it considers whether to replace
8 copper facilities with fiber, the economics of that decision will be changed in a way that
9 will make the deployment of fiber less likely. In addition, based on testimony Covad
10 has provided in other states, it is clear that Covad's proposal would prohibit Qwest from
11 recovering the costs of this undefined "alternative service" if the costs exceed the
12 amount Covad is currently paying Qwest to access copper loops. A requirement to
13 provide an alternative service for which Qwest may not recover its costs would create
14 an economic disincentive for deploying fiber that is clearly inconsistent with the Act's
15 objective, as set forth in section 706, of increasing the deployment of advanced
16 telecommunications facilities.

⁹ *TRO* at ¶ 281.

1 While the FCC stated in the *TRO* that it was not preempting state commissions from
2 evaluating whether an ILEC's policies relating to loop retirements comply with state
3 law, any state law requirements relating to this issue should be consistent with the
4 Act's objective of encouraging the deployment of advanced telecommunications
5 facilities.

6 **Q. PLEASE EXPLAIN FURTHER HOW QWEST'S ABILITY TO RETIRE**
7 **COPPER FACILITIES RELATES TO THE GOAL OF ENCOURAGING THE**
8 **DEPLOYMENT OF FACILITIES THAT SUPPORT BROADBAND SERVICES.**

9 A. In the *TRO*, the FCC identified the deployment of broadband services as one of its
10 paramount objectives, emphasizing that "[b]roadband deployment is a critical domestic
11 policy objective that transcends the realm of communications."¹⁰ Accordingly, the
12 FCC sought to formulate rules that would "help drive the enormous infrastructure
13 investment required to turn the broadband promise into a reality."¹¹

¹⁰ *TRO* at ¶ 212.

¹¹ *Id.*

1 An important component of the FCC's regulatory regime for promoting investment in
2 broadband is its ruling confirming the right of ILECs to retire copper loops. The
3 economic incentive of a carrier to deploy fiber loops increases if the carrier is
4 permitted to retire copper loops when it deploys fiber. Without a right to retire
5 copper, a carrier evaluating whether to deploy fiber would be faced with the
6 duplicative costs of maintaining *both* the copper and the fiber facilities. A critical
7 shortcoming of Covad's proposal is that it would require Qwest to either (1) not retire
8 copper loops and incur the resulting duplicative maintenance costs or (2) retire copper
9 loops but only after providing an "alternative service" for which full cost recovery
10 would not be allowed. Both of these options reduce Qwest's ability to deploy fiber
11 facilities and are inconsistent with the right of Qwest to recover its costs for providing
12 access to network elements to CLECs.

13 **Q. DO YOU HAVE ADDITIONAL CONCERNS RELATING TO COVAD'S**
14 **PROPOSAL FOR COPPER RETIREMENTS?**

15 A. Yes. Covad's proposal also is improper because, as discussed above, it would prevent
16 Qwest from recovering its costs and also is so ambiguous as to be incapable of clear
17 implementation. As I discussed above, Covad's proposal would require Qwest to
18 provide an "alternative service" at no increase in the cost that Covad is currently
19 incurring in Utah to provide DSL service to its customers. This artificial cap on what
20 Covad would be required to pay for an alternative service violates Qwest's right under
21 the Act to recover the costs it incurs to provide unbundled network elements and

1 interconnection services. Specifically, section 252(d)(1) of the Act *requires* that rates
2 for interconnection and network element charges be "just and reasonable" and based on
3 "the cost (determined without reference to a rate-of-return or other rate-based
4 proceeding) of providing the interconnection or network element."

5 Under Covad's proposal, Qwest would not be permitted to charge any monthly
6 recurring rate for the alternative service, since Covad is currently paying a
7 Commission-prescribed monthly rate of \$0.00 for access to the high frequency
8 portion of the unbundled loop. That zero rate would serve as a cap on Qwest's cost
9 recovery under Covad's proposal, regardless of the amount of the costs Qwest would
10 incur to provide an alternative service. This artificial cap would prevent Qwest from
11 recovering its costs in violation of the Act's cost recovery requirement.

12 **Q. WHAT CONCERNS DO YOU HAVE RELATING TO THE AMBIGUITY OF**
13 **COVAD'S PROPOSAL?**

14 A. It is fundamental that ICA terms and conditions, as with any contract, should be clearly
15 defined to apprise parties of their rights and obligations and to thereby avoid or
16 minimize disputes. Covad's "alternative service" proposal falls far short of this basic
17 requirement.

1 The most glaring contractual shortcoming of Covad's proposal is the absence of any
2 definition of the "alternative service" that Qwest would have to provide upon retiring
3 a copper loop. Nowhere in its proposal does Covad define this term, which is central
4 to its proposal. Under the plain language of the ICA, therefore, Qwest would have no
5 way of knowing what alternative service to provide or whether such a service would
6 meet the requirements of the ICA. Covad likewise fails to define the requirement that
7 the alternative service "not degrade the service or increase the costs to CLEC or
8 End-User Customers of CLEC." It does not propose, for example, any metrics to
9 determine whether the service has degraded. Nor does it offer any ICA language for
10 measuring whether the costs of service have increased.

11 In short, Covad's language fails to define with any clarity the parties' rights and
12 obligations and would inevitably lead to costly and time-consuming disputes in the
13 implementation and administration of the ICA.

14 **Q. PLEASE SUMMARIZE YOUR POSITION RELATING TO THIS ISSUE?**

15 A. Qwest has proposed language that complies fully with the FCC's requirements relating
16 to the retirement of copper facilities and also goes beyond those requirements to
17 minimize the possibility of service disruptions for Covad's customers. By contrast,
18 Covad has proposed onerous retirement conditions that are not in the *TRO*, that would
19 decrease Qwest's incentive to deploy fiber facilities, that would prevent Qwest from
20 recovering its costs, and that are not adequately defined so as to be susceptible to clear

1 implementation. Accordingly, the Commission should adopt Qwest's proposed ICA
2 language relating to this issue.

3 **III. CONCLUSION**

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 A. Yes.