

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

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

Docket No. UT-003013

COVAD COMMUNICATIONS  
COMPANY'S MOTION TO FILE  
SECOND SUPPLEMENTAL  
RESPONSIVE TESTIMONY

Covad Communications Company respectfully submits this Motion to File Second Supplemental Responsive Testimony in this matter. As grounds in support of this Motion, Covad states as follows:

1. The original schedule in this matter contemplated Direct Testimony to be filed in November 2001, Response Testimony to be filed in December 2001, and Reply Testimony to be filed at the end of January 2002.<sup>1</sup> The hearing was scheduled for February 2002.

2. As a result of several issues, the schedule changed. Parties were allowed to file Supplemental Responsive Testimony on February 14, 2002, the Reply Testimony deadline was delayed to March 7, 2002, and the hearing was rescheduled for the week of April 8, 2002.

3. In anticipation of filing its supplemental responsive testimony, Covad

---

<sup>1</sup> Twenty Sixth Supplemental Order; Part D Prehearing Conference Order, dated October 19, 2001 at p. 4.

propounded Data Request 60 to Qwest, which sought the production of Qwest's cooperative testing logs for Covad's 2-wire non-loaded loops for the months of November, December and January. After much procedural maneuvering (including the filing of a motion to compel a response to Data Request 60), Qwest agreed to provide the January data, plus one week each of November and December cooperative testing data for Covad's 2 wire non-loaded loops.

4. Although Qwest and Covad reached their compromise agreement regarding the production of the cooperative testing documentation in the first week of February, 2002, Covad did not receive the January 2002 cooperative testing data until Saturday, February 9, 2002 (leaving only three full business days before Covad's testimony was due), and did not receive the sample weeks for November and December 2001 until Monday, February 25, 2002 (almost two weeks after Covad's testimony was due). In both cases, there was an additional delay of two days in getting this information to Covad's expert witnesses due to the need to photocopy and then overnight mail the voluminous documents to those experts.

5. Because of the delay in receiving the documents responsive to Covad Data Request 60 until just mere days before and almost two weeks after the deadline for filing Covad's Supplemental Response Testimony, Covad's witness, Dr. Richard Cabe, was unable to include any specific examples from the cooperative testing data to provide additional factual support for the points he made in his testimony. Thus Dr. Cabe in his February 14, 2002 Supplemental Responsive Testimony the express caveat that he would need to supplement his testimony in order to incorporate any additional information contained in the cooperative testing logs. Plainly, such caveat was made necessary not because of any dilatoriness on Covad's part, but rather because of Qwest's delay in providing to Covad the documents it had agreed to provide as a result of Covad's Motion to Compel.

6. By this Motion, Covad requests leave to file the Second Supplemental

Response Testimony of Richard Cabe, which is attached hereto as *Exhibit 1*. The purpose of this short supplement (just nine pages) is extremely limited and in no way expands the scope of Dr. Cabe's original Supplemental Response Testimony. Specifically, Dr. Cabe illustrates with specific examples from the cooperative testing data produced in response to Covad Data Request 60 the points he made in his February 14, 2002 Supplemental Response Testimony. That is, Dr. Cabe describes various instances, as reflected in the cooperative testing logs, that support his original testimony that (1) cooperative testing is a collaborative process that ensures the loop is installed correctly (Supplemental Response Testimony, pp. 6 and 10); (2) the CLEC's cooperative testing and facilities are utilized by Qwest prior to loop delivery to ensure good loop quality upon delivery (*id.*, pp. 10, 12 and 13); and (3) cooperative testing uncovers faults or problems on the loop that are not detected by Qwest prior to involving the CLEC (*id.*, pp. 12-13). *See Exhibit 1*. Finally, Dr. Cabe amplifies, again with specific examples from the cooperative testing logs, on the concern he raised regarding Qwest's reliance on "271 teams" to ensure timely loop delivery.

7. The filing of this Second Supplemental Testimony in no way prejudices any party to this proceeding. This testimony does not expand in any way the scope of Dr. Cabe's February 14, 2002 testimony, nor does it inject any new issues into this proceeding with respect to the costing and pricing of the basic installation with cooperative testing UNE. Rather, the testimony provides factual examples documenting the concerns previously raised by Dr. Cabe and which he was prevented from including in his February 14, 2002 Supplemental Response Testimony because of Qwest's delay in producing the documents responsive to Covad Data Request 60. Further, because Qwest has been in possession of the specific information that Dr. Cabe now spells out in the Second Supplemental Response Testimony (and, indeed, of the nine pages of additional testimony, almost eight pages are dedicated to describing events reflected in the cooperative testing logs), none of this information can come as a surprise to it. In fact,

given that Qwest witness Hubbard testified at page 23 of his Reply Testimony that he had reviewed the cooperative testing logs for January 2002, Qwest has already reviewed and assimilated all of the information contained in Dr. Cabe's Second Supplemental Response Testimony.

8. Conversely, precluding Covad from filing this testimony would severely prejudice Covad and would be tantamount to implicitly condoning Qwest's undue delay in providing the cooperative testing data to Covad. Thus, Covad requests leave to file Dr. Cabe's Second Supplemental Response Testimony, and that the Second Supplemental Response Testimony, which is attached as *Exhibit 1*, be accepted for filing in this proceeding.

WHEREFORE, for the reasons set forth above, Covad Communications Company respectfully requests leave to file the Second Supplemental Response Testimony of Richard Cabe, and further requests that the Commission accept for filing that testimony, which is attached hereto as *Exhibit 1*.

Dated: March 22, 2002.

RESPECTFULLY SUBMITTED,

Covad Communications Company

---

K. Megan Doberneck  
7901 Lowry Boulevard  
Denver, Colorado 80230  
Phone: 720-208-3636  
Facsimile: 720-208-3350  
Email: mdoberne@covad.com