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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
RESPONSE TO COVAD DATA
REQUEST 60

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 60. 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 non-recurring rates, develop a complete record upon which this Commission may render its decision as to those rates, or determine to any reasonable degree of certainty whether certain of Qwest's claims are correct and accurate. 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 nonrecurring rates for basic installation
3 with cooperative testing for unbundled loops.

4 2. Covad propounded discovery regarding Qwest's basic installation with
5 cooperative testing offering. Qwest stated in response to Covad Data Request Nos. 5 and 18,
6 attached hereto as Exhibit 1, that it corrects all faults or problems on the loop ordered by a CLEC
7 with the basic installation with cooperative testing option prior to even calling the CLEC to
8 perform cooperative testing. In relevant part, the response provided:

9 Qwest conducts performance tests when it installs every circuit. If during
10 performance testing a fault is discovered, Qwest fixes the fault and makes
11 sure the circuit meets the required specifications of the facility being
12 ordered. Once the circuit meets required specifications Qwest will contact
13 the CLEC for cooperative testing If the facility does not meet the
14 CLEC's needs at the time of cooperative testing, the CLEC has the option
15 of canceling the order

16 According to Qwest, therefore, it first completes performance testing on the loop and then calls
17 the CLEC to undertake an additional, but different, series of tests in connection with the
18 cooperative testing portion of this installation option.

19 3. Qwest reiterated its purported practice and procedure of providing trouble free
20 loops to CLECs even before undertaking cooperative testing in response to follow up data
21 requests propounded by Covad, stating that:

22 If any parameters [of the loop] exceed the Technical Specifications, the
23 trouble will be corrected before the circuit is handed off to the CLEC.

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25 The CLEC is provided a circuit which meets the technical specifications of
26 the requested NC/NCI code or the CLEC is advised no circuit is available.

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There is not any fault identification provided to the CLEC [that orders basic installation with cooperative testing] as there is not a fault on the circuit turned over with the test results.

Attached hereto as Exhibit 2 is Qwest's response to DRs 40, 48 and 55.

4. Through its responses to data requests, Qwest has made absolutely clear that there are only three possible scenarios presented at the time of cooperative testing -- (1) the loop meets all applicable technical specifications; (2) the CLEC is informed that the loop does not meet all applicable technical specifications and the CLEC cancels the order; or (3) the CLEC is informed that the loop does not meet all applicable technical specifications and is informed that no facility is available. Thus, according to Qwest, there should never be the situation in which, during cooperative testing, the loop fails to meet the applicable technical specifications and Qwest then relies on the CLEC to uncover technical failures on the loop. Either the loop is delivered with all performance requirements having been met and Qwest having done the work that supports the costs underlying the proposed rate for basic installation with cooperative testing, or the loop order is cancelled.

5. In order to test the veracity of Qwest's repeated assertions that, for loops offered to Covad for cooperative testing: (1) Qwest has done the work necessary to complete all necessary performance tests (thereby justifying, in part, the rate Qwest proposes here for basic installation with cooperative testing); and (2) cooperative testing at the CLEC's expense is not a method by which Qwest ensures basic loop quality (for which Qwest alone should bear the cost), Covad propounded DR 60, which provides as follows:

1 **COVAD DATA REQUEST 60:** With respect to every 2-wire non-loaded
2 loop ordered by Covad with cooperative testing in the last ninety (90) days,
3 produce a list of PONs (purchase order numbers) reflecting those loop
4 orders and, for each, produce all performance test result data or other
5 information developed by Qwest in the course of performance testing and
6 delivering the loop through cooperative testing. For each loop that did not
7 pass performance testing, produce all data and information regarding the
8 faults, problems or other issues that caused the loop not to pass performance
9 testing. For each loop that did not pass cooperative testing, produce all data
10 and information regarding the faults, problems or other issues that caused
11 the loop not to pass cooperative testing.

12 6. Qwest objected to Data Request 60 on the grounds that it sought information “not
13 relevant to the issues in this cost docket. The loops that failed performance testing, and the
14 nature of the faults encountered, is not a cost issue.” Attached hereto as Exhibit 3 is Qwest’s
15 Response to DR 60. Although Covad explained that its concern was whether Qwest used
16 cooperative testing as a substitute for the work it should already be doing to ensure loop quality
17 (thus forcing the CLEC to pay twice to get the quality of loop ordered), Qwest continued to
18 object to DR 60 and refused to provide any substantive response. Attached hereto as Exhibit 4 is
19 Qwest’s response to Covad’s letter clarifying the intent of DR 60.

20 7. By its responses to DRs 5, 18, 40, 48 and 55, Qwest has affirmatively stated that,
21 under no circumstances, is a loop delivered to Covad that would fail cooperative testing on any
22 grounds covered by performance testing. Qwest itself thus has placed at issue the quality of the
23 loop delivered by Qwest to Covad prior to the parties undertaking any sort of cooperative testing.
24 Yet, when Covad sought to determine the factual basis for, and accuracy of, Qwest’s claim,
25 Qwest refused to provide the documentation that supports its claim. In effect, therefore, Qwest
26 expects CLECs and this Commission to take at face value its claims, rather than to undertake an
independent effort to determine whether Qwest’s claim is reasonable or accurate. Qwest cannot

1 resist discovery on a “fact” it put at issue through responses to data requests. Covad is entitled to
2 determine, *with Qwest’s own records*, whether the “fact” advanced by Qwest is actually a
3 verifiable and correct statement.

4 8. Recourse to Covad’s own records is simply not a sufficient solution. First, Covad
5 maintains no information or records regarding the results of Qwest’s pre-delivery performance
6 tests because those tests are performed without participation by Covad. Second, while Covad
7 believes that Qwest has in fact delivered faulty loops that are identified in the cooperative testing
8 process, Covad’s records do not contain the precise type of information it seeks here. Assuming
9 Qwest maintains records that are responsive to Covad’s Data Request 60, Covad is entitled to the
10 data, both to augment its own information and to prepare for any Qwest reply testimony or cross
11 examination on the loop quality issue.
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14 9. Plainly, in the absence of the specific information requested in DR 60, no party
15 (including Covad) can determine the accuracy of Qwest’s claims and the appropriateness of the
16 costs and rates Qwest seeks to recover here for basic installation with cooperative testing. The
17 boundary of discovery is not limited by Qwest’s theories on an issue. Covad is entitled to
18 discovery of facts that support its theories. Accordingly, Qwest should be directed to provide
19 immediately the information requested pursuant to Covad Data Request 60.

20 WHEREFORE, Covad Communications Company respectfully requests that Qwest be
21 compelled to provide immediately the information requested in Covad Data Request 60.
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RESPECTFULLY SUBMITTED this 28th day of January, 2002.

COVAD COMMUNICATIONS COMPANY

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CERTIFICATE OF SERVICE
UT-003013

I hereby certify that on this day I served a true and correct copy of the foregoing *Covad Communications Company's Motion to Compel Response to Covad Data Request 60* on the following persons by electronic mail and U.S. Mail unless otherwise indicated:

DATED this 28th day of January 2002.

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