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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE CONTINUED
COSTING AND PRICING OF UNBUNDLED
NETWORK ELEMENTS AND TRANSPORT
AND TERMINATION

Docket No. UT-003013 (Part D)

COVAD COMMUNICATIONS
COMPANY’S MOTION TO COMPEL

COVAD COMMUNICATIONS COMPANY (“COVAD”), pursuant to WAC 480-09-480, respectfully submits this Motion to Compel Qwest Corporation (“Qwest”) to provide immediately material information requested pursuant to Covad Data Request No. 66. Covad needs the information to determine whether Qwest’s proposed rates are based on a least-cost forward looking network. Without the information, neither Covad nor the Commission can undertake a meaningful review of certain of Qwest’s proposed recurring rates or develop a complete record upon which this Commission may render its decision as to those rates. Therefore, Covad requests that the Commission require Qwest to provide the information requested in timely and complete manner. As grounds in support of this Motion, Covad states as follows:

1 1. On November 7, 2001, Qwest filed its direct testimony in this matter on all the
2 UNEs to be costed and priced in Part D, including the recurring and nonrecurring rates for
3 unbundled packet switching (“UPS”).

4 2. During its initial review of Cost Study 5918, which contains the documentation
5 underlying Qwest’s proposed recurring rates for UPS, Covad determined that such underlying
6 documentation was not particularly useful due, in large part, to the fact that Qwest had
7 designated as “proprietary” the (1) identity of the manufacturer of the equipment used by Qwest
8 in providing UPS; (2) the type of equipment used by Qwest in providing UPS; and (3) the rates
9 charged by vendors for the equipment purchased by Qwest for purposes of provisioning UPS.
10 Thus, rather than an identification of the specific information necessary to a critical and informed
11 review of Qwest’s cost support, Qwest provided only a gray box bearing the designation of
12 “vendor proprietary.” Without any underlying cost data, Covad and the Commission are unable
13 to determine if Qwest’s proposed rates are properly “cost-based.”
14

15 3. In order to obtain this critical cost information, on December 28, 2001 Covad
16 served Qwest with its 5th Set of Data Requests. Relevant to this Motion to Compel, Covad Data
17 Request No. 66 requested that Qwest “[p]rovide a non-redacted version of Cost Study 5918 in
18 order to permit Covad to review all information currently redacted/eliminated/designated as
19 ‘vendor proprietary’ information.”
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21 4. After consultation with Covad regarding Data Request No. 66, Qwest agreed to
22 provide an identification of the vendor from whom it purchased the equipment necessary to
23 provision UPS as well as the type of equipment actually ordered. Qwest continued to refuse,
24 however, to provide the information regarding the rates actually charged by the vendor for the
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1 equipment purchased by Qwest. Rather, Qwest “replaced [such information] with unit
2 investments of \$1.” As Qwest recognized, however, by refusing to provide the actual cost
3 information and substituting in the \$1 figure, “the cost results are meaningless after removing the
4 vendor proprietary investment. . . .” See *Qwest’s Response to DRs 65 and 66*, attached hereto as
5 *Exhibit 1*.
6

7 5. The provision of additional information by Qwest regarding Cost Study 5918 left
8 Covad in the same position it was in before Qwest responded to Data Request No. 66. That is,
9 Covad remains unable to determine whether the equipment inputs and assumptions in Cost Study
10 5918 comported with the TELRIC requirement that Qwest’s cost studies be based on a least cost,
11 forward-looking network. Qwest’s response deprived both Covad and this Commission of any
12 basis upon which to determine whether, in Qwest’s cost study, Qwest appropriately determined
13 the per unit cost of that equipment when provisioning UPS. See 47 C.F.R. 51.511.
14

15 6. Qwest’s proposal that “Covad is free to input the unit investments that they think
16 to be appropriate to see the cost results,” see *Exhibit 1*, amounts to an offer for Covad to bear the
17 burden of providing appropriate unit investments, without allowing examination of the unit
18 investments upon which Qwest relies in proposing certain UPS rates. Aside from the question of
19 legal burden, this means that Covad cannot, as a practical matter, question the appropriateness of
20 any of Qwest’s unit investments without performing the research necessary to find appropriate
21 comparable values for all of Qwest’s unit investments. Qwest’s failure and refusal to provide the
22 precise information that would permit “meaning[ful]” review of Qwest’s UPS cost study means
23 that Covad’s evaluation of the study will be much more difficult and less likely to produce
24 conclusive results. Attached hereto as *Exhibit 2* is the affidavit of Richard Cabe averring to the
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1 substantive problems created by Qwest’s refusal to provide specific pricing information as set
2 forth in Paragraphs 5 and 6 herein.

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4 7. Plainly, in the absence of the vendor-specific pricing information for the
5 equipment utilized by Qwest in provisioning UPS, no party (including Covad) can determine the
6 appropriateness of the underlying costs upon which Qwest’s proposed recurring UPS rates are
7 based. Qwest thus gives itself a “pass” on any obligation to prove that its recurring UPS rates
8 comply with TELRIC and the FCC’s pricing rules, despite the fact that the burden is on Qwest to
9 prove compliance therewith. *See* 47 C.F.R. 51.505. Such a result cannot be countenanced. The
10 application of TELRIC and associated pricing rules are mandatory, and CLECs and the
11 Commission are entitled to review and determine independently whether Qwest has adhered to
12 those pricing requirements. Qwest cannot circumvent CLEC and Commission right to scrutinize
13 its cost filings simply upon a claim that the data is proprietary.¹ Qwest should be directed to
14 provide immediately the information requested pursuant to Covad Data Request No. 66.

15 WHEREFORE, Covad Communications Company respectfully requests that Qwest be
16 compelled to provide immediately the vendor-specific pricing information redacted from Cost
17 Study 5918 as requested in Covad Data Response No. 66 and provide an electronic copy of a
18 revised cost study that includes all such information.

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¹ Qwest’s claim of “vendor proprietary” is somewhat vague. Presumably it refers to a contract between Qwest and
26 its vendor. Such contracts typically contain exceptions where a party is under legal compulsion to disclose
information, as they rationally must. Accordingly, regardless of the source of Qwest’s “proprietary” claim, they
should not dissuade the Commission from entering an order to compel.

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RESPECTFULLY SUBMITTED this ____day of January, 2002.

COVAD COMMUNICATIONS COMPANY

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