

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

REBUTTAL TESTIMONY

OF

KAREN A. STEWART

FOR

QWEST CORPORATION

(Issue 1: Retirement of Copper Facilities)

November 12, 2004

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1 **I. OVERVIEW**

2 **Q. PLEASE STATE YOUR NAME.**

3 **A.** My name is Karen A. Stewart. I filed direct testimony in this proceeding on October
4 8, 2004. I describe my background and job responsibilities with Qwest Corporation
5 in that testimony.

6 **Q. WHAT IS THE PURPOSE OF YOUR RESPONSE TESTIMONY?**

7 **A.** My rebuttal testimony addresses the direct testimony of Covad witness, Megan
8 Doberneck, relating to Issue 1 – Retirement of Copper Facilities. In particular, I
9 respond to Ms. Doberneck's assertions that the conditions Covad seeks to impose on
10 Qwest's right to retire copper facilities are consistent with the FCC's rulings in the
11 *Triennial Review Order ("TRO")*¹ and would not affect Qwest's economic incentive
12 to deploy fiber facilities. As I discuss below, Covad's proposal is not consistent with
13 the *TRO*, as the FCC considered and rejected imposing the types of conditions that
14 Covad is seeking. The only requirement the FCC imposed is that incumbent local
15 exchange carriers ("ILECs") must comply with the FCC's notice requirements relating
16 to network modifications when they retire copper facilities, which Qwest clearly
17 does.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 16978 ¶ 195 (2003) ("*TRO*"), *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) ("*USTA II*").

1 As I also address below, Covad's proposals reveal disregard for the FCC's clearly
2 stated policy of promoting the deployment of fiber facilities. In the *TRO* and in other
3 orders, the FCC has recognized that it has a Congressionally-mandated obligation to
4 promote fiber deployment so that consumers can have broad access to advanced
5 telecommunications services.² A critical component of the FCC's effort to meet this
6 obligation is its decision not to require ILECs to provide unbundled access to fiber-to-
7 the-home ("FTTH") loops and fiber-to-the-curb ("FTTC") loops and its related
8 decision confirming the ILECs' right to retire copper loops that are replaced by fiber
9 facilities.³ Ms. Doberneck's testimony makes it clear that Covad's proposal relating
10 to copper facilities disregards this important policy objective and that, in Covad's
11 view, this Commission should be unconcerned about promoting the deployment of
12 fiber facilities. However, promoting the deployment of these facilities and making
13 advanced telecommunications services widely available to consumers are critical
14 objectives of the Act and sound public policy. The Act and the FCC's
15 pronouncements do not permit undermining these objectives through the type of
16 onerous retirement conditions that Covad is proposing.

² *TRO* at ¶ 278.

³ *Id.*

1 **II. ISSUE 1 – RETIREMENT OF COPPER FACILITIES**

2 **Q. ON PAGES 9-11 OF HER DIRECT TESTIMONY, MS. DOBERNECK**
3 **DESCRIBES HOW COVAD'S PROPOSAL REQUIRING QWEST TO**
4 **PROVIDE AN “ALTERNATIVE SERVICE” WHEN IT RETIRES**
5 **COPPER FACILITIES WOULD BE IMPLEMENTED. DOES HER**
6 **DESCRIPTION PROVIDE ANY FURTHER INSIGHT INTO**
7 **WHETHER COVAD'S PROPOSAL IS CONSISTENT WITH THE *TRO***
8 **AND THE ACT?**

9 **A.** Ms. Doberneck's description further confirms that there is no support in the Act or the
10 *TRO* for Covad's proposal. At page 9 of her testimony, she explains that Covad's
11 proposed language would require Qwest to provide an undefined "alternative service"
12 at "no increase in cost or decrease in service quality until [a Covad customer]
13 choose[s] to leave Covad." These conditions are not found anywhere in the *TRO* or
14 in the Act.

15 In the *TRO* proceeding, some parties requested that ILECs be prohibited from retiring
16 copper loops unless they take "transitional measures" that would give CLECs some
17 form of continued access to copper loops or provide CLECs with access to ILEC
18 broadband facilities.⁴ The FCC rejected these proposals, choosing instead to require

⁴ *Id.* at ¶ 281 & n.822 and ¶ 291 & n.839.

1 only that an ILEC provide notice of its intent to retire specific copper facilities so that
2 a CLEC can object to the FCC. The FCC found that its notice requirements would
3 "serve as adequate safeguards."⁵ Covad's proposed conditions on Qwest's retirement
4 right clearly go far beyond any requirements imposed by the FCC and therefore are
5 not consistent with the *TRO*.

6 **Q. HAVE OTHER STATE COMMISSIONS EVALUATED WHETHER**
7 **COVAD'S "ALTERNATIVE SERVICE" PROPOSAL IS CONSISTENT**
8 **WITH THE *TRO*?**

9 A. Yes. In a decision issued last week in the Qwest/Covad arbitration in Washington, an
10 administrative law judge rejected Covad's proposal on the ground that it is
11 inconsistent with the FCC's rulings in the *TRO*: "Covad's proposal requiring Qwest to
12 provide an alternative arrangement at no additional cost to Covad is not consistent
13 with the requirements of the Triennial Review Order."⁶ In so ruling, the ALJ
14 observed that the FCC has "rejected proposals to place specific conditions on an
15 ILEC's right to retire copper facilities" and has only required that ILECs provide

⁵ *Id.* at ¶ 281. While the FCC concluded that CLECs are not impaired without access to FTTH loops, it ruled that "in fiber loop overbuild situations where the incumbent LEC elects to retire existing copper loops . . . the incumbent LEC [must] offer unbundled access to those fiber loops, and in such cases the fiber loops must be unbundled for narrowband services only." *Id.* at ¶ 273. Thus, if an ILEC retires a copper loop in a fiber-to-the-home overbuild situation, it has an obligation to provide an unbundled voice channel for narrowband service only – not for broadband service. An "overbuild" situation is distinguished from a newly deployed or "greenfield" fiber loop that does not replace a copper loop. *Id.*

⁶ *Petition for Arbitration of Covad Communications Company with Qwest Corporation*, Washington Docket no. UT-043045, Order No. 04, Arbitrator's Report and Decision at 13 (rel. Nov. 2, 2004).

1 notice of planned retirements."⁷ Similarly, the Colorado Commission has rejected
2 Covad's proposal, finding that it is without legal support.⁸ Thus, in the two
3 arbitrations in which this issue has been considered, Covad's proposal has been
4 rejected and found not to comply with governing law.

5 **Q. AT PAGE 8 OF HER TESTIMONY, MS. DOBERNECK ASSERTS**
6 **THAT THE RULINGS IN THE *TRO* CONFIRMING THE RIGHT OF**
7 **ILECS TO RETIRE COPPER FACILITIES APPLY ONLY WHEN AN**
8 **ILEC REPLACES A COPPER FACILITY WITH A FIBER-TO-THE-**
9 **HOME ("FTTH") LOOP. IS HER ASSERTION CORRECT?**

10 A. No. In the *TRO*, the FCC confirmed that ILECs are permitted to retire copper
11 facilities when they replace copper with fiber in all circumstances, not just when the
12 copper loop is replaced with a FTTH loop. Specifically, in the line sharing portion of
13 the *TRO* at paragraph 271, the FCC specifically "decline[d] to prohibit incumbent
14 LECs from retiring copper loops or copper subloops *that they have replaced with*
15 *fiber.*"⁹ As this quote clearly demonstrates, the FCC did not limit the right of ILECs
16 to retire copper facilities solely to situations involving the installation of FTTH loops.
17 Instead, ILECs are permitted to retire any copper loops and subloops that they have

⁷ *Id.* at 13.

⁸ *Petition of Qwest Corporation for Arbitration of an Interconnection Agreement*, Docket No. 04B-160T, Initial Commission Decision, Decision No. C04-1037 at 54 (rel. Aug. 27, 2004).

⁹ Emphasis added.

1 replaced "with fiber." In her discussion of the *TRO*, Ms. Doberneck not only fails to
2 acknowledge this statement by the FCC, but she also fails to cite any ruling by the
3 FCC in the *TRO* or in any other order that supports Covad's very narrow reading of
4 ILEC's copper retirement rights.

5 **Q. IS MS. DOBERNECK'S NARROW INTERPRETATION OF ILEC**
6 **COPPER RETIREMENT RIGHTS CONSISTENT WITH THE FCC'S**
7 **POLICY OF ENCOURAGING CARRIERS TO DEPLOY FIBER**
8 **FACILITIES?**

9 A. No. As I discuss in my direct testimony at page 11, the FCC has emphasized the
10 importance of encouraging carriers to deploy fiber facilities in order to bring
11 advanced telecommunication services to carriers throughout the country. The FCC
12 again emphasized the importance of this Congressionally-mandated objective in an
13 order issued last month relating to FTTC loops. In that order, in which the FCC ruled
14 that FTTC loops are subject to the same limited unbundling obligations that apply to
15 FTTH loops, the FCC emphasized the importance of "eliminat[ing] disincentives to
16 invest in broadband facilities and, therefore, further section 706's goals."¹⁰

¹⁰ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147, FCC 04-248, Order on Reconsideration at ¶ 13 (rel. Oct. 18, 2004).

1 If the right of ILECs to retire copper facilities were limited to situations involving
2 installations of FTTH loops, as Ms. Doberneck incorrectly claims, ILECs would have
3 reduced incentive to deploy fiber. This reduced incentive would arise because, in the
4 absence of a retirement right, an ILEC would have to maintain both its copper
5 facilities and the newly deployed fiber facility. Faced with the prospect of duplicative
6 maintenance costs, an ILEC would be less likely to install fiber facilities. That result
7 would directly undermine the FCC's policy of encouraging the deployment of fiber.

8 **Q. WHAT DOES MS. DOBERNECK'S TESTIMONY REVEAL ABOUT**
9 **WHETHER COVAD CONSIDERED THE IMPORTANCE OF**
10 **ENCOURAGING THE DEPLOYMENT OF FIBER FACILITIES IN**
11 **FORMULATING ITS POSITION RELATING TO THE RETIREMENT**
12 **OF COPPER FACILITIES?**

13 A. Ms. Doberneck's testimony confirms that Covad has disregarded the FCC's clearly
14 stated policy objective of encouraging the deployment of fiber facilities. In view of
15 the FCC's statements about the importance of fiber deployment to consumer welfare,
16 Covad is wrong in assuming that investment incentives are irrelevant to the issue of
17 copper retirement. By proposing language that would decrease incentive to deploy
18 fiber and by failing even to acknowledge the importance of policies that promote
19 investment in fiber facilities, Covad is acting inconsistently with a fundamental goal
20 of the Act.

1 **Q. AT PAGES 6 AND 8 OF HER TESTIMONY, MS. DOBERNECK**
2 **STATES THAT COVAD'S NEWLY REVISED PROPOSAL IS**
3 **INTENDED TO ADDRESS THE SITUATION IN WHICH QWEST IS**
4 **RETIRING A COPPER LOOP AND REPLACING IT WITH A**
5 **"HYBRID LOOP." IN THE TRO, DID THE FCC ISSUE A RULING**
6 **CONCERNING WHETHER ILECS ARE REQUIRED TO PROVIDE**
7 **UNBUNDLED ACCESS TO HYBRID LOOPS?**

8 A. Yes. In paragraphs 288 and 290 of the *TRO*, the FCC ruled that ILECs are not
9 required to unbundle the broadband capabilities of hybrid loops, which are loops
10 comprised of both fiber and copper. In reaching that result, the FCC specifically
11 considered and rejected arguments that Covad presented in an attempt to obtain
12 unbundle access to the broadband capabilities of these loops:

13 We decline to require incumbent LECs to unbundle the next-
14 generation network, packetized capabilities of their hybrid loops to
15 enable requesting carriers to provide broadband services to the mass
16 market. AT&T, WorldCom, Covad, and others urge the Commission
17 to extend our unbundling requirements to the packet-based and fiber
18 optic portions of incumbent LEC hybrid loops. We conclude,
19 however, that applying section 251(c) unbundling obligations to these
20 next-generation network elements would blunt the deployment of
21 advanced telecommunications infrastructure by incumbent LECs and
22 the incentive for competitive LECs to invest in their own facilities, in
23 direct opposition to the express statutory goals authorized in section
24 706. The rules we adopt herein do not require incumbent LECs to
25 unbundle any transmission path over a fiber transmission facility
26 between the central office and the customer's premises (including fiber
27 feeder plant) that is used to transmit packetized information.
28 Moreover, *the rules we adopt herein do not require incumbent LECs to*
29 *provide unbundle access to any electronics or other equipment used*
30 *to transmit packetized information over hybrid loops, such as the*

1 *xDSL-capable line cards installed in DLC systems* or equipment used
2 to provide passive optical networking (PON) capabilities to the mass
3 market.¹¹
4

5 As this ruling shows, the FCC has made it clear that ILECs are not required to
6 unbundle the broadband capabilities of their hybrid loops. To the extent that Covad is
7 seeking access to those capabilities, its request violates the *TRO*.

8 **Q. IS THIS FCC RULING RELATING TO HYBRID LOOPS RELEVANT**
9 **TO COVAD'S REVISED PROPOSAL FOR COPPER RETIREMENT?**

10 A. Yes. Qwest is concerned that the underlying intent of Covad's new proposal may be
11 to gain unbundled access to the broadband capabilities of hybrid loops -- precisely
12 what the FCC rejected in the *TRO*. In this regard, it is significant that Covad has not
13 offered a definition of the "alternative service" that Qwest would have to provide
14 before retiring a copper facility. Given the complete vagueness of that term, if
15 Covad's proposal were adopted, it is quite possible Covad would claim that access to
16 the broadband capabilities of hybrid loops is the "alternative service" to which it
17 would be entitled. That outcome would directly violate the FCC's ruling.

18 For example, Covad's own testimony hints at this being a logical extension of the
19 "alternative service" requirement. Ms. Doberneck states at pages 14-15:
20 "Conversely, of course, Qwest could interpret it in a number of ways, which would

¹¹ *TRO* at ¶ 288. (Footnotes omitted and emphasis added).

1 meet Covad's needs and not require Qwest to maintain copper plant it otherwise
2 would have retired." The only way Qwest would not be required to maintain the
3 copper plant is if Qwest provided the "alternative service" by unbundling its hybrid
4 feeder fiber to provide unbundled access to the electronics or other equipment used to
5 transmit packetized information over hybrid loops, such as the xDSL-capable line
6 cards installed in DLC systems. As demonstrated by the FCC ruling set forth above,
7 Qwest is under no obligation to provide unbundled access to its xDSL-capable line
8 cards. Covad's possibly veiled attempt at requiring this unbundling by its use of the
9 vague "alternative service" requirement should be rejected by this Commission, as it
10 already has in Washington and Colorado.

11 **Q. AT PAGE 11 OF HER TESTIMONY, MS. DOBERNECK IDENTIFIES**
12 **QWEST DSL VOLUME PLAN AGREEMENT ("VISP") AS AN**
13 **ALTERNATIVE SERVICE QWEST COULD PROVIDE. ISN'T VISP**
14 **ALREADY AVAILABLE FOR COVAD TO PURCHASE?**

15 A. Yes, VISP is already available for Covad to purchase and can be utilized when a
16 hybrid loop serves the end user location. However, Ms. Doberneck is proposing that
17 Qwest be required to provide access to Qwest DSL Volume Plan Agreement, or
18 "VISP service," apparently at the state-prescribed recurring rate for the high
19 frequency portion of the unbundled loop. I am inferring that Covad advocates that
20 rate based on Covad's proposal that any "alternative service" that Qwest provides

1 should not increase the cost to Covad or its end-user (a position reflected in the
2 Covad proposed language for section 9.2.1.2.3.1 of the ICA and Ms. Doberneck's
3 testimony at page 14). In Utah, the current recurring rate for line sharing over the
4 high frequency portion of the unbundled loop is \$0. Despite the claims to the
5 contrary by Ms. Doberneck (at page 21), a rate of \$0 would not allow Qwest to
6 recover its costs of providing VISP or any other "alternative service" a CLEC may
7 demand.

8 If the estimated savings for Covad of \$2,400 set forth at page 20 of Ms. Doberneck's
9 testimony (the flip side of the Qwest revenue lost) is an accurate statement of the
10 amount at stake here, one wonders why Covad is going through the resource-
11 intensive exercise of seeking arbitration of this issue, particularly when Covad is
12 essentially asking the Commission to disregard federal law governing the treatment of
13 the unbundling of such services.¹²

14 **Q. MS. DOBERNECK ASSERTS AT PAGE 14 OF HER TESTIMONY**
15 **THAT BECAUSE QWEST ALREADY OFFERS VISP SERVICE, IT**
16 **HAS NO "ADDITIONAL COSTS" THAT IT WOULD HAVE TO**
17 **RECOVER FROM COVAD IN PROVIDING AN ALTERNATIVE**
18 **SERVICE. IS THERE ANY MERIT TO THIS ASSERTION?**

¹² In its post-hearing briefs, Qwest will provide its legal analysis of why Covad's request violates this law.

1 A. No. This confusing argument cannot mask a basic flaw in Covad's proposal – that it
2 would prevent Qwest from recovering the costs it would incur to provide an
3 alternative service. If Covad's language were adopted, Qwest would unquestionably
4 incur costs to provide an alternative service. Under Covad's proposal, however, the
5 rate Qwest could charge to recover those costs could be no greater than what Covad is
6 charged today. As discussed above that monthly rate today is \$0, meaning that the
7 monthly rate for an alternative service would also be \$0. If Qwest is not permitted to
8 charge a monthly rate, as would be the case under Covad's proposal, it would not
9 recover its costs. That result would be a direct violation of Qwest's rights of cost
10 recovery under the Act.

11 **Q. DOES MS. DOBERNECK'S TESTIMONY SUPPORT COVAD'S**
12 **CLAIM THAT THE RETIREMENT OF COPPER FACILITIES WILL**
13 **LEAD TO SIGNIFICANT SERVICE DISRUPTIONS FOR COVAD'S**
14 **CUSTOMERS?**

15 A. No. On the contrary, Mr. Doberneck emphasizes at page 17 of her testimony that
16 Qwest fiber placement activates have not impacted Covad and that "we reasonably
17 assume that the impact will not be huge." She states that Covad has similarly
18 experienced minimal impact in BellSouth's region even though, according to her

1 testimony, BellSouth "has been far more aggressive than Qwest in replacing copper
2 with fiber."¹³

3 **Q. GIVEN THE VERY LIMITED SCOPE OF ANY POTENTIAL**
4 **SERVICE DISRUPTIONS RESULTING FROM QWEST'S**
5 **RETIREMENT OF COPPER LOOPS, IS IT REASONABLE FOR**
6 **COVAD TO PROPOSE THE RETIREMENT CONDITIONS IT IS**
7 **SEEKING?**

8 A. No. Under Covad's proposal, every time Qwest retires a copper loop that is serving a
9 Covad customer, it would be required to provide an "alternative service" over a
10 "compatible facility." Although Covad does not define this "alternative service,"
11 providing such a service would almost certainly require Qwest to incur costs that,
12 under Covad's proposal, Qwest would not be entitled to recover. It would be illogical
13 to impose such an ambiguous and potentially costly requirement when, as Ms.
14 Doberneck emphasizes, Covad does not expect any significant problems resulting
15 from Qwest's retirement of copper loops over the remaining few years of
16 grandfathered line sharing arrangements.

17 Moreover, as I have discussed discuss in my direct testimony, Covad's requirements
18 would reduce Qwest's incentive to deploy fiber facilities.¹⁴ If Qwest is faced with the

¹³ Doberneck Direct at 17.

1 costs of either continuing to maintain copper facilities or providing an "alternative
2 service" over "compatible facilities" each time it considers whether to replace copper
3 facilities with fiber, the economics of that decision will be changed in a way that will
4 make the deployment of fiber less likely. It would be nonsensical to create this
5 disincentive given Covad's acknowledgement that it does not expect Qwest's
6 retirement of copper loops to lead to any significant service disruptions.

7 **Q. DOES MS. DOBERNECK'S TESTIMONY PROVIDE ANY**
8 **ADDITIONAL INFORMATION CONCERNING WHETHER COVAD'S**
9 **PROPOSED CONDITIONS ARE CONSISTENT WITH THE GOAL OF**
10 **INCREASING NETWORK EFFICIENCY?**

11 A. Yes. Ms. Doberneck demonstrates the inefficiency of Covad's proposal. At page 5 of
12 her direct testimony, she acknowledges that "the maintenance costs for fiber cable are
13 much lower than they are for copper, resulting in long-term cost savings once fiber
14 and the associated equipment is in place." Under Covad's proposal, if Qwest chose
15 not to provide an "alternative service" upon deploying fiber facilities, it would be
16 required to incur *both* the substantially higher maintenance costs for copper and the
17 lower maintenance costs for fiber. That result would be very inefficient and would
18 further reduce Qwest's incentive to deploy fiber. Qwest should not be encumbered by

¹⁴ Stewart Direct at 3.

1 conditions that prevent it from realizing the network and cost efficiencies that can be
2 achieved by deploying fiber facilities.

3 **Q. IS MS. DOBERNECK CORRECT IN SUGGESTING AT PAGES 5-6 OF**
4 **HER TESTIMONY THAT COVAD'S PROPOSED CONDITIONS WILL**
5 **PRESERVE CONSUMER CHOICE?**

6 A. No. Ms. Doberneck is viewing "consumer choice" from a perspective that is too
7 narrow. She is focusing on the choice of what is, by her own acknowledgement, only
8 a "handful" of customers at most. The more relevant perspective is how the
9 deployment of fiber facilities affects overall consumer choice, not just the choice of a
10 very small number of individual consumers. From that perspective, it is clear that the
11 replacement of copper facilities with fiber significantly adds to consumer choice, as
12 the deployment of fiber substantially increases the bandwidth that is available and
13 allows a carrier to deploy voice, data, and video services over a single loop. Ms.
14 Doberneck herself acknowledges that the additional bandwidth provided by fiber
15 increases competition, and in turn consumer choice, when she states at page 5 of her
16 direct testimony that it allows Qwest "to compete with the cable companies for
17 virtually all the services cable customers generally subscribe to." It is this type of
18 increased competition, brought about through the deployment of fiber that generates
19 true facilities-based competition and increased consumer choice.

1 Moreover, even for the handful of Covad customers that potentially could be affected
2 by the retirement of copper loops, it is not at all clear that they would lose "consumer
3 choice" by being unable to obtain service from Covad. Even if Qwest does not leave
4 copper loops in service, Covad can continue providing service to its customers served
5 over those loops by deploying remote DSLAMs. While Ms. Doberneck states at page
6 19 of her testimony that it is does not make sense for Covad to deploy DSLAMs, in
7 the *TRO*, the FCC specifically sought to promote CLEC investment in remote
8 DSLAMs and other next-generation network equipment. In ruling that ILECs do not
9 have to unbundle packetized fiber loops, as discussed above, the FCC found that
10 giving CLECs access to copper distribution subloops instead of packetized fiber loops
11 would "promote competitive CLEC investment in next generation equipment (*e.g.*,
12 packet switches, remote DSLAMs, etc.) and transmission facilities (*e.g.*, fiber loop
13 facilities built to points in incumbent LEC networks closer to the home)."¹⁵ Thus, the
14 FCC seems to believe that it is economically feasible for CLECs to deploy remote
15 DSLAMs.

16 **Q. IN HER DISCUSSION OF "RETIREMENT OF COPPER**
17 **FACILITIES," MS. DOBERNECK STATES ON PAGE 4 OF HER**
18 **TESTIMONY THAT PRIOR TO THE *TRO*, COVAD "COULD**

¹⁵ *TRO* at ¶ 291.

1 **PROVIDE DSL SERVICE TO END USERS OVER HYBRID COPPER-**
2 **FIBER LOOPS IF A PACKET SWITCHING FUNCTIONALITY -- AN**
3 **ILEC DSLAM -- EXISTED ON THAT LINE." IS THAT STATEMENT**
4 **COMPLETE?**

5 A. No. Ms. Doberneck's statement seems to imply that prior to the *TRO*, Covad had
6 access to unbundled packet switching ("UPS") if Qwest had deployed UPS.
7 However, in the *UNE Remand Order*, the FCC ruled that ILECs are not required to
8 provide access to UPS except in limited circumstances:

9 *We decline at this time to unbundle the packet switching functionality,*
10 *except in limited circumstances. Among other potential factors, we*
11 *recognize that the presence of multiple requesting carriers providing*
12 *services over their own packet switches is probative of whether they*
13 *are impaired without access to unbundled packet switching. The*
14 *record demonstrates that competitors are actively deploying facilities*
15 *used to provide advanced services to serve certain segments of the*
16 *market – namely, medium and large business – and hence they cannot*
17 *be said to be impaired in their ability to offer service, at least to these*
18 *segments without access to the incumbent's facilities.*¹⁶
19

20 Under this ruling, Covad was required to place a DSLAM at a remote terminal where
21 hybrid loops were deployed if Qwest had deployed a DSLAM at a remote terminal.
22 Covad was entitled to UPS in this scenario only if, among other criteria, Qwest had
23 deployed a remote DSLAM while concurrently not permitting Covad to deploy its

¹⁶ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696 at ¶ 306 (1999) ("*UNE Remand Order*").

1 own remote DSLAM. Ms. Doberneck's statements suggest that under the terms of
2 the *UNE Remand Order*, Covad would never have been required to locate a DSLAM
3 at a remote terminal and was entitled to access to UPS. That is not a correct
4 statement of the FCC's pre-*TRO* rules.¹⁷

5 **Q. AT PAGES 23-25 OF HER TESTIMONY, MS. DOBERNECK ASSERTS**
6 **THAT THE NOTICE QWEST HAS COMMITTED TO PROVIDE TO**
7 **CLECS WHEN IT IS RETIRING COPPER FACILITIES IS**
8 **INADEQUATE. ARE HER CRITICISMS JUSTIFIED?**

9 A. No. In response to CLEC concerns, Qwest has agreed to send an e-mail notification
10 to all CLECs at the time it posts the network disclosures regarding copper
11 retirements. CLECs routinely use Qwest's network disclosure postings to obtain
12 information about Qwest's network. This process for disseminating information to
13 CLECs is efficient and, contrary to the implication in Ms. Doberneck's testimony, is
14 not burdensome for CLECs. The combination of Qwest's e-mail notifications and its
15 postings of network disclosures ensure that CLECs will receive notifications of any
16 plans to retire copper facilities. Moreover, despite Ms Doberneck's allegation to the
17 contrary, Qwest does provide contact information should a CLEC require additional
18 information regarding a specific copper retirement e-mail notification. Finally, Qwest

¹⁷ See pre-*TRO* 47 CFR 51.319 (c)(5) (establishing four requirements for access to unbundled packet switching).

1 has agreed in its proposed language to comply with all applicable FCC rules relating
2 to notice, thereby ensuring that Covad will receive the notice it is entitled to under the
3 FCC's rules.

4 **Q. DID THE ALJ IN THE WASHINGTON ARBITRATION ADDRESS**
5 **COVAD'S DEMANDS RELATING TO NOTICE?**

6 A. Yes. The ALJ rejected Covad's notice demands, finding that the information Covad
7 is requesting Qwest to provide in notices "may be burdensome." She adopted Qwest's
8 language, explaining: "Given that Qwest commits to providing the information
9 required by the FCC rules, such as the location of the facilities to be retired, the issue
10 is resolved in favor [of] Qwest's language for Section 9.1.15 and 9.2.1.2.3."¹⁸

11 **III. CONCLUSION**

12 **Q. CAN YOU PLEASE SUMMARIZE YOUR POSITION RELATING TO**
13 **THIS ISSUE?**

14 A. Qwest has proposed language that complies fully with the FCC's requirements
15 relating to the retirement of copper facilities and Qwest goes beyond those
16 requirements to minimize the possibility of service disruptions for Covad's customers.
17 By contrast, Covad has proposed onerous retirement conditions that are not in the
18 *TRO*, that would decrease Qwest's incentive to deploy fiber facilities, and that are not

¹⁸ Washington Order at ¶ 36.

1 supported by any actual or anticipated experience with the retirement of copper loops.
2 Accordingly, the Commission should adopt Qwest's proposed ICA language relating
3 to this issue.

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

5 A. Yes.