

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for Arbitration	)	
of an Interconnection Agreement Between	)	DOCKET NO. UT-043045
	)	
DIECA COMMUNICATIONS, INC., d/b/a	)	ORDER NO. 01
COVAD COMMUNICATIONS	)	
COMPANY	)	
	)	ORDER ON ARBITRATION
with	)	PROCEDURE; APPOINTMENT
	)	OF ARBITRATOR; NOTICE OF
QWEST CORPORATION	)	PREHEARING CONFERENCE
	)	<b>(Set for Tuesday, June 29, 2004)</b>
Pursuant to 47 U.S.C. Section 252(b), and	)	
the <i>Triennial Review Order</i> .	)	
.....	)	
	)	

1 **NATURE OF PROCEEDING:** On May 25, 2004, Dieca Communications, Inc., d/b/a Covad Communications Company (Covad) 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) (Act).<sup>1</sup> The petition was served on Qwest Corporation (Qwest), and included the following materials:

- A. Petition for Arbitration
- B. Exhibit A: Proposed Draft Interconnection Agreement

2 This arbitration will be governed by the terms of this Order, WAC 480-07-630, and WAC 480-07-640.

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<sup>1</sup> *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 **STATUTORY DATES:** The petition reports the following statutory dates:

Request for Negotiation	December 17, 2003
Plus 135 Days	April 30, 2004
Plus 160 Days	May 25, 2004

4 The nine-month time line for resolution is September 17, 2004. The Commission interprets its Section 252(b)(4)(C) duty to resolve disputes not later than nine months after negotiations are requested to be met by service of an Arbitrator's Report and Decision.

5 According to the reported dates, the petition is timely filed. Any party asserting that the dates are incorrect should do so within three business days of service of this Order. If no objection is received these dates shall be adopted as the statutory deadlines for this arbitration.

6 **MODIFIED PROCEDURES:** Pursuant to WAC 480-07-630, the Commission adopts the following modified procedures for purposes of this proceeding. These procedures will govern the course of the arbitration unless the arbitrator or the Commission modifies them for cause.

7 **ARBITRATOR:** The Commission appoints C. Robert Wallis as arbitrator in this proceeding. Arbitrator Wallis' telephone number is (360) 664-1142, and e-mail address is [bwallis@wutc.wa.gov](mailto:bwallis@wutc.wa.gov). The arbitrator may select staff members to provide technical or other assistance. The arbitrator shall have all the reasonable and necessary authority to conduct the arbitration according to the terms of this order and to issue an Arbitration Report as set forth below.

8 **PARTIES:** The parties to the arbitration are Covad Communications Company and Qwest Corporation. Although non-parties may ask to participate, intervention by

persons not a party to the negotiation will generally not be permitted, except on a showing that such participation will serve a compelling public interest. The Public Counsel Section of the Office of Attorney General may request participation in an arbitration pursuant to RCW 80.04.510. If the arbitrator permits any participation, limits may be imposed on the participant's rights in the arbitration.

9 **RESPONSE BY NON-PETITIONING PARTY:** Qwest Corporation may respond to the petition and may file with the Commission such additional information as it wishes 25 days after the petition filing date (June 21, 2004). At a minimum, the response shall include:

- a. A brief or other written statement addressing the disputed issues. The brief should address, in addition to any other matters, how the parties' positions, and any conditions requested, meet or fail to meet the requirements of Sections 251 and 252 of the Telecom Act, any applicable FCC regulations, and any applicable regulation, order, or policy of this Commission;
- b. If prices are in dispute, the responding party shall submit its proposed rates or charges, and all relevant cost studies and related supporting materials;
- c. Any conditions that the responding party requests be imposed;
- d. The response may include a recommendation as to any information that should be requested from the parties by the arbitrator pursuant to Section 252(b)(4)(B) of the Telecom Act;<sup>2</sup>
- e. An alternative draft interconnection agreement, if one is proposed; and

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<sup>2</sup> The recommendation should state why the information is necessary for the arbitrator to reach a decision on the unresolved issues.

- f. Any other documents relevant to the dispute, including copies of all documents in a party's possession or control on which it relies to support its positions or which it intends to introduce as an exhibit at the hearing.

10 All responses and accompanying documentation shall be verified as provided by WAC 480-07-630(8), or submitted by affidavit.

11 **PROTECTIVE ORDER:** The Commission may enter a protective order in this matter upon the request of either party, pursuant to WAC 480-07-420 and WAC 480-07-423, as permitted by WAC 480-07-630(9).

12 **DISCOVERY:** Parties must cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. Parties must exchange copies of all documents relevant to the dispute, including those on which they rely in support of their position or which they intend to introduce as exhibits. Failure to exchange information may be deemed a failure to negotiate in good faith under the Telecom Act. The arbitrator may decline to consider documents or information improperly withheld during discovery.

13 Any party that receives a data request to which it objects on any grounds, in whole or in part, must immediately notify the arbitrator and opposing counsel by telephone or facsimile transmission. The parties must make a good faith effort to stipulate to relevant facts before the Commission will resolve any discovery dispute.

14 **PREHEARING CONFERENCE:** A **prehearing conference** will be held in this matter on **Tuesday, June 29, 2004, beginning at 9:30 a.m. in the Commission's Hearing Room, Room 206**, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

- 15 The purpose of the conference will be to review disputed issues, discuss the hearing schedule and format, and review the need for any remaining discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. §252(b)(4)(B). Any disputed discovery requests may be submitted to the arbitrator at the conference. The submission must include an explanation of why the information is necessary to reach a decision on the unresolved issues. This provision shall not limit the right of the arbitrator or Commission to request information from the parties at any time pursuant to 47 U.S.C. § 252(b)(4)(B).
- 16 **COMMISSION REQUEST FOR INFORMATION:** Pursuant to 47 U.S.C. § 252(b)(4)(B), the arbitrator may require both parties to provide information necessary to reach a decision on unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request, then the arbitrator may proceed on the basis of the best information available to it from whatever source derived. The parties must respond to such requests within seven days, unless the arbitrator sets another time for a response.
- 17 **HEARING AND BRIEFING SCHEDULE:** An arbitration hearing will be scheduled at the prehearing conference on June 29, 2004. The hearing and all post-hearing briefs must be completed no later than August 13, 2004. Parties may waive hearing and submit the issues to arbitration on the written record.
- 18 **HEARING PROCEDURE:** Hearing time shall not exceed two days, unless extended by the arbitrator. The direct and rebuttal testimony of a witness shall be offered in written form. Documentary evidence may be introduced. Evidence is admissible if, in the judgment of the arbitrators, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Evidence may be excluded on the ground that it was improperly withheld during discovery.

19 **ARBITRATOR'S REPORT:** The arbitrator will issue an Arbitrator's Report and Decision that will constitute the resolution by the Commission of the issues submitted for arbitration, subject to final Commission review during the approval process. The Arbitrator's Report will comply with the requirements of 47 U.S.C. § 252(c).

DATED at Olympia, Washington, and effective this 4th day of June, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner