

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)	
Arbitration of)	DOCKET NO. UT-043045
)	
COVAD COMMUNICATIONS)	
COMPANY,)	ORDER NO. 04
)	
With)	
)	ARBITRATOR'S REPORT AND
QWEST CORPORATION,)	DECISION
)	
Pursuant to 47 U.S.C. Section 252(b))	
and the Triennial Review Order)	
.....)	

- 1 **Synopsis.** *This Arbitration decision determines that:*
- (1) *Qwest’s language concerning notice of retirement of copper facilities is consistent with FCC rules, and no additional conditions are necessary for Qwest to pursue retirement of copper facilities;*
 - (2) *The Commission has no authority under Section 252 to arbitration issues other than obligations under Section 251, without the mutual agreement of the parties, and although the Commission has independent statutory authority to establish unbundled elements, the Commission cannot make findings of impairment on the facts presented in the record of this proceeding, finding in favor of Qwest’s language regarding definitions in Section 4.0 of the proposed agreement, as well as other provisions relating to availability of network elements on an unbundled basis;*
 - (3) *While the agreement should distinguish between network elements unbundled pursuant to Section 251(c)(3) of the Act and other network elements provided on an unbundled basis, the Triennial Review Order provides that network elements unbundled pursuant to Section 271 are not subject to commingling;*

(4) Certain Covad language proposals concerning regeneration are appropriate, while others are not, i.e., Qwest may not assess a separate charge for regeneration provided as a part of ILEC-to-CLEC cross connections or for connections between non-contiguous spaces of the same CLEC, but may charge for regeneration requested as a part of CLEC-to-CLEC cross-connections under the FCC Access No. 1 tariff; and

(5) The agreement should include standard industry time frames for payment due dates, as well as standard industry time frames for remedies upon failure to make payment.

I. BACKGROUND

A. Procedural History

2 On May 25, 2004, Covad Communications Company (Covad)¹ filed with the Washington Utilities and Transportation Commission (Commission) a request for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (the Act) and the Federal Communications Commission's (FCC) Triennial Review Order.² Covad served the petition on Qwest Corporation (Qwest). Qwest filed its Response on June 21, 2004. The Commission conducted a duly noticed arbitration hearing before Administrative Law Judge Ann E. Rendahl (Arbitrator) on August 26 and 27, 2004.

¹ Although the petition for arbitration was initially filed in the name of Dieca Communications, Inc., d/b/a Covad Communications Company, Covad later filed a motion to revise the petition to modify the name of the petitioner to properly reflect the entity in Washington seeking arbitration.

² *In the matter of 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, 96098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. August 21, 2003) [Hereinafter "Triennial Review Order"].

3 Covad is a Competitive Local Exchange Carriers (CLEC) that wishes to use local interconnection arrangements with Qwest to provide various services in Washington. Qwest is an incumbent local exchange company (ILEC) as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services in various local exchange areas in Washington. The Commission has jurisdiction over the petition and the parties pursuant to 47 U.S.C. §§ 251-252 and RCW 80.36.610. The parties have negotiated and agreed to the majority of terms that would be included in an interconnection agreement between them. Five issues remain to be resolved via this arbitration.

4 The Commission entered an Order on Arbitration Procedure and appointed an Arbitrator on June 4, 2004. The procedural order is consistent with the Commission's procedural rules governing arbitration proceedings under the Act, as codified, as well as the Commission's interpretive statements establishing guidelines for conducting such arbitrations.³

5 On June 29, 2004, the Arbitrator held a prehearing conference to establish a procedural schedule and to consider other matters that would facilitate an efficient arbitration process. On July 1, 2004, the Commission entered Order No. 2, a protective order, in this proceeding. On July 13, 2004, the Arbitrator entered Order No. 3, a prehearing conference order establishing a procedural schedule agreed to by the parties. The parties agreed to waive the statutory deadlines set forth in 47 U.S.C. § 252(b)(1) and (4) in this proceeding, but seek prompt consideration.

6 Covad and Qwest filed their respective direct testimonies and exhibits on July 15, 2004, and their respective responsive cases on August 3, 2004. The exhibit list

³ WAC 480-07-630; *see also Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996*, Docket No. UT-960269, In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996 (June 28, 1996).

attached to this Report as Appendix A reflects the admission of these documents at hearing, and the admission of various exhibits that were introduced on cross-examination during the arbitration hearing.

7 The Commission conducted its arbitration hearing on August 26 and 27, 2004, before Administrative Law Judge Ann E. Rendahl. The parties filed briefs on October 4, 2004.

8 On October 21, 2004, the parties filed with the Commission a letter describing agreements reached through additional negotiations, and attaching a revised issues list. The parties report in the letter that they have completely resolved Issue No. 4, relating to collocation, and Issue No. 6, relating to Qwest issuance of a single LSR. The parties also reported agreements on language resolving portions of Issue No. 3 relating to EEL Eligibility, Ratcheting and Resale Commingling, and a portion of Issue No. 8 relating to a section providing remedies for a repeatedly delinquent payment. *See October 21, 2004, letter, and Revised Issues List.*

B. Appearances.

9 Karen Shoresman Frame, Senior Counsel, and Andrew R. Newell, Gorsuch, Kirgis, LLP, Denver, Colorado, represented Covad at the arbitration hearing. Winslow Waxter and John M. Devaney, Denver, Colorado, and Adam L. Sherr, Seattle, Washington, represented Qwest at the arbitration hearing.

C. Unresolved Issues

10 Covad and Qwest have engaged in largely successful negotiations toward an interconnection agreement. Although Covad's Petition stated 8 potential issues, the number was reduced to 7 by the time the parties filed briefs, and to 5 by late-

October.⁴ The Arbitrator commends the parties for their substantial progress toward achieving a fully negotiated agreement. Many of the remaining disputes, in particular Issues 1, 2, and 3, result from the parties' general dispute over the meaning and effect of the FCC's Triennial Review Order, and the effect of the FCC's recent Interim Order.⁵

11 The remaining disputed issues are:

ISSUE ONE:⁶ Should Qwest be permitted to retire copper facilities serving Covad's end users in a way that causes them to lose service?

ISSUE TWO: Should the Parties' Agreement provide for access to network elements pursuant to Section 271 of the Telecommunications Act of 1996 and Washington law, as well as Section 251 of the Telecommunications Act of 1996?

ISSUE THREE: Should Qwest be required to follow the FCC's directives regarding the commingling of facilities and combination of UNEs established in the Triennial Review Order?⁷

ISSUE FIVE: Should Qwest provide regeneration between CLEC collocations, and can Qwest recover regeneration costs?

⁴ See October 21, 2004, letter and Revised Issues List.

⁵ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 01-313, CC Docket No. 01-338, FCC 04-179 (Rel. Aug. 20, 2004) [Interim Order].

⁶ The issue numbers correspond to those designated by the parties throughout this arbitration proceeding.

⁷ The parties have resolved all issues relating to ratcheting, resale commingling, and EEL eligibility in Issue 3. See October 21, 2004, letter .

ISSUE EIGHT: Payment Due Date and Timing of Remedies for Non-payment.

D. Resolution of Disputes and Contract Language Issues

- 12 This Arbitrator's Report is limited to the disputed issues presented for arbitration. *47 U.S.C. § 252(b)(4)*. The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator reserves the discretion to either adopt or disregard proposed contract language in making decisions. Each decision by the Arbitrator is qualified by discussion of the issue. Contract language adopted pursuant to arbitration remains subject to Commission approval. *47 U.S.C. § 252(e)*.
- 13 This Report is issued in compliance with the procedural requirements of the Act, and it resolves all issues that the parties submitted to the Commission for arbitration. The parties are directed to resolve all other existing issues consistent with the Arbitrator's decisions. If the parties are unable to submit a complete interconnection agreement due to an unresolved issue they must notify the Commission in writing prior to the time set for filing the Agreement. At the conclusion of this Report, the Arbitrator addresses procedures for review to be followed prior to entry of a Commission order approving an interconnection agreement between the parties.

II. MEMORANDUM

A. The Commission's Duty Under the Telecommunications Act of 1996

- 14 Two central goals of the Act are the nondiscriminatory treatment of carriers and the promotion of competition. The Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms

and conditions necessary for the ILECs to fulfill their duties under the Act. 47 U.S.C. § 251(c)(1). Each interconnection agreement must be submitted to the Commission for approval, whether the agreement was negotiated or arbitrated, in whole or in part. 47 U.S.C. § 252(d).

B. Standards for Arbitration

15 The Act provides that in arbitrating interconnection agreements, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

C. Background

16 Covad is a competitive local exchange carrier (CLEC) that provides DSL telecommunications services in Washington and other states. Qwest is an incumbent provider of local exchange services in Washington, and in thirteen other states. Qwest is a “telecommunications company” and a “public service company,” as those terms are defined in RCW 80.04.010, and an Incumbent Local Exchange Carrier (ILEC) under 47 U.S.C. § 251(h).

D. Issues, Discussion, And Decisions

1. EFFECT OF INTERIM ORDER:

17 Although the FCC’s Interim Order and its effect were not identified by Covad or Qwest as an issue in the arbitration, the FCC issued its order on August 20, 2004,

just days prior to the hearing in this arbitration. The Arbitrator asked the parties to address in brief the effect of the Interim Order on the arbitration proceeding.

18 In the Interim Order, the FCC required ILECs to continue to provide unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions under interconnection agreements while the FCC considered how to modify its rules following the decision in *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*). *Interim Order*, ¶¶ 1, 16. The FCC ordered that the rates, terms and conditions of interconnection agreements remain in effect until the effective date of final unbundling rules adopted by the FCC or six months after the Federal Register publication of the Order. *Id.* The FCC provided certain exceptions to its standstill order, namely, voluntarily negotiated agreements, an intervening FCC order affecting specific unbundling requirements, or a state public utilities commission decision increasing rates. *Id.*

19 Qwest asserts that the Interim Order precludes this Commission from adopting any of Covad's proposals in the arbitration relating to access to elements addressed in the Interim Order that differ from the terms and conditions in the parties current interconnection agreement. *Qwest Brief at 4*. Qwest refers specifically to Covad's commingling proposals and asserts that such proposals, if adopted, would alter the status quo. *Id. at 4-5*. Qwest asserts further that Covad's unbundling proposals set forth in Issue 2 would expand Qwest's unbundling obligations beyond what is required under the Triennial Review Order. *Id.* Qwest requests that the Commission reject Covad's requests while the FCC is pursuing the rulemaking, and wait to determine what the FCC determines before imposing the unbundling obligations that Covad requests. *Id. at 6*.

20 Covad does not address the effect of the Interim Order in its brief.

- 21 **Discussion and Decision.** The intent of the FCC’s Interim Order is to preserve the status quo while the FCC develops final unbundling rules following the *USTA II* decision. The Order appears to preclude carriers, and state commissions from, arbitrating or approving arbitrated new interconnection agreements that would expand contractual rights under existing agreements, for at least six months or until the FCC issues final unbundling rules. *Interim Order*, ¶ 23.
- 22 The Interim Order allows carriers to pursue change of law proceedings to address the changes under the Triennial Review Order and *USTA II*. *Id.* The Interim Order provides that any “change in law proceedings that presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport ... approved or deemed approved by the relevant state commission” not take effect until six months after the Federal Register publication of the Interim Order or after the effective date of final unbundling rules. *Id.*
- 23 The Commission does not consider the Interim Order to preclude carriers from pursuing arbitration proceedings under Section 252 of the Act, nor to preclude state commissions from considering arbitration petitions. The Interim Order would preclude state commissions from approving or adopting arbitrated agreements that are contrary to the Interim Order. Any decisions in this Arbitrator’s Report and Decision, however, are not effective until final review by the Commission, which is likely to occur after the FCC issues or adopts its final unbundling rules. If parties believe that any decisions in this Arbitrator’s Report are contrary to the status quo requirements of the Interim Order, the parties can address the issue in petitions for review before the full Commission. The Commission will address the matters at that time, and will hopefully be able to look to new FCC rules for guidance on the issues.

2. ISSUE ONE: Should Qwest be permitted to retire copper facilities serving Covad's end users in a way that causes them to lose service?

- 24 This issue addresses Qwest's ability pursuant to the FCC's Triennial Review Order to retire copper facilities and replace them with facilities using fiber or other technologies. Covad is concerned that Qwest will retire copper facilities that Covad uses to serve its xDSL customers, causing degradation or discontinuance of service.
- 25 Covad agrees that the Triennial Review Order provides that ILECs such as Qwest may retire copper loops, subloops, and copper feeder, and replace them with fiber. Covad proposes language to ensure that Qwest adheres to FCC rules governing notification of copper retirement, that Covad will not be denied access to facilities if Qwest replaces copper feeder with fiber, and to require that Qwest provide an alternative service to Covad if the copper retirement or replacement results in discontinuance of CLEC end user customers. *Covad Brief at 4.*
- 26 Covad and Qwest agree that the FCC has established a notification process for the retirement of copper loops when the loops are replaced with fiber to the home loops, or FTTH. *Id.*; see also 47 C.F.R. § 51.325-.333. Covad asserts that Qwest's ability to retire copper is limited by these rules and provisions of the Triennial Review Order. *Covad Brief at 5.* Specifically, Covad asserts that if the retirement would deny access to facilities required by the FCC's rules, the ILEC may not rely on the copper retirement provisions of the Triennial Review Order. *Id.* Covad argues that the FCC will deem all oppositions to copper retirement as denied within 90 days of public notice of the retirement "unless the copper retirement scenario suggest that competitors will be denied access to the loop facilities required under our rules." *Id.*, citing *Triennial Review Order*, ¶ 282. Covad also argues that if the FCC rules on an objection within the 90-day notice period, the ILEC may not retire the copper facilities at issue. *Id.*, citing to 47 C.F.R. § 51.333(f).

- 27 Since filing briefs in this proceeding, Covad and Qwest have agreed to language in Sections 9.1.15 and 9.2.1.2.3 of the proposed agreement identifying how Qwest will provide notice of a planned retirement of copper facilities, and how Qwest may proceed with copper retirement under the FCC's rules. *See Revised Issues List at 1, 3-4.* Covad proposes some additional language for Section 9.1.15 that identifies specific information Qwest must include in the e-mail notification to CLECs, such as the city, state, and wire center, planned retirement date, and a listing of all impacted directory assistance and CLEC customer impacted addresses. *Id. at 1-2.*
- 28 Covad also proposes language for Sections 9.2.1.2.3.1 and 9.2.1.2.3.2 in contrast to Qwest language for these sections requiring that Qwest provide alternative arrangements when the retirement of copper facilities results in discontinuation of service to Covad end user customers. *Id. at 4-6.*
- 29 Covad argues that the Triennial Review Order does not preempt the ability of state commissions to ensure that copper retirement complies with state requirements concerning such retirement. *Covad Brief at 6.* Covad argues that Washington law, under RCW 80.36.300, identifies state policies for providing telecommunications service which preserve non-discriminatory access to loop facilities. *Id. at 6-7.* Covad asserts that the Commission has authority to further the statutory goals by adopting Covad's proposals for the agreement. *Id.*
- 30 On another issue, Covad asserts that it is very concerned with retirement of copper feeder facilities with fiber, noting that retirement of copper feeder is not covered by the FCC's notification rules. *Covad Brief at 10.* Covad notes that ILECs replace copper feeder with fiber feeder because of problems with maintaining aging copper feeder. *Id. at 9.* Covad proposes language in Sections 9.1.15.1 and 9.1.15.1.1 of the proposed agreement to require that Qwest follow network modification requirements when retiring copper feeder facilities and that Qwest provide alternative arrangements when the retirement of copper

feeder will discontinue service to Covad's end user customers. *See Revised Issues List at 2-3.*

- 31 Qwest notes that it has agreed to include in Sections 9.1.15 and Section 9.2.1.2.3 language relating not just to notice for copper loops and subloops, but copper feeder facilities as well. *Qwest Brief at 6.* Qwest identifies the remaining issues as whether Qwest must provide an alternative service to Covad that does not degrade the service or increase cost to Covad, and whether the e-mail notice Qwest provides must include the specific information Covad is requesting. *Id. at 7; see also October 21, 2004, letter at 2.*
- 32 Qwest argues that the Triennial Review Order confirmed the right of ILECs to retire copper facilities without obtaining regulatory approval beforehand. *Qwest Brief at 7.* Qwest argues that its proposed language in Sections 9.2.1.2.3 and 9.2.1.2.3.1 of the agreement correctly implement the Triennial Review Order. *Id. at 8.* Qwest asserts that Covad's proposals requiring that Qwest provide an alternative service are not consistent with the Triennial Review Order, and that the FCC specifically rejected similar proposals. *Id. at 8-9.* Qwest asserts that the Triennial Review Order did not include such conditions, and that the proposal conflicts with the FCC's obligation to promote deployment of facilities that support broadband services. *Id. at 9.*
- 33 Qwest disputes Covad's claim that allowing Qwest to retire copper facilities will cause substantial harm to its customers, asserting that Covad's witness Ms. Doberneck testified that only a handful of customers in Washington are likely to be affected by the retirement of copper loops. *Id. at 11.* Qwest argues that Covad could continue to provide service to its customers by deploying remote DSLAMs or by purchasing other DSL-related services from Qwest. *Id.*
- 34 Qwest argues that Covad's proposal for an alternative service is not properly defined in the agreement, such that Qwest would have no way of knowing what

type of service it must provide. *Id. at 12.* In addition, Qwest asserts that it is not clear from Covad's language how Qwest or Covad will determine if service has been degraded. *Id.* Finally, Qwest argues that Covad's proposal requires the alternative service to be provided at no additional cost, preventing Qwest from recovering its costs in violation of Section 252(d)(1) of the Act. *Id.*

35 **Discussion and Decision.** Qwest and Covad have narrowed the disputes concerning copper retirement to the following: (1) Whether additional notice requirements are necessary in Section 9.1.15; and (2) Whether Qwest must provide an alternative service to Covad at no additional cost for retirement of copper feeder in Sections 9.1.15.1, and 9.1.15.1.1, and copper loops and subloops in Sections 9.2.1.2.3.1.

36 FCC rules provide the minimum requirements for public notice of planned network changes, including the location of the facilities. *See 47 C.F.R. § 51.327(a).* Qwest has agreed in Sections 9.1.15 and 9.2.1.2.3 to provide specific information in an e-mail notification to Covad when it plans to retire copper loops, subloops, and copper feeder, "in accordance with FCC rules." While it may reduce later conflict between the parties to list in Sections 9.1.15 and 9.2.1.2.3 the information that would assist CLECs in identifying how the planned copper retirement will specifically affect the CLEC, the list of information identified by Covad in its proposed language for Section 9.1.15 may be burdensome to Qwest. Given that Qwest commits to providing the information required by FCC rules, such as the location of the facilities to be retired, the issue is resolved in favor of Qwest's language for Section 9.1.15 and 9.2.1.2.3.

37 As Qwest notes, the FCC rejected proposals to place specific conditions on an ILEC's right to retire copper facilities. *Triennial Review Order, ¶ 281, n.822.* The only limitation the FCC placed on an ILEC's right to retire copper facilities is the requirement to provide public notice at least 91 days prior to the planned retirement to allow time for CLECs to file objections with the FCC. *Id., ¶¶ 282-*

283; 47 C.F.R. § 51.333(b)(ii). If the FCC does not act, the objections are deemed denied, and the planned retirement can go forward.

38 Covad's proposal requiring Qwest to provide an alternative arrangement at no additional cost to Covad is not consistent with the requirements of the Triennial Review Order. Should Qwest provide notice of a planned retirement of copper facilities that would degrade or discontinue service to Covad's end user customers, Covad's recourse under FCC rules and its agreement with Qwest is to file an objection with the FCC. Covad may propose in its objection the proposal for an alternative arrangement at no additional cost, on a case-by-case basis. This issue is resolved in favor of Qwest's proposed language.

3. ISSUE TWO: Should the Parties' Agreement provide for access to network elements pursuant to Section 271 of the Telecommunications Act of 1996 and Washington law, as well as Section 251 of the Telecommunications Act of 1996?

39 The parties agreed prior to hearing that the disputes in Issue No. 2 are legal issues concerning the scope of Qwest's obligations to provide certain network elements, including certain unbundled loops and dedicated transport following the FCC's Triennial Review Order. The disputes address a number of sections in the proposed agreement, including definitions in Section 4 of "Unbundled Network Element" and "251(c)(3) UNE," as well as numerous provisions in Section 9 addressing the specific network elements available on an unbundled basis, whether the network elements are available pursuant to Section 271 of the Act or state law, and the pricing for network elements available under Section 271. *See Revised Issues List at 6-28.*

40 In the Revised Issues List, Covad proposes a definition of "Unbundled Network Element" that includes network elements unbundled under Section 271 and state law. *Id. at 6-7.* Covad asserts that Qwest continues to have obligations to

provide network elements on an unbundled basis pursuant to Section 271 and state law and that to label them differently would create confusion. *Id.*

However, Covad also asserts that it is necessary to distinguish between the types of UNEs available or there will be confusion when parties refer to the term unbundled network elements. *Id. at 7.*

41 Covad argues that the FCC clearly established in the Triennial Review Order that Section 271 of the Act creates independent access obligations for Qwest and other BOCs. *Covad Brief at 11-12, citing to Triennial Review Order, ¶¶ 653, 655.* Covad asserts that the FCC also determined that these independent unbundling obligations apply to loop, transport, switching and signaling network elements subject to Checklist items 4, 5, 6, and 10. *Covad Brief at 12, citing to Triennial Review Order, ¶¶ 654.*

42 Covad asserts, contrary to Qwest's arguments, that the Commission has authority to order in an arbitration proceeding that parties adopt terms relating to the unbundling requirements of Section 271. *Covad Brief at 12.* Relying on a decision from the Maine Public Utilities Commission, Covad argues that state commissions may arbitrate Section 271 obligations and pricing in the context of section 252 arbitrations. *Id.* Covad also relies upon the Commission's decisions in its 1995 Interconnection Order,⁸ and RCW 80.36.140, as support for its arguments that the Commission has authority to arbitrate Section 271 obligations. *Id. at 13-14.* Covad argues that the FCC has not preempted state action in this area and asserts that Commission enforcement of the Section 271 checklist obligations would not prevent or impair implementation of the Act. *Id. at 14.* Covad argues that the Act preserves a role for the states under Section 271, requiring state to consult with the FCC concerning Section 271 compliance. *Id. at 15.*

⁸ *WUTC v. U S West Communications, Inc.*, Fourth Supplemental Order Rejecting Tariff Filing and Ordering Refiling; Granting Complaints, In Part, WUTC Docket No. UT-941614 (Oct. 30, 1995) [Interconnection Order].

- 43 In further support of its position that states may arbitration Section 271 obligations, Covad relies upon language in the Triennial Review Order concerning the pricing of Section 271 network elements. *Id. at 15-16*. Specifically, Covad argues that states have authority and responsibility under Section 252(c)(2) for establishing rates for interconnection agreements. *Id.* Covad argues that the FCC made clear that a different pricing standard applied to Section 271 network elements than network elements provided under Section 251, implying that the states would establish pricing for such elements. *Id. at 16*.
- 44 Covad argues that this Commission has applied and adopted TELRIC pricing as the appropriate cost methodology for non-competitive services. *Id. at 16-17*, citing *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination and Resale, Eighth Supplemental Order, Docket No. UT-960369 ¶38 (April 16, 1998)*. Covad notes that the FCC does not forbid the application of TELRIC pricing to Section 271 network elements and proposes that the Commission apply TELRIC pricing for such elements until the Commission establishes pricing for section 271 network elements. *Id. at 17-18*.
- 45 Covad also argues that the Commission has independent, state law authority to require access to dedicated transport and loops, such as high capacity loops, line splitting arrangements, line splitting arrangements and subloop arrangements. *Id. at 19*. Covad cites to the policy declarations in RCW 80.36.300, provisions in RCW 80.36.140, the Commission's decision in the Interconnection Order, and the state Supreme Court's decision in *In re Electric Lightwave*, 869 P.2d 1045 (1994), as supporting the Commission's independent authority to require unbundling of network elements. *Id. at 19-20*.
- 46 Covad asserts that the FCC has acknowledged that state authority in the filed of telecommunications regulation is not preempted, noting that Section 252(e)(3) preserves the states' authority to establish or enforce requirements of state law in interconnection agreements and to establish unbundling requirements. *Id. at 20*,

citing Triennial Review Order, ¶¶ 191, 192. Covad argues that the FCC has not established a blanket preemption of all state laws and rules that may be inconsistent with federal laws and rules, but establishes a process for determining whether there is an inconsistency that requires preemption. *Id. at 21-25.*

47 Qwest proposes language to allow Covad access to network elements that ILECs must unbundle under Section 251, and to make clear that Qwest is not required to provide access in an interconnection agreement to elements for which there is no Section 251 obligation. *Qwest Brief at 18.* Qwest's language reflects its position that an interconnection agreement should recognize the limits of unbundling requirements under Section 251, and that network elements may be available on an unbundled basis to CLECs in other ways, such as through commercial agreements. *Id. at 18-19.*

48 Qwest argues that Covad is seeking to require that Qwest provide access to network elements pursuant to Section 271 and state law that the FCC has determined are no longer required to be unbundled under Section 251 of the Act. *Id. at 19.* Qwest asserts that Covad's proposed language is contrary to the FCC's non-impairment findings in the Triennial Review Order and the D.C. Circuits vacatur in USTA II. *Id.*

49 Qwest argues that state commissions have no authority to impose binding unbundling obligations under Section 271. *Id. at 27.* Qwest argues that Section 271(d)(3) confers authority only on the FCC, not states, to determine whether BOCs have complied with the provisions of Section 271. *Id.* Qwest argues that states have only a consulting role in the determination of compliance. *Id.* Qwest further argues that the rates terms and conditions of unbundling obligations under Section 271 are determined under Sections 201 and 202 of the Act, which provide no role for state commissions. *Id.*

- 50 Qwest argues that state administrative agencies have no role in the administration of federal law, unless authorized by Congress. *Id. at 28*. Qwest argues that states have no authority to impose Section 271 obligations in arbitration as Section 252, which governs the arbitration of interconnection agreements, limits state authority to imposing terms and conditions relating to ILEC obligations under Section 251. *Id. at 28-29*. Qwest notes that state commissions may arbitrate disputes regarding matter other than the duties imposed by Section 251 if both parties mutually agree to those matters in their negotiations. *Id. at 28, n. 72, citing CoServe Limited Liability Corp. v. Southwestern Bell Tel. Co., 350 F.3d 482 (5th Cir. 2003)*. Qwest asserts that it has not agreed to discuss Section 271 obligations in this arbitration. *Id.*
- 51 Qwest argues that Covad's proposed language concerning TELRIC pricing of Section 271 unbundled network elements is likewise based on a lack of state authority. *Id. at 29-31*. Qwest asserts that the FCC ruled in the Triennial Review Order that it would determine the appropriate rates that BOCs may charge for Section 271 elements. *Id. at 30*. Qwest also notes that the FCC asserted in its opposition to petitions for certiorari filed with the Supreme Court in connection with the USTA II decision, that Section 252(c)(2) makes no mention of a state role in setting rates for network elements provided pursuant to Section 271. *Id. at 30*.
- 52 Concerning state authority to establish access to unbundled network elements, Qwest asserts that only the FCC has authority to determine what network elements should be made available pursuant to Section 251(c)(3). *Id. at 20-22*. Qwest asserts that the savings clause of Section 251(d)(3) preserves independent state authority only to the extent it is consistent with the Act. *Id. at 22*. Thus, Qwest argues that the savings clause does not preserve state commission authority to adopt or enforce state law unbundling requirements that have been rejected by the FCC or vacated in USTA II. *Id. at 23*.

53 Qwest further argues that even if the Commission had the authority to establish unbundling requirements, it could not do so until the FCC defines the impairment standard to make determinations of what network elements must be unbundled. *Id. at 25*. Qwest further argues that even if the Commission were to apply the impairment standard, the Commission could not meaningfully do so. *Id.*

54 **Discussion and Decision.** As Qwest asserts above, and Covad appears to agree, network elements unbundled pursuant to Section 251 should be distinguished from those network elements that are available on an unbundled basis pursuant to Section 271 of the Act, other provisions of the Act, or state law. The network elements may be the same, *i.e.*, certain types of loops or transport, but the foundation for their availability on an unbundled basis is different. For purposes of defining terms in the proposed agreement, unbundled network element should refer to those elements unbundled pursuant to Section 251. Other types of unbundled network elements, such as Section 271 unbundled elements, should be individually labeled or defined in the agreement. The dispute over the definition of Unbundled Network Element is resolved in Qwest's favor, in part, but also in Covad's favor, in part, in that the parties should include definitions of Section 271 and other types of unbundled network elements in the agreement.

55 The FCC has determined that there is an independent unbundling obligation under Section 271, aside from its determinations of impairment under Section 251(c)(3). *Triennial Review Order*, ¶¶ 653-655. It appears reasonable for states to rely on the current law, *i.e.*, the FCC's determination concerning access to unbundled network elements under Section 271. By doing so, states are not making an independent determination on impairment or seeking to enforce Section 271 of the Act. As Qwest argues, however, state commission arbitration of interconnection agreements under Section 252 is limited to those matters identified in Section 252(c), specifically "ensuring that such resolution and condition meet the requirements of section 251, including the regulations

prescribed by the Commission pursuant to section 251.” *See* 47 U.S.C. § 252(c)(1). Unless the parties have mutually agreed to discuss matters other than requirements under Section 251, the state cannot impose conditions other than those required by Section 252(c). The issue of whether network elements are available under the independent unbundling obligations of Section 271 can be imposed in this arbitration is resolved in Qwest’s favor.

56 In addition, the issue of forbearance of Section 271 unbundling obligations is pending before the FCC. A number of ILECs filed with the FCC petitions seeking forbearance under 47 U.S.C. § 160(c), requesting that the FCC forbear from enforcing the independent unbundling requirements of Section 271.⁹ On October 27, 2004, the FCC released its Broadband Section 271 Forbearance Order, granting the petitions of Verizon and BellSouth, and granting in part the petitions of SBC and Qwest, and agreed to forbearance from enforcement of the BOCs’ independent unbundling obligations under Section 271 for fiber-to-the-home (FTTH) loops, fiber-to-the-curb (FTTC) loops, the packetized functionality of hybrid loops, and packet switching.¹⁰

57 The statutory period for considering the broader forbearance petitions filed by SBC and Qwest ends on November 5, 2004, and December 17, 2004, respectively.¹¹ Thus, the FCC is likely to rule on the availability of unbundling

⁹ In the Matters of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications, Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc., Petition for Forbearance Under 47 U.S.C. § 160(c), Memorandum Opinion and Order, WC Docket Nos. 01-338, 03-235, 03-260, 04-48, FCC 04-254 (Rel. Oct. 27, 2004) ¶ 1 [Broadband Section 271 Forbearance Order].

¹⁰ *Id.* The Verizon and SBC petitions were limited to forbearance of the section 271 unbundling obligations concerning broadband elements removed from unbundling under Section 251, while Qwest and SBC requested broader relief, asking the FCC to forbear from applying the Section 271 unbundling obligations to all network elements removed from unbundling requirements under Section 251. *Id.*, ¶¶ 2, 12.

¹¹ *Id.*, ¶ 12, n.48.

obligations under Section 271 for all network elements at issue in this arbitration proceeding prior to the Commission's consideration of any petitions for review.

58 Given the decision above concerning arbitration of Section 271 obligations, there is no need to reach the issue of pricing for Section 271 unbundled network elements. The dispute as to pricing of Section 271 unbundled network elements is resolved in favor of Qwest.

59 As Covad asserts, the Commission has independent statutory authority. The Commission was justified in relying on that authority in its Interconnection Order prior to 1996 Act. Since the Act, however, states must also take into consideration the FCC's findings and rules, and may only act in a way that is not inconsistent with federal law. In addition, this Commission cannot find independent unbundling obligations pursuant to state law without engaging in the necessary impairment analysis, and determining whether any findings are inconsistent with FCC's findings.

60 Covad has not filed a petition requesting that the Commission conduct such a specific independent unbundling analysis, nor submitted the kind of evidence necessary for the Commission to make such determinations for the state of Washington. The dispute over language in the proposed agreement requiring unbundling pursuant to state law is resolved in favor of Qwest on the basis that the Commission has not engaged in the necessary impairment analysis, *not* on the basis that the Commission lacks authority to require that certain network elements be made available on an unbundled basis. The Commission's statutes certainly allow the Commission to make those determinations.

4. ISSUE THREE: Should Qwest be required to follow the FCC's directives regarding the commingling of facilities and combination of UNEs established in the Triennial Review Order?

61 This dispute concerns whether unbundled network elements provided pursuant to Section 251(c)(3) of the Act may be commingled or combined with network elements provided pursuant to Section 271 of the Act. The FCC defines commingling as:

The connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services.

Triennial Review Order, ¶ 579. The parties both refer to this definition in their briefs but dispute the definition of commingling in the proposed agreement. *See Covad Brief at 26; Qwest Brief at 33; see also Revised Issues List at 28-30.* At issue is whether Section 271 elements are considered a wholesale service subject to commingling.

62 Covad asserts that Section 271 network elements should be treated like any other telecommunications service not purchased under Section 251(c)(3), and thus can be commingled with any other wholesale service. *Covad Brief at 25-26.* Covad argues that the Triennial Review Order originally contained language referring to Section 271 unbundled elements in paragraph 584, which discussed ILECs' resale commingling obligations. *Id. at 26.* Covad asserts that deletion of the reference to Section 271 elements from paragraph 584 in the FCC's Errata did not exclude Section 271 elements from eligibility for commingling. *Id.* Covad argues that paragraph 579 of the Triennial Review Order was not modified in the Errata, and that if the FCC had intended to exclude Section 271 elements from

consideration from commingling, it would have modified the language in paragraph 579. *Id.* Covad asserts that as an unbundled network element, a Section 271 element is a wholesale service that may be combined or commingled with Section 251 unbundled network elements. *Id. at 26-27.*

63 Covad proposes a definition in Section 4.0 of the agreement to distinguish unbundled network elements obtained pursuant to Section 251(c)(3) from unbundled network elements obtained in other ways, i.e., pursuant to Section 271. *Id. at 27.* Covad asserts that the separate definition is necessary, given other language in the proposed agreement referring to “UNEs to the extent required under Section 251(c)(3) of the Act and other Applicable Laws.” *Id. at 27-28.* Covad further argues that the Colorado Public Utilities Commission found in Covad’s favor on this issue in arbitration proceedings in that state. *Id. at 28.*

64 Qwest argues that the provisions of the Interim Order preclude this Commission from requiring commingling with Section 271 elements, as the current interconnection agreement between Qwest and Covad does not require Qwest to perform any commingling. *Qwest Brief at 33.* Qwest requests that the Commission order the parties to include language in the agreement that the commingling provisions do not apply to commingling of enterprise market loops, dedicated transport, or switching. *Id. at 33-34.*

65 Qwest objects to Covad’s proposed definition of “Section 251(c)(3) UNE” as well as the definition of “commingling,” arguing that Covad seeks to impermissibly include network elements that Qwest provides pursuant to Section 271. *Id. at 34.* Qwest reiterates its argument that states may not arbitrate under Section 252 any terms or conditions relating to network elements pursuant to Section 271. *Id.*

66 Qwest also argues that Covad’s proposal conflicts with the FCC’s and D.C. Circuits ruling that ILECs are not required to combine Section 271 elements with UNEs. *Id. at 34-35.* Qwest asserts that the FCC determined in the Triennial

Review Order that checklist items 4, 5, 6, and 10 of Section 271(c)(2)(B), the checklist items that impose an independent unbundling obligation, do not include a cross-reference to the combination requirement of Section 251(c)(3). *Id. at 35; citing Triennial Review Order, ¶¶ 654, 656, n.1990.* Qwest asserts that the D.C. Circuit upheld the FCC's limitation on combining in USTA II. *Id. at 36.* Qwest objects to Covad's interpretation of paragraph 579 of the Triennial Review Order as reading out of the Order the FCC's ruling that BOCs are not required to combine Section 271 elements. *Id. at 36-37.*

67 **Discussion and Decision.** Consistent with the resolution in Issue No. 2 concerning the definition of Unbundled Network Elements, network elements unbundled pursuant to Section 251 should be distinguished from those network elements that are available on an unbundled basis pursuant to Section 271 of the Act, other provisions of the Act, or state law. The dispute over the definition of "Section 251(c)(3) UNE" is resolved in favor of Covad.

68 On the other hand, the dispute over whether Section 271 elements are wholesale services subject to commingling is resolved in favor of Qwest. The FCC clearly stated in the Triennial Review Order that Section 271 elements were not subject to the commingling requirement of Section 251(c)(3). *Triennial Review Order, ¶¶ 654, 655, n.1990.* Although it appears reasonable, as Covad asserts, that Section 271 elements are wholesale services, the FCC was clear in its Order that Section 271 elements are not subject to commingling.

5. ISSUE FIVE: Should Qwest provide regeneration between CLEC collocations, and can Qwest recover regeneration costs for such regeneration?

69 The dispute between Covad and Qwest concerns whether Covad may order regeneration of a CLEC-to-CLEC cross connection on the same terms as it orders regeneration for any other interconnection product, *i.e.*, at no charge. *Covad Brief at 28-33.* Qwest asserts that when a CLEC requests regeneration as part of a

CLEC-to-CLEC cross connection, regeneration is a finished product, not a wholesale product, and must be ordered off the FCC access tariff No. 1, as FCC rules do not require Qwest to provision the cross connection. *Qwest Brief at 40-41.*

70 Covad proposes language that would extend Qwest's policies regarding regeneration of signals between Covad and Qwest's networks to regeneration of signals between Covad's physical collocations and those of other collocated CLECs within a Qwest premises. *Covad Petition at 24.* Specifically, Covad proposes modifying Section 8.2.1.23.1.4, creating a new Section 8.3.1.9, and deleting Section 9.1.10, to identify all situations where regeneration is required and specify that Qwest will not charge CLECs for such regeneration. *Id. at 22; Revised Issued List at 31-35.*

71 Covad asserts that FCC rules governing cross connections require Qwest to provide regeneration at no charge. *Covad Brief at 29.* Specifically, Covad asserts that 47 C.F.R. §51.323(h) states:

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

Covad argues that, under this rule, Qwest may either permit CLECs to make their own cross connection arrangements or must provide the cross connection upon request. *Id.*

- 72 Covad asserts that it is often impossible for CLECs to provide regeneration themselves, and that limiting placement of regeneration to a CLECs' own collocated facilities would often result in inefficient engineering. *Id.* Covad argues that Qwest must provide the cross-connection using the medium requested by the CLEC and must therefore include all equipment necessary to make the medium work, *i.e.*, regeneration. *Id.* at 30.
- 73 Covad argues that Qwest has changed its position on regeneration, such that CLEC-to-CLEC cross connection is ordered as a wholesale product, but when regeneration is required, Qwest now offers regeneration as a retail product available under its FCC access tariff. *Id.* Covad argues that the Commission required Qwest in the Section 271 proceedings to include costs for regeneration for CLEC to ILEC in its common costs and not to charge for the product separately. *Id.* at 31, citing to *Fifteenth Supplemental Order* at 27. Covad argues that Qwest's prior statements concerning regeneration for CLEC-to-CLEC cross connections indicate that Qwest will provide regeneration, and dispute Qwest's arguments that its COCC-X product does not include regeneration. *Id.* at 32; see also *Ex. 4 at 4-6.* .
- 74 Qwest argues that the FCC's Fourth Advanced Services Order,¹² and FCC rules in 47 C.F.R. §51.323(h) require ILECs to provide CLEC-to-CLEC connections under certain circumstances, including if the ILEC does not permit CLECs to provide the connection for themselves. *Qwest Brief at 40-41.* Qwest argues that it allows CLECs to provide the cross connections themselves, has removed itself from the CLEC-to-CLEC relationship, and that any services it provides related to that cross connection are not interconnection or wholesale services, but retail services. *Id.* at 41.

¹² *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, CC Docket No. 98-147, FCC 01-204 (Rel. Aug. 8, 2001) [Fourth Advanced Services Order].

75 Qwest objects to Covad's proposed language in Section 8.2.1.23.1.4. Qwest states that language providing that Qwest will not charge for regeneration for CLEC-to-CLEC cross connections is currently part of the Washington 8th Revised SGAT, but asserts that the language resulted from an inadvertent mistake in the Commission's Eleventh Supplemental Order¹³ in the Section 271 Docket, as well as Qwest's mistake in including the language in its SGAT. *Qwest Brief at 43*. Qwest asserts that the Commission's Eleventh Supplemental Order interpreted the FCC's Second Report and Order¹⁴ to require ILECs to "furnish any regeneration required in cross-connection between LECs and CLEC," and then required modifications to Section 8.2.1.23.1.4, which applies to CLEC-to-CLEC cross connections. *Qwest Brief at 42-43*. Qwest argues that the FCC's Second Report and Order addressed only ILEC-to-CLEC cross connections, not CLEC-to-CLEC cross connections, and that Qwest's language comports with the FCC's *Fourth Advanced Services Order* and FCC rules. *Id. at 43-44*.

76 Qwest requests that the Commission reevaluate the language in the 8th Revised SGAT, and notes that Qwest plans to remove the language from its SGAT and interconnection agreements as it negotiates new contracts and relies a 9th revised SGAT. *Id. at 44*.

77 Qwest asserts that its proposed language in Sections 8.3.1.9 and 9.1.10 limits Qwest's obligations to provide regeneration at no charge to cross connections between Qwest and a CLEC. *Id.* Qwest argues that this position is consistent with the Commission's decisions and Qwest's statements and assurances to the CLEC community. *Id.* Qwest argues that Exhibits 3 and 4 address Qwest's

¹³ *In the Matter of the Investigation into U S West Communications, Inc.'s, Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. UT-003022, *In the Matter of U S West Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket No. UT-003040, Eleventh Supplemental Order, Initial Order Finding Noncompliance on Collocation Issues (Mar. 30, 2001) [11th Supplemental Order].

¹⁴ *In the Matter of Local Exchange Carrier's Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order, CC Docket No. 93-162, FCC 97-208 (Rel. June 13, 1997).

statements of what Qwest will do from a technical perspective, not the pricing for services or the FCC requirements. *Id. at 45-46.*

78 Finally, Qwest argues that the fact that Qwest entered into an interconnection agreement with its affiliate Qwest Communications Corporation (QCC) that essentially adopted the provisions of the 8th Revised SGAT, including Section 8.2.1.23.1.4, does not mean that Qwest has discriminated against Covad. *Id. at 46-47.* Qwest asserts that Covad could have adopted the SGAT but chose instead to negotiate a new agreement with Qwest. *Id. at 47.*

79 **Discussion and Decision.** At issue is whether Qwest is obligated to provision regeneration as a part of a CLEC-to-CLEC cross connection, whether Qwest may charge for such regeneration, and if so, whether Qwest may charge for the product as a finished service. The issue appears to have come to the forefront due to the fact that CLECs are now more likely to partner with each other in line splitting and loop splitting arrangements, request CLEC-to-CLEC cross-connections, and face situations where regeneration at either end of the cross-connection will not be sufficient to meet ANSI standards. *Tr. at 202-3.*

80 The FCC's rules governing CLEC to CLEC cross connections provide that: "An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the carriers to provide the requested connection for themselves." 47 C.F.R. §51.323(h). The language in Section 8.2.1.23 is not contested by the parties, and provides, that Qwest "will design and engineer the most efficient route and cable racking" for a CLEC-to-CLEC cross connection, and that the CLEC, or Covad, "shall have access to the designated route and construct such connection ... utilizing a vendor of CLEC's own choosing." In other words, Qwest allows CLECs the option of performing the connection themselves, as provided by FCC rule.

81 Covad proposes, and Qwest objects to, the following additional underlined language in Section 8.2.1.23.1.4:

CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Depending on the distance parameters of the combination, regeneration may be required but Qwest shall not charge CLEC for such regeneration, if there does not exist in the affected Premises, another Collocation space whose use by CLEC would not have required regeneration, and such a space would not have existed except for Qwest's reservation of the space for its own future use.

Revised Issues List at 31-32.

82 Covad also proposes a new section, Section 8.3.1.9, that details when regeneration is required, and when regeneration charges should apply, and proposes to delete Section 9.1.10, which specifies that there will be no separate charge for channel regeneration between a collocation space and Qwest's network. *Id. at 33-35.*

83 As Qwest notes, a review of paragraphs 88 through 92 of the Eleventh Supplemental Order appears to apply, inadvertently, pricing standards for regeneration in ILEC-to-CLEC cross connections to regeneration in CLEC-to-CLEC cross connections. Although Qwest is changing its prior practice, Qwest's argument that it is not required to provide and pay for regeneration as a part of a CLEC provisioned CLEC-to-CLEC cross connection is persuasive. As regeneration may be required in some CLEC-to CLEC cross connections, however, the parties should include the following language in Section 8.2.1.23.1.4 in the proposed agreement:

CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration may be required, depending on the distance parameters of the combination.

84 As to pricing, it is appropriate address the channel regeneration charge in Section 8 of the agreement, which relates to collocation, as opposed to addressing the charge in Section 9.1.10 of the agreement. Covad's proposal for Section 8.3.1.9, to replace the provisions of Section 9.1.10, is too far reaching, however. Covad's proposal provides that Qwest may not charge for channel regeneration for ILEC-to-CLEC cross connections, for connections between non-contiguous spaces of the same CLEC, or for CLEC-to-CLEC cross connections. To be consistent with the apparent intent of the Commission's Eleventh Supplemental Order, Qwest may not charge a separate channel regeneration charge for regeneration provided as a part of ILEC-to-CLEC cross connections or for connections between non-contiguous spaces of the same CLEC. These services are provided as a part of the interconnection with Qwest's network and are subject to the requirements of the FCC's Second Report and Order. As discussed above, however, Qwest may charge for CLEC-to-CLEC cross-connections.

85 Covad also includes language in Section 8.3.1.9 that precludes Qwest from assessing channel regeneration charges based upon space allocation decisions by Qwest, and requires that regeneration costs will be recovered on a proportionate basis among all collocators and Qwest. This language is not appropriate at Qwest cannot control

86 For the reasons discussed above, the issue of deleting Section 9.1.10 is resolved in favor of Covad, but Covad's proposal for Section 8.3.1.9 must be modified to be consistent with the findings discussed above.

87 The remaining issue is whether Qwest may charge for regeneration under its FCC Access No. 1 tariff, or based on TELRIC rates. In the 46th Supplemental Order in Docket Nos. UT-003022 and UT-003040, the Commission approved changes to Exhibit A to the SGAT, *i.e.*, Washington rates under the SGAT, to include the TELRIC rates approved by the Commission in Parts B and D of Docket No. UT-003013. The changes to Exhibit A included reducing rates for channel regeneration to \$0.00 from a \$9.88 recurring charge and \$479.79 non-recurring charge for DS1 Regeneration and to \$0.00 from a \$36.00 recurring charge and a \$1810.56 nonrecurring charge for DS3 Regeneration. As such, there are no TELRIC based channel regeneration charges to rely on. Although it may not seem equitable to allow Qwest to charge rates from the FCC Access No. 1 tariff for channel regeneration for CLEC-to-CLEC cross connections, there is no TELRIC rate to fall back upon.

6. ISSUE EIGHT: Payment Due Date and Timing of Remedies for Non-Payment.

88 Covad requests that the timeframe for payment of invoices in Section 5.4.1 of the agreement, as well as the timeframes for remedies for non-payment in Sections 5.4.2 and 5.4.3, be extended to allow Covad more time to evaluate the extensive bills it receives from Qwest each month and to provide some relief from Qwest's remedies for nonpayment. *See Petition at 26-29.*¹⁵ Qwest asserts that the time frames are standard across the industry and within Qwest's Statement of General Terms and Conditions, or SGAT, in Washington, and that changing these timeframes will require Qwest to provide service for extended periods of time without payment even if Covad does not dispute the amount owed. *Qwest Response at 33-34.*

¹⁵ As noted above, the parties have resolved language relating to Section 5.4.5 of the draft agreement.

- 89 **Section 5.4.1: Payment Due Date.** In testimony and at the time of hearing, the only dispute between Covad and Qwest over the language in this section concerned timing, *i.e.*, the number of days within which amounts were deemed due and payable after the date of the invoice. Covad proposed 45 days as the appropriate interval, while Qwest proposed 30 days. *See Ex. 70 at 43.*
- 90 Covad asserts that it requires more than 30 days from the invoice date in order to review and verify Qwest's bills. Covad asserts that it receives a substantial number of paper and electronic invoices each month and that the standard 30 days is not sufficient for review and verification. *Ex. 21-T at 25-26.* Covad asserts that Qwest's billing systems create invoices to Covad that require substantial manual effort to verify. *Covad Brief at 36.* Covad also raises the concern that as it begins to partner with other CLECs to provide line split or loop split services, that billing will become more difficult. Covad asserts that it will require more time to coordinate and resolve billing issues under these arrangements than the 30 days proposed by Qwest. *Ex. 21 at 28-29.*
- 91 Specifically, Covad asserts that certain bills or invoices, such as non-recurring collocation charges, which are provided in paper format, and billing for transport services or individual case basis charges, require manual review. *Id. at 25-26.* In addition, Covad asserts that the format of Qwest invoices makes it difficult to process the billing within 30 days. *Id. at 26-27.* Covad asserts that certain of Qwest's bills do not contain relevant circuit identification numbers or universal service ordering codes (USOC). *Id.* Covad asserts that it does not have time to resolve the circuit identification number issue and must simply pay the amounts. *Id. at 27.*
- 92 Qwest uses its own identification number instead of a circuit identification number in invoices for line sharing services. *Tr. at 100-101.* Covad retained a third-party vender to develop Covad's billing software using industry-wide standards. *Id. at 99.* Qwest, apparently, is the only ILEC that does not assign a

circuit identification number to line sharing products for billing purposes, and Covad's software does not recognize Qwest's identification number. *Id. at 100-101.*

93 Covad asserts that the performance measures for billing accuracy and completeness do not provide a sufficient remedy for the problem it experiences with Qwest's invoices and the timing of payment. *Ex. 21 at 29-30.* Covad asserts that it has raised these billing issues with billing personnel and through the change management process, and that Qwest has not been responsive to Covad's concerns. *Id. at 30-31.*

94 Covad asserts that allowing a meaningful time for bill review will avoid the inefficient results of Covad relying on the audit process to conduct bill review, or blindly contesting Qwest bills in order to buy time to conduct a thorough review. *Covad Brief at 37.* Further, Covad counters Qwest's argument that Covad should be able to review Qwest's bills within 30 days given Covad's experience in the business, and that Covad agreed to the 30-day payment period in the Qwest 271/SGAT proceedings. *Id. at 38.* Covad asserts that its evidence shows that 30 days is not sufficient, and that during the Section 271 process, Covad was focusing on other issues, not the bill review process. *Id.*

95 Qwest proposes language for this and other sections is identical to what appears in Qwest's SGAT in Washington State. *Qwest Brief at 50-51.* Qwest asserts that no new facts justify extending the deadlines for payment, discontinuing processing orders or discontinuing service, and that Covad's proposed deadlines are at odds with commercially reasonable practice. *Id. at 51.* Qwest asserts that the 30-day period is an industry standard: The 30-day payment period has been in Covad's interconnection agreement since early 1998, AT&T's recent agreement contains such language, over 30 carriers have opted-in to the SGAT, which contains the 30-day language, and Covad, itself, requires a 30-day payment period for its invoices. *Id. at 51-52.*

- 96 Qwest asserts that the vast majority of the bills it issues to Covad are in electronic format, and that only a small portion is issued in paper format. *Id. at 52-53.* Qwest asserts that Covad could have developed “appropriate software” to handle all of its bills electronically, but has chosen not to. *Id. at 53.* Qwest asserts that the format of Qwest bills is more appropriately addressed in the Change Management forum than in negotiations over an interconnection agreement. *Id.* Qwest asserts that it has a strong interest in ensuring that its bills are accurate, as Qwest’s Performance Assurance Plan includes performance measures on billing completeness and accuracy. *Id.*
- 97 Qwest is concerned that Covad is seeking the shift the burden to Qwest as Covad modifies its business plan to partner with other CLECs in line-splitting arrangements. *Id. at 53-54.* Qwest asserts that these line- splitting arrangements with Qwest and other CLECs include a 30-day payment provision. *Id. at 54.* Qwest is further concerned about CLECs opting-in to the Covad agreement, which Qwest argues would unreasonable increase Qwest’s financial exposure. *Id.* Finally, Qwest asserts that Covad’s proposal would not work as Covad proposes it will, as Covad will still be reviewing the prior month’s bill when it receives the next bill. *Id.*
- 98 In the October 20, 2004, Updated Joint Issues List, Covad proposes substantially new language for this section of the draft agreement identifying a New Products Exception, in which amounts payable for line splitting or loop splitting products, a missing circuit ID, a missing USOC, or new rates elements, services, or features not previously ordered would be due within 45 days of receipt of the invoice. *See October 20, 2004, letter and attachment.* The New Products Exception would apply for twelve months experience, after which time the standard 30-day payment timeframe would apply. *Id.*
- 99 Covad asserts in the revised Joint Issues List “a review of wholesale invoices is a complicated task, which will become more complicated as line sharing/line

splitting arrangements become more commonplace.” *Revised Issues List at 36.* Qwest asserts that Covad’s New Product Exemption proposal would require a major effort to modify billing systems and logic compared to other CLEC customers, and the twelve month proposal would require Qwest’s systems to identify when Covad has ordered a new product and be able to modify the billing cycle after twelve months. *Id. at 37-38.* Qwest is concerned about the possible confusion that may result from such an effort. *Id. at 38.*

100 **Discussion and Decision.** Although Covad does raise credible claims regarding problems with Qwest’s billing process, in particular concerning circuit identification numbers and USOC codes, neither Covad’s initial nor revised proposal is the best way to remedy the problem. The 30-day payment period is present in Covad’s current agreement, appears standard in the industry, and is a payment interval that Covad relies upon for its own customers and will be standard in CLEC line-splitting arrangements.¹⁶

101 While it is not credible that Qwest was unaware that it is the only ILEC not assigning circuit identification numbers in line sharing invoices,¹⁷ the fact that Qwest’s billing process is not consistent with other ILECs does not justify a change in the 30-day payment period. The issue of USOC codes and circuit identification number assignments is more appropriately addressed through Qwest’s Change Management process, as it appears that Covad has begun to pursue. *Ex. 21 at 30-31.* While the circuit identification issue may only be a priority for data CLECs such as Covad, Qwest should not avoid addressing the issue for that reason.

¹⁶ While Qwest relies heavily on “consensus” reached in the Section 271 proceeding as a strong reason for retaining the 30-day period, that argument does not apply to an arbitration proceeding. Parties engage in arbitration to enter into an agreement tailored to the companies’ needs, not to adopt a standard agreement. Covad is not bound to the 30 day payment period simply because it was a party to the SGAT negotiations and hearings

¹⁷ *See Tr. at 153.*

102 Likewise, the issue of billing errors and completeness is more properly addressed through processes established to focus on performance measurements under Qwest's QPAP than in this arbitration proceeding. Although Covad is correct that Qwest has withdrawn from the current collaborative process to review performance measures, the six-month review process remains as a viable option to raise issues with performance measures before state commissions.

103 It is expected that CLECs, like Covad, that provide service across the country are likely to receive a large number of invoices from ILECs such as Qwest. The sheer number of bills appears to be one of the consequences of providing service to its customers. As such, bill review is a cost of business to Covad, which should be able to assign sufficient resources to conduct bill review and either contest inaccurate bills or audit those bills after payment. Modifying the payment due date for particular products, and then for a twelve month period, will likely create delays and confusion for both Covad and Qwest that may result in far more problems than the current process. Covad also appears to seek the extra 15 days to allow it to better address billing issues that may arise from increased CLEC partnering in line splitting arrangements. The burden for dealing with these new arrangements should not be placed upon Qwest, but is a cost of doing business for Covad.

104 The issue of the payment due date under Section 5.4.1 is resolved in Qwest's favor.

105 ***Sections 5.4.2 and 5.4.3: Timing for Discontinuation of Processing of Orders and Disconnection of Services.*** The only dispute between Covad and Qwest concerns the number of days following the payment due date after which Qwest may discontinue the processing of orders and disconnect services if Covad fails to pay Qwest the amount due. At the time of hearing, Covad proposed 90 days as the appropriate interval for the remedy of discontinuing orders and 120 days for disconnecting services, whereas Qwest proposed 30 and 60 days, respectively.

See Ex. 70 at 43. Following briefing, the parties submitted an Updated Joint Issues List which indicates that Covad now proposes a interval of 60 days for the remedy of discontinuing orders and 90 days for disconnecting services. *Revised Issues List at 38-42.*

106 While Covad recognizes Qwest's "right" to have a remedy for nonpayment of bills, Covad is concerned that the remedies are potentially disruptive to Covad's business if Qwest can stop processing orders or disrupt service to Covad's customers. *Ex. 21 at 33.* Covad is concerned about protecting the viability of its business in the event of a billing dispute where Covad disputes bills and Qwest rejects Covad's dispute. *Id.; see also Covad Brief at 40.* Although Covad recognizes that it would have legal remedies in that situation, Covad is concerned that Qwest may invoke its remedies under these sections while Covad pursues its own. *Covad Brief at 40.*

107 Covad raises concerns about the length of Qwest's billing dispute process and difficulties in getting Qwest to acknowledge billing disputes , such that Qwest may fail to acknowledge a dispute and resort to its remedies under these sections. *Ex. 21 at 34-36.* On the other hand, Covad recognizes that it has an excellent history of paying Qwest's bills, unlike other CLECs, and that a short extension of these timeframes is reasonable. *Id. at 33-34.* Covad recognizes that situation envisioned under these sections will likely never arise, but wants to be protected in the event it does. *Covad Brief at 40.*

108 Qwest is concerned that Covad's timing proposal for these sections could shift enormous financial risk to Qwest by limiting Qwest's remedies for non-payment of bills. *Ex. 35-T at 16, 18.* Qwest asserts that the arguments Covad raises concerning a billing issue in Arizona and Covad's good credit history demonstrate that Covad's request for additional time in sections 5.4.2 and 5.4.3 is unreasonable. *Qwest Brief at 54-55.* Qwest asserts that in the lengthy dispute process that occurred in Arizona, Qwest did not assess late charges, stop taking

Covad orders, or disconnect service. *Id.*; see also *Ex. 39-T at 15-16*. Qwest asserts that in the past, Qwest has been left with large receivables when CLECs left the business, and had no recourse to remedies such as the ones proposed in these sections. *Ex. 39 at 14*. Qwest argues that its timing proposals are standard in the industry, and are included in the Washington SGAT. *Ex. 35-T at 16, 19*.

109 **Discussion and Decision.** Unlike the language at issue above in Section 5.4.1, the language at issue in Sections 5.4.2 and 5.4.3 of the agreement is not currently included in the existing agreement between Covad and Qwest. Covad recognizes Qwest right to include such remedies in the agreement. Covad seeks extended timing under these sections, however, as Covad is not sure how the remedies in the sections for discontinuing order processing and services will be applied. While Covad's unease with these new sections is understandable, Covad also recognizes that it is not clear that the sections would ever be applied given Covad's timely payment history.

110 After reviewing the arguments of both parties, the matter is resolved in favor of Qwest. Covad's concerns do not outweigh the possible financial risk to Qwest by processing additional orders from Covad and providing service to Covad while Covad has the option of not paying Qwest for services rendered for 90 and 120 days, respectively. The issue is resolved in favor of Qwest's proposed language.

E. Implementation Schedule

111 Pursuant to 47 U.S.C. § 252(c)(3), the Arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." In preparing an agreement for submission to the Commission for approval, the parties may include an implementation schedule. In this case the parties did not submit proposed implementation schedules. Specific provisions to the agreement, however, may contain implementation time-lines. The parties must

implement the agreement according to the schedule provided in its provisions, and in accordance with the Act, applicable FCC Rules, and this Commission's orders.

F. Conclusion

112 The Arbitrator's resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). The parties are directed to submit an interconnection agreement to the Commission for approval pursuant to the following requirements.

1. Petitions for Review and Requests for Approval

113 Any party may petition for Commission review of this Arbitrators' Report and Decision by December 2, 2004. Any petition for review must be in the form of a brief or memorandum, and must state all legal and factual bases in support of arguments that the Arbitrator's Report and Decision should be modified. Replies to any petition for Commission review must be filed by December 13, 2004.

114 The parties must also file, by December 13, 2004, a complete copy of the signed interconnection agreement, including any attachments or appendices, incorporating all negotiated terms, all terms requested pursuant to Section 252(i), and all terms intended to fully implement arbitrated decisions. This filing will include the parties' request for approval, subject to any pending petitions for review.¹⁸ The Agreement must clearly identify arbitrated terms by bold font style and identify by footnote the arbitrated issue that relates to the text.

¹⁸ If the parties agree that no petition for review will be filed, the parties may file their joint request for approval and complete interconnection agreement at any time after the date of this Report and Decision.

- 115 Parties that request approval of negotiated terms must summarize those provisions of the agreement, and state why those terms do not discriminate against other carriers, are consistent with the public interest, are consistent with the public convenience, and necessity, and satisfy applicable state law requirements, including relevant Commission orders.
- 116 Parties that request approval of arbitrated terms must summarize those provisions of the agreement, and state how the agreement meets each of the applicable requirements of Sections 251 and 252, including relevant FCC regulations, and applicable state requirements, including relevant Commission orders. A party that petitions for review must provide alternative language for arbitrated terms that would be affected if the Commission grants the party's petition.
- 117 Any petition for review, any response, and/or any request for approval may reference or incorporate previously filed briefs or memoranda. Copies of relevant portions of any such briefs or memoranda must be attached for the convenience of the Commission. The parties are not required to file a proposed form of order.
- 118 Any petition for review of this Arbitration Report and Decision and any response to a petition for review must be filed (original and five (5) copies) with the Commission's Secretary and served as provided in WAC 480-07-145. Post-arbitration hearing filings and any accompanying materials must be served on the opposing party by delivery on the day of filing, unless jointly filed.
- 119 An electronic copy of all post-arbitration hearing filings must be provided by e-mail delivery to the Commission Secretary at records@wutc.wa.gov. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch, IBM-formatted, high-density diskette including the filed document(s), in Adobe Acrobat file format (*i.e.*, <filename>.pdf), reflecting the

pagination of the original. Please also provide the text in either MSWord file format (*i.e.*, <filename>.doc) or WordPerfect file format (*i.e.*, <filename>.wpd). Attachments or exhibits to pleadings and briefs that do not pre-exist in an electronic format do not need to be converted.

2. Approval Procedure

- 120 The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) to include the approval process. Further, the Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act.
- 121 The Commission will consider any request(s) for approval at a special public meeting scheduled for January 12, 2004, at 1:30 pm, or earlier, depending upon the Commission's hearing schedule. Any person may appear at the public meeting to comment on the request(s).
- 122 The Commission will enter an order approving or rejecting the Agreement by January 20, 2005.¹⁹ The Commission's order will include its findings and conclusions.

Dated at Olympia, Washington, and effective this 2nd day of November 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Arbitrator

¹⁹ As noted above, the parties have agreed to waive the statutory deadlines in 47 U.S.C. § 252(e)(4), but have requested prompt resolution of the petition.

APPENDIX A

EXHIBIT LIST

EXHIBIT LIST

COVAD ARBITRATION PETITION

DOCKET NO. UT-043045

NO.	WITNESS	A/R	DATE	DESCRIPTION
1-T	MICHAEL ZULEVIC	A	8/26/04	Direct Testimony of Michael Zulevic, dated July 15, 2004 (MZ-1T)
2		"	"	Qwest's Initial Comments in CPUC Docket No. 04M-111T, In the Matter of the Review of Certain Wholesale Rates of Qwest Corporation, dated June 15, 2004 (MZ-2)
3		"	"	Qwest Response to Document in Review, Version 4.0, dated January 10, 2003 (MZ-3)
4		"	"	Page from Qwest Web Site – Wholesale - Change Management Process (CMP) – Open Product/Process CR PC120301-4 Detail as of July 15, 2004 (MZ-4)
5-RT		"	"	Corrected Response Testimony of Michael Zulevic, dated July 29, 2004 (MZ-5T), revised August 19, 2004
6		"	"	Interconnection Agreement between Qwest Corporation and Qwest Communications Corporation, dated May 4, 2004 (MZ-6)
7		"	"	Letter requesting approval of interconnection agreement between Qwest Corporation and Qwest Communications Corporation, filed July 2, 2004 (MZ-7)
8		"	"	Order No. 01, Order Approving Negotiated Agreement for Interconnection and Resale of Services, In re Request of Qwest Communications Corporation and Qwest Corporation, Docket No. UT-043066, dated July 28, 2004 (MZ-8)

NO.	WITNESS	A/R	DATE	DESCRIPTION
9				
10				
11-T	RENÉE ALBERSHEIM	A	8/26/04	Direct Testimony of Renée Albersheim, dated July 15, 2004 [Redacted Version] (RA-1T)
12-TC		"	"	Direct Testimony of Renée Albersheim, dated July 15, 2004 [Confidential Version] (RA-1TC)
13		"	"	Qwest Change Management Process (CMP) Open System Change Request SCR030603-01EXSC Detail from Qwest's web site, dated May 18, 2004 (RA-2).
14		"	"	Qwest Change Management Process (CMP) Open System Change Request SCR120303-01 Detail from Qwest's web site, dated May 18, 2004 (RA-3).
15-RT		"	"	Response Testimony of Renée Albersheim, dated August 2, 2004 [Redacted Version] (RA-4RT)
16-RTC		"	"	Response Testimony of Renée Albersheim, dated August 2, 2004 [Confidential Version] (RA-4RTC)
17		w/d	8/26/04	Excerpt of Testimony of Renée Albersheim before Colorado Public Utilities Comm'n, Docket No. 04B-160T, dated June 21, 2004
18		"	"	Qwest Response to Covad's First Set of Data Requests (01-013)
19				

NO.	WITNESS	A/R	DATE	DESCRIPTION
20				
21-T	MEGAN DOBERNECK	A	8/26/04	Corrected Direct Testimony of Megan Doberneck [Redacted Version] dated July 15, 2004 (KMD-1T), revised August 19, 2004.
22-TC		"	"	Direct Testimony of Megan Doberneck [Confidential Version] dated July 15, 2004 (KMD-1TC).
23		A	8/26/04	Qwest DSL Volume Plan Agreement (KMD-2)
24		"	"	Covad Communications Monthly Invoice dated 1/19/04 (KMD-3)
25		"	"	Covad Communications Monthly Invoice dated 2/21/04 (KMD-4)
26		"	"	Covad Communications Monthly Invoice dated 4/20/04 (KMD-5)
27		"	"	Covad Communications Monthly Invoice dated 4/19/04 (KMD-6)
28		"	"	Covad Communications Monthly Invoice dated 4/24/04 (KMD-7)
29-RT		"	"	Corrected Responsive Testimony of Megan Doberneck dated July 29, 2004 (KMD-8RT), revised August 19, 2004.
30		"	8/27/04	Excerpt of Testimony of Megan Doberneck before Colorado Public Utilities Comm'n, Docket No. 04B-160T, dated June 22, 2004
31		"	8/27/04	Excerpt of <i>Triennial Review Order</i> , ¶¶ 270 - 295
32				

NO.	WITNESS	A/R	DATE	DESCRIPTION
33				
34				
35-T	WILLIAM R. EASTON	A	8/26/04	Direct Testimony of William R. Easton, dated July 15, 2004 [Redacted] (WRE-1T)
36-TC		"	"	Direct Testimony of William R. Easton, dated July 15, 2004 [Confidential Version] (WRE-1TC)
37		"	"	Sample bill from Covad web site (WRE-2)
38		"	"	Covad Service Customer Policies, Version 030804 (WRE-3).
39-RT		A	8/26/04	Response Testimony of William R. Easton, dated August 2, 2004 [Redacted Version] (WRE-4RT)
40-RTC		"	"	Response Testimony of William R. Easton, dated August 2, 2004 [Confidential Version] (WRE-4RTC)
41		W/D	8/26/04	Excerpt of Testimony of William Easton before Colorado Public Utilities Comm'n, Docket No. 04B-160T, dated June 21, 2004
42		"	"	Qwest Responses to Covad's First Set of Data Requests (01-005)
43		"	"	<i>In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i> , CC Docket No. 01-338, Second Report and Order, FCC 04-164 (rel. July 13, 2004) ("Second Report and Order")
44		A	8/27/04	Qwest Reponse to CLEC Request re: Billing and Repair Systems CR, dated August 16, 2004

NO.	WITNESS	A/R	DATE	DESCRIPTION
45-T	MICHAEL NORMAN	A	8/26/04	Direct Testimony of Michael J. Norman, dated July 15, 2004 (MJN-1T)
46-RT		"	"	Response Testimony of Michael J. Norman, dated August 2, 2004 [Redacted Version] (MJN-2RT)
47-RTC		"	"	Response Testimony of Michael J. Norman, dated August 2, 2004 [Confidential Version] (MJN-2RTC)
48		W/D	"	Excerpt of <i>Triennial Review Order</i> , ¶ 296, n. 851
49		W/D	"	Excerpt of Testimony of Michael Norman before Colorado Public Utilities Comm'n, Docket No. 04B-160T, Vol 1, dated June 21, 2004
50		W/D	"	Excerpt of Testimony of Michael Norman before Colorado Public Utilities Comm'n, Docket No. 04B-160T, Vol 2, dated June 22, 2004
51		W/D	8/26/04	Excerpt of Testimony of Jeff Hubbard before Colorado Public Utilities Comm'n, Docket No. 04B-160T, dated June 22, 2004
52		"	"	Qwest Responses to Covad's First Set of Data Requests (01-14)
53		A	8/26/04	Qwest Technical Publication 77386
54		"	"	History Log Technical Publication 77386

55		"	"	Documentation re Notification Number NETW.06.17.03F.01847.TechPub_77386_Update (June 17, 2003)
56		"	"	Open Product/Process CR Number PC-120301-4 (December 3, 2001)
57				
58				
59				
60				
61-T	KAREN A. STEWART	A	8/27/04	Direct Testimony of Karen A. Stewart, dated July 15, 2004 (KAS-1T)
62		"	"	Excerpt of transcript before Colorado Public Utilities Commission, Docket No. 04B-160T, dated June 22, 2004 (KAS-2)
63-RT		"	"	Response Testimony of Karen A. Stewart, dated August 2, 2004 (KAS-3RT)
64		W/D	8/27/04	Excerpt of <i>Triennial Review Order</i> , ¶ 221, ¶¶ 281-84; ¶¶ 579-584; ¶¶ 653-667.
65		"	"	Excerpt of Testimony of Paul McDaniel before Colorado Public Utilities Comm'n, Docket No. 04B-160T, dated June 22, 2004
66-C		A	8/27/04	Qwest Responses to Covad's First Set of Data Requests (01-002 through 004; 01-006 through 012).
67		A	9/20/04	Qwest Response to Record Requisition No. 3, Sample Network Disclosure Announcement No. ABC

68				
69				
70		A	8/27/04	Washington Joint Disputed Issues List, August 23, 2004
71		A	8/27/04	Draft Interconnection Agreement, Exhibit A to Petition for Arbitration dated September 2, 2004.
72				