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

In the Matter of the Petition of
QWEST CORPORATION
To Initiate a Mass-Market Switching and
Dedicated Transport Case Pursuant to the
Triennial Review Order

DOCKET NO. UT-033044

**REBUTTAL TESTIMONY OF
MEGAN DOBERNECK AND MICHAEL ZULEVIC**

**FILED ON BEHALF OF
COVAD COMMUNICATIONS COMPANY**

February 20, 2004

I. QUALIFICATIONS

1
2 **Q. ARE YOU THE SAME MEGAN DOBERNECK AND MICHAEL ZULEVIC THAT**
3 **FILED DIRECT AND RESPONSE TESTIMONY ON BEHALF OF COVAD?**

4 A. We are.

5
6 **II. PURPOSE OF TESTIMONY**

7 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A: The purpose of this testimony is to reply to the Response Testimony of Qwest witnesses
9 Shooshan and White.

10 **III. REPLY TO QWEST TESTIMONY**

11 **Q. QWEST WITNESS SHOOSHAN SUGGESTS THAT IT IS, ESSENTIALLY, NO BIG**
12 **DEAL FOR A DATA CLEC TO PROVIDE VOICE SERVICE AS WELL. DO YOU**
13 **AGREE WITH THAT STATEMENT?**

14 A. Absolutely not, and Mr. Shooshan's statements in that regard reflect his absolute lack of
15 understanding as to what it takes to build and maintain a network capable of supporting any
16 service a carrier wishes to provide. Covad has in place a network and the personnel capable
17 of supporting broadband services. Covad has neither the equipment nor the expertise that
18 would permit it now or in the near future to provide switched, analog voice service. In order
19 for Covad to provide switched analog voice service, it would have to greatly expand its
20 collocation spaces in order to accommodate the equipment necessary to support a switched
21 voice service. Then, Covad would have to purchase equipment, such as Media Gateways,
22 in every LATA. These gateways must be capable of supporting VoIP / TDM conversion,
23 SS7 and PSAP (E911) functionality. Also, power equipment would be needed to provide
24 loop power in case of commercial power failures at the end user premises. While we are not
25 experts in the procurement of this type of equipment, it is beyond question that it would be
26 a costly undertaking to put into place the network equipment and infrastructure necessary
to support a switched, analog, voice service. And in addition to the cost, there is also an

1 inherent time delay that would push out substantially the time at which a data CLEC, like
2 Covad, would be ready, willing and able to provide a switched, analog voice service.

3 Second, Covad would have to reconfigure its network, redesign its software and
4 OSS, and hire numerous employees and ensure that they are trained and have the requisite
5 expertise to support a switched voice service offering. It is obvious that the time and money
6 required to undertake these activities would create an insurmountable barrier to entry, which
7 Mr. Shooshan blithely ignores. Indeed, it was precisely these kinds of issues – issues of sunk
8 costs and first mover advantages – that the FCC found posed a powerful barrier to entry,
9 particularly when combined with a lack of ability to take advantage of economies of scale,
10 which clearly would exist with a data CLEC attempting to enter the voice market.¹

11 Finally, Mr. Shooshan’s testimony ignores the fact that no individual CLEC is
12 required to provide a panoply of services simply to remain competitive. As Congress made
13 clear when enacting the Telecommunications Act of 1996 (“TA96”), the issue is not whether
14 a CLEC is impaired generally, but whether a CLEC is impaired in the services it seeks to
15 offer. 47 U.S.C. 251(d)(2)(B). Covad seeks to offer data services as part of a bundled
16 offering through partnering arrangements with voice CLECs. Covad cannot, and should not,
17 be required to also pursue a switched, analog voice service, in order to remain a viable
18 competitor, since such a requirement runs directly counter to what Congress envisioned
19 when enacting TA96.

20 **Q. MR. SHOOSHAN ALSO ALLEGES THAT THERE ARE NO HOT CUT- RELATED**
21 **IMPAIRMENT ISSUES THAT WOULD PRECLUDE A DATA CLEC FROM ALSO**
22 **PROVIDING VOICE SERVICE. DO YOU AGREE?**

23 **A.** We find this claim to be virtually unfathomable. In the first place, Qwest currently is
24 resisting including data services in the batch hot cut process, so the hot cuts that Mr.

25
26 ¹ TRO, ¶¶ 87-89.

1 Shooshan assumes are available simply are not.² And even if you looked at it on an
 2 individual line basis, there still are hot cut issues because hot cuts are not an available
 3 installation option when a carrier seeks to migrate service from a UNE-P arrangement to a
 4 UNE-L arrangement on an individual line basis. A cursory review of the Qwest Statement
 5 of Generally Available Terms and Conditions makes clear that hot cuts are not available for
 6 line shared, UNE-P line split, or UNE-L loop split loops.³ So, it is clear that Mr. Shooshan's
 7 testimony is based on demonstrably inaccurate factual assumptions.

8 **Q. WHY DO YOU THINK THAT MR. SHOOSHAN, UNLIKE THE OTHER QWEST**
 9 **WITNESSES, ASSUMES A HOT CUT (BATCH OR OTHERWISE) IS AVAILABLE**
 10 **FOR VOICE PLUS DATA LOOPS?**

11 A. Presumably, that is because Mr. Shooshan – unlike Qwest witness Pappas – followed the
 12 FCC rules on what constitutes a batch hot cut. Rule 51.319(d)(2)(ii) provides:

13 A batch cut process is defined as a process by which the incumbent LEC
 14 simultaneously migrates two or more *loops* from one carrier's local circuit
 15 switch to another carrier's local circuit switch, giving rise to operational and
 16 economic efficiencies not available when migrating *loops* from one carrier's
 17 local circuit switch to another carrier's local circuit switch on a line-by-line
 18 basis. (Emphasis added.)

19 As is obvious, the text of this rule does not limit the batch cut to “voice-only” loops.

20 Mr. Shooshan also apparently followed the guidance provided more recently in the
 21 TRO, where the FCC stated that:

22 As an initial matter, state commissions should adopt a batch cut over
 23 “increment” for migrating customers served by *unbundled loops* combined
 24 with unbundled local circuit switching to unbundled stand-alone loops. In
 25 other words, states should decide the appropriate volume of *loops* that should
 26 be included in the “batch.”⁴

24 ² See Direct Testimony of Dennis Pappas and Matthew White, pp. 95-102.

25 ³ SGAT §§ 9.4.1; 9.4.4.1.1; 9.21.1, 9.21.4.1.1; 9.24.1; 9.24.4.1.1.

26 ⁴ TRO, ¶ 489 (emphasis added).

1 As Mr. Shooshan correctly recognized (despite his failure to “toe the Qwest line”), a loop
2 carrying voice plus data is no less a loop than one that carries voice only.

3 Mr. Shooshan also appears to have followed the FCC’s guidance with respect to the
4 definition of a “mass market” customer:

5 Mass market customers consist of residential customers and very small
6 business customers. Mass market customers typically purchase ordinary
7 switched voice service (Plain Old Telephone Service or POTS) and a few
8 vertical features. *Some customers also purchase additional lines and/or high
9 speed data services....*

10 [f]or the mass market, carriers can use copper loops to provide both
11 narrowband voice service *and broadband xDSL services....*

12 The record reflects that high-capacity loops, DS1 to OCn, are generally
13 provisioned to enterprise customers, while voice-grade analog loops, DS0
14 loops, and *loops that deploy xDSL services*, are used to serve customers
15 typically associated with the *mass market....*

16 We note that very small business customers, like residential customers,
17 typically purchase analog loops, DS0 loops, or *loops using xDSL-based
18 technologies*. We address the loops provisioned to these customers as part of
19 our *mass market analysis*.⁵

20 So, despite what Qwest witness Pappas likes to claim about the batch hot cut process
21 and despite the fact that Qwest as a company is trying to exclude data services from the hot
22 cut processes, Mr. Shooshan at least follows the FCC requirements for hot cuts.

23 **Q. QWEST WITNESS WHITE ATTEMPTS TO PROVE THE POINT THAT QWEST
24 HAS THE OSS NECESSARY TO SUPPORT UNE-P LINE AND UNE-L LOOP
25 SPLITTING. WHAT IS YOUR RESPONSE TO MR. WHITE’S TESTIMONY?**

26 **A.** We think that the most notable thing about Mr. White’s testimony is that he does not dispute
at any point the fact that Qwest currently does not allow a carrier to hot cut (either batch or
singly) line shared or UNE-P line split loops to a UNE-L loop split arrangement. For all
intents and purposes, therefore, Qwest has conceded that CLECs are at a competitive
disadvantage if and when unbundled switching is eliminated in this state.

⁵ TRO, ¶¶ 127, 209 and fn. 624.

1 **Q. MR. WHITE ALSO SEEMS TO SUGGEST THAT OSS ISSUES ARE SEPARATE**
2 **AND DISTINCT FROM THE IMPAIRMENT ISSUE. DO YOU AGREE?**

3 A. We do not. The Commission should keep in mind that impairment is not
4 simply a function of whether access or not exists; to the contrary, impairment may exist
5 because a practice or system employed by an ILEC precludes or stymies a CLEC's ability
6 to compete. The FCC made clear that barriers to entry within the control of the ILEC⁶ –
7 such as the functionality and usability of an ILEC's OSS – are directly relevant to whether
8 impairment exists. It was precisely this kind of approach that the FCC employed when
9 finding that CLECs are impaired without access to UBS because of the economic and
10 operational issues associated with hot cut procedures. Thus, while Mr. White suggests that
11 the single LSR issues raised by Covad are a “roving investigation,” they are nothing of the
12 sort – rather they are issues that are wholly within the control of Qwest and create barriers
13 to entry if not remedied.

14 Equally important, our testimony will assist the Commission in defining the markets
15 in which it will evaluate impairment for local switching. Specifically, our testimony on the
16 OSS issues addresses the following factors identified by the FCC as being relevant to
17 defining the appropriate market: “variation in factors affecting competitors’ ability to serve
18 each group of customers, and competitors’ ability to target and serve specific markets
19 economically and efficiently using currently available technologies” and “how the number
20 of high-revenue customers varies geographically....”⁷ Regarding “high-revenue customers,”
21 the FCC stated in footnote 1541 of the TRO that “[t]hese include, for example, business
22 customers, as well as those residential customers likely to take vertical features *and ancillary*
23 *services such as data* and voice mail service” (emphasis added). The entire premise of our
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25 ⁶ TRO, ¶ 91.

26 ⁷ TRO, ¶ 495.

1 testimony is that unless Qwest provides OSS and processes that adequately address the high-
 2 revenue voice plus data loops, CLECs are impaired without access to unbundled circuit
 3 switching. As set forth in detail in our Direct Testimony:

4 The future of voice competition in the Washington mass market hinges upon
 5 the ability of competitors to provide a bundled voice and data product—via
 6 line splitting—in competition with the voice and data bundles currently being
 7 provided by Qwest. . . . *Because Qwest does not currently have operations
 and OSS to support line splitting ordering and migrations or UNE-P line
 splitting to UNE-L loop splitting ordering and migrations, CLECs are
 impaired without access to line splitting over UNE-P.*

8 Doberneck/Zulevic Direct, at 9. Accordingly, it is clear that this Commission’s trigger
 9 analysis may consider the ability of CLECs to serve “high-revenue customers” with voice
 10 plus data loops.

11 **Q. PLEASE CORRECT MR. WHITE’S ASSUMPTION THAT THE FCC**
 12 **SPECIFICALLY EXCLUDED LINE SPLITTING ISSUES FROM THE MASS**
 13 **MARKET SWITCHING CASES.**

14 A. The very paragraph of the *Triennial Review Order* cited as support by Mr. White disproves
 15 this claim:

16 [W]e encourage incumbent LECs and competitors to use existing state
 17 commission collaboratives and change management processes to address OSS
 modifications that are necessary to support line splitting.⁸ \

18 Whatever meaning can fairly be given to the word “encourage,” it cannot be said to preclude
 19 this Commission’s ability to reach the decision it has already made: to include issues
 20 surrounding voice plus data loop migrations in *this* proceeding.

21 **Q. MR. WHITE ATTEMPTS TO EXPLAIN AWAY ANY CONCERN COVAD MAY**
 22 **HAVE ABOUT THE SINGLE LSR ISSUE BY STATING THAT QWEST HAS**
 23 **COMMITTED TO INCLUDING THAT CHANGE IN THE APRIL 2004 OSS**
 24 **RELEASE. DOES THAT ASSUAGE YOUR CONCERN?**

25
 26 ⁸ TRO, ¶ 252.

1 A. No, it doesn't. First, we want to clarify that the one LSR issue relates to both migration
2 scenarios as well as to new service orders. In the migration context, where a customer
3 currently has a line shared, UNE-P line split, or UNE-L loop split arrangement, it takes two
4 LSRs to migrate that service to UNE-P line splitting or UNE-L loop splitting arrangements
5 with a new carrier(s). But, where the customer has a UNE-P line split or UNE-L loop split
6 arrangement, and that customer wishes to convert to either a line shared arrangement (Qwest
7 voice and CLEC DSL) or Qwest voice and data, it only takes one LSR. In the new service
8 context, where a customer has never previously had service at his or her current location,
9 Qwest requires the submission of two LSRs in order to provide a bundled voice and data
10 service via UNE-P or an unbundled loop, while only one LSR is required for a line shared
11 or Qwest voice and data new service installation. For ease of reference, we have attached
12 Qwest's line splitting and loop splitting scenarios from its website, which shows how Qwest
13 places CLECs at a disadvantage by requiring two LSRs, whereas it only takes one LSR when
14 the change benefits Qwest. *See* Exhibit __ (MD/MZ-18) and Exhibit __ (MD/MZ-19).

15 Second, it is an overstatement to say that Qwest has "committed to" including the
16 one LSR changes into the April 2004 release, and here's why: originally, when Qwest
17 initiated its CR to allow customers to order Qwest voice and data or line shared service on
18 one LSR, it had included, because of the parity requirement, the single LSR for line splitting
19 and loop splitting as well. That CR was "committed to" being included in the August 2003
20 IMA 13.0 release. However, when push came to shove, Qwest only implemented the portion
21 of the CR that benefited it – the ability to order via one LSR line shared services or the
22 Qwest bundled voice and data service. Qwest, pursuant to an "event notification",
23 unilaterally delayed the implementation of the line split/loop split single LSR portion of the
24 change. Consequently, until Qwest has actually implemented the single LSR feature for line
25 splitting and loop splitting, Qwest cannot be trusted to live up to its commitments, given the
26 fact that it has already reneged once on that "commitment."

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

2 A. This concludes our Rebuttal Testimony, however, we anticipate being presented for cross
3 examination at the hearing on the merits.

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