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**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996</p>	<p>Docket No. UT-003022</p>
<p>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</p>	<p>Docket No. UT-003040 QWEST'S MOTION TO STRIKE PORTIONS OF COVAD'S WORKSHOP 4 BRIEF ON DISPUTED LOOPS, LINE SPLITTING, EMERGING SERVICES AND PUBLIC INTEREST ISSUES</p>

**INTRODUCTION**

Qwest Corporation ("Qwest") brings this motion to strike portions of the Post-Workshop Brief of Covad Communications Company on Disputed Loops, Line Splitting, Emerging Services, and Public Interest Issues ("Covad Workshop 4 Brief")<sup>1</sup> that: (1) address at length the issue of cooperative testing although Covad asked to have this issue deferred to the Regional Oversight Committee ("ROC") OSS process; (2) the issue of FOC delivery and performance in the xDSL FOC trial and (3) presents new factual allegations regarding spectrum management that Covad did not raise at the workshop and for

1 which there is no evidentiary support.<sup>2</sup> Prior to filing this motion, Qwest informed Covad of its objections  
2 in an attempt to resolve this issue without the need to involve the Commission. During the week of  
3 September 17, 2001, Covad and Qwest have exchanged correspondence and spoken by telephone in an  
4 attempt to narrow their areas of disagreement. Covad and Qwest have been able to narrow their areas  
5 of disagreement as a result.  
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7 The Commission should grant Qwest's motion to strike. As set forth below, the record is clear  
8 that the parties closed the issues relating to whether Qwest should provide a 72-hour FOC for xDSL  
9 loops and the surrounding Colorado xDSL FOC trial issues for purposes of Washington Workshop 4.  
10 The record is equally clear that the parties closed Covad's issues relating to cooperative testing and  
11 deferred them to the ROC OSS process. By briefing these closed issues extensively, Covad confuses the  
12 record and the disposition of these issues. On the spectrum management issue, Qwest's motion is equally  
13 well-founded: Covad makes factual arguments that it did not make at the workshop and that are  
14 unsupported by any record evidence. The Commission should strike those portions of Covad's brief  
15 discussed in this motion.  
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## 19 ARGUMENT

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21 <sup>1</sup> All references to Covad's brief are to the Errata brief filed by Covad on September 12, 2001.

22 <sup>2</sup> Qwest notes that Covad attaches to its brief several "exhibits" it did not present in the workshop. Some of those  
23 materials relate to information that Covad allegedly obtained after the close of the workshop and, accordingly, Qwest  
24 has not challenged all "exhibits" attached to Covad's brief. However, Qwest's decision to focus on the most  
25 troublesome aspects of Covad's brief does not mean it agrees that parties can attach random documents to their briefs.  
26 Covad could have filed a motion or notice to supplement the record thereby giving Qwest the opportunity to respond  
in its impasse brief.

1                   **1. The Commission Should Grant Qwest's Motion To Strike The Portions of**  
2                   **Covad's Brief Relating to FOC Performance Issues And The xDSL**  
3                   **FOC Trial.**

4                   At pages 26-30 of its brief, Covad addresses at length its interpretation of the results of the  
5 Colorado xDSL FOC trial. This is an issue, however, that Covad agreed to close for purposes of the  
6 Washington workshop and, indeed, where it *withdrew* its own testimony.

7                   The Colorado xDSL FOC trial was assigned Washington Loop Issue 5 at the workshops. At the  
8 initial session of Workshop 4, Covad withdrew its data regarding Qwest's FOC and agreed that pursuit  
9 of a 72-hour FOC would be appropriate. July 11, 2001 Workshop 4 Transcript at 4358 ("MS.  
10 DOBERNECK: And we have also, and this goes to the modification of Ms. Cutcher's testimony,  
11 *withdrawn or we will be withdrawing our testimony regarding the FOC trial and the loop*  
12 *installation interval as well as MC-3, which relates to the FOC trial. So we consider that*  
13 *particular issue closed although subject to review at the conclusion of the OSS testing as far as*  
14 *how Qwest performs on the PO-5 and OP-3 measurements. And I believe I got those correct, but*  
15 *correct me if I'm wrong") (emphasis added). AT&T was unable to state whether it would agree to  
16 support a 72-hour FOC for xDSL loops and, accordingly, the issue was held open until the follow up  
17 workshop to permit AT&T to formulate its position. With respect to Covad, however, the ALJ noted  
18 that Covad agreed to support the 72-hour FOC before the ROC. *Id.* at 4361 ("JUDGE RENDAHL:  
19 Okay, well, then I think it's an agreement for Covad, but it's an AT&T take back for the follow-up  
20 session").  
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                  At the follow-up session of Workshop 4, AT&T reported that it would agree to support a 72-  
hour FOC for xDSL loops. The parties discussed some disagreements regarding the meaning of the

1 Colorado trial data, but the parties ultimately agreed to close this issue. Judge Rendahl captured the  
2 disposition of Washington Loop Issue 5 as follows:

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4 MS. SACILOTTO: For purposes of this record in Washington, you know, we -- the only issue  
5 that's captured within Washington Loop 5 is the issue the ALJ was talking about that should be  
6 closed is should we go with the 72-hour FOC to the ROC. I mean, I would disagree with your  
7 characterization of the reconciliation process in Colorado. As it's being presented, it sounds as if  
8 we didn't offer to reconcile or we didn't follow through on requests to reconcile data, and that's  
9 incorrect. Only two carriers asked to do it, one of which followed through and then subsequently  
10 withdrew 90 percent of their own data. So you know, for purposes of Washington, I agree with  
11 the ALJ that this issue is closed.

12 MS. DOBERNECK: To bring the comments full circle, getting back to the 72-hour FOC,  
13 Covad had no objection to Qwest going to the ROC for that. We're currently operating under  
14 72 hours, so we had no objection.

15 JUDGE RENDAHL: It seems to me that the issue, as Ms. Sacilotto stated, here in Washington  
16 is whether going to a 72-hour testing interval is acceptable to the parties, and my understanding,  
17 from hearing all of you, is that that is okay. So for purposes of the issue here in Washington it is  
18 closed. If there are performance issues that result out of that, I expect we'll be hearing about that  
19 when we're discussing performance here in Washington.

20 MS. DOBERNECK: On behalf of Covad, that's my understanding as well.

21 August 1, 2001 Workshop 4 Transcript at 5607-08.

22 Covad, nevertheless, devotes roughly four pages of its brief to this issue, including briefing its view  
23 of the results of the xDSL FOC trial and the data reconciliation process in Colorado. Covad stated on  
24 the record that it reserved the right to challenge Qwest's ultimate performance in the ROC OSS process.  
25 Accordingly, Qwest believes it is unnecessary, confusing for purposes of the record, and prejudicial to  
26 Qwest for Covad to extensively brief this closed issue in the guise of preserving its rights to challenge  
future performance. The Commission should strike this portion of Covad's brief. If, however, the

1 Commission denies Qwest's motion on this issue, Qwest requests that the Commission afford Qwest the  
2 opportunity to respond to Covad's briefing.

3 **2. The Commission Should Strike Covad's Briefing On Cooperative Testing.**

4 Qwest also moves to strike pages 22-25 of Covad's brief addressing cooperative testing as well  
5 as the conclusion of that discussion on the top of page 26. At the express request of Covad, this issue  
6 was closed in the Workshop and deferred to the ROC OSS test process. Indeed, Qwest requested how  
7 Covad wanted this issue reflected on the log and in the record: .  
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10 JUDGE RENDAHL: Okay, is that sufficient on issue 20? Okay, let's move on to the next issue.

11 MS. SACILOTTO: I'm sorry, Megan, what did we do with it, did we close it?

12 JUDGE RENDAHL: It's closed subject to ROC testing.

13 MS. DOBERNECK: Yes.

14 July 12, 2001 Workshop 4 Transcript at 4502.

15 Despite the closure of this issue, Covad spends four full pages, more space than it devoted to  
16 most impasse issues, challenging the accommodations Qwest has made to resolve this issue by consensus,  
17 Covad Workshop 4 Brief at 22, and arguing Covad's allegations regarding Qwest's alleged "failure to  
18 perform cooperative testing." *Id.* at 24-26. Covad has informed Qwest that it included this discussion as  
19 a "placeholder" in the event Covad needs to raise performance-related issues later in the Washington  
20 proceedings. However, Qwest believes that Covad's briefing goes far beyond preserving its ability to  
21 raise issues later in the workshop process. Qwest notes, for example, that presents extensive criticism  
22 and legal arguments regarding this issue, and Covad does not mention that the parties were engaged in a  
23 data reconciliation process regarding the differences in their cooperative testing data, and that Qwest's  
24 data shows that its cooperative testing results for Washington show that Qwest  
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1 meets its obligation 94% of the time.<sup>3</sup>

2 By briefing issues that are closed or deferred, the ALJ and the Commission are hard pressed to  
3 know if an issue requires a decision when a party "closes" an issue only to brief it extensively in the  
4 impasse briefs. If Covad intended to hold some aspect of this issue open for briefing, then it was  
5 incumbent upon Covad to inform the ALJ, parties and Staff at the workshop that this was its intent. As it  
6 stands, the Washington Issues Log and transcript reflect this issue as "closed." The Commission should  
7 strike Covad's discussion of Washington Loop Issue 20.  
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10 **3. The Commission Should Strike Covad's Spectrum Management Discussion.**

11 Finally, Qwest moves to strike Covad's discussion of spectrum management appearing on page  
12 34 of Covad's Workshop 4 Brief. Here, Covad does not brief a closed issue, but it presents  
13 unsupported factual arguments it never raised in Washington. The issue of spectrum management has  
14 been a topic of discussion since the first loop workshops in Arizona and Colorado in March and April.  
15 Covad has never presented any testimony in any workshop relating to this topic, choosing instead to rely  
16 upon the testimony and multi-state record developed by Rhythms NetConnections. Now, after the close  
17 of the workshop, Covad comes forward with a claim that T1.417 "relies upon 26 gauge equivalent  
18 working length" which, according to Covad, "cannot be measured or effectively stored in Qwest's  
19 records." Covad's Workshop 4 Brief at 34. The ALJ and Commission will search long and hard for any  
20 discussion of what Qwest's records can or cannot store in the Washington, multi-state or any other  
21 record. Indeed, Covad provides no evidentiary support for this statement. Covad continues, claiming  
22 that if Covad were required to provide Qwest with spectrum management class information, Covad  
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<sup>3</sup> July 12, 2001 Workshop 4 Transcript at 4502.  
QWEST'S MOTION TO STRIKE PORTIONS OF  
COVAD'S WORKSHOP 4 BRIEF ON DISPUTED  
LOOPS, LINE SPLITTING, EMERGING SERVICES  
AND PUBLIC INTEREST ISSUES

1 would be required to order a "different loop" for "every service and update the loop each time a user  
2 changes speeds." Again, although Covad's claims make little sense, what is clear is that neither Covad  
3 nor any other party in Washington presented such evidence or testimony at the workshop. Covad  
4 concludes this discussion with a discussion of the alleged conflict between T1.417 and different kinds of  
5 SDSL service. This is not mere argument of counsel, but detailed factual allegations regarding the  
6 deployment guidelines for what Covad identifies as "SDSL 384." Neither Covad nor any other CLEC  
7 presented evidence at the workshop regarding SDSL 384, even though Covad clearly was on notice that  
8 spectrum management would be addressed in this workshop. In short, Covad could have and should  
9 have raised this issue on the record to permit Qwest the opportunity to respond. The Commission should  
10 strike Covad's arguments regarding spectrum management.  
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### 13 CONCLUSION

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15 The parties at the Workshop have worked hard to define the issues that remain in dispute and to  
16 address the most appropriate resolution of them. Staff has also worked hard to track the positions of the  
17 parties and to present them on a log for the benefit of the record. By briefing issues that have been closed  
18 or deferred as well as presenting factual allegations regarding extremely technical issues after the close of  
19 the workshop, Covad ignores the rules of these proceedings. No party should be required to guess at the  
20 issues that remain for resolution or the issues that must be briefed, nor should the Commission and its  
21 Staff be required to parse through the record and determine if what the parties *really* mean by their  
22 positions in the workshop. As a matter of procedural and substantive fairness, the Commission should  
23 strike pages 22-25, 26-30, and the spectrum management discussion on page 34 of Covad's Workshop  
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4 brief.

Respectfully submitted this 24th day of September, 2001.

QWEST CORPORATION

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