

Washington Updated Joint Disputed Issues List
Docket No. UT-043045
Qwest/Covad Wasington ICA Negotiations
October 20, 2004

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			<p>NOTE: Underlined language is language proposed by Covad. Strikethrough language is Qwest proposed language that Covad does not agree with.</p>	
<p>Issue 1 9.2.1.2.3 Retirement of Copper Facilities</p>	<p>9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its web site (www.qwest.com/disclosures); and (ii) provide email notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.</p> <p>9.2.1.2.3 Retirement of Copper Loops or Copper Subloops and</p>	<p>The <i>TRO</i> grants ILECs the right to retire copper loops and subloops that have been replaced with fiber. In granting ILECs the right to retire copper loops, the FCC rejected CLEC proposals that would have required ILECs to obtain regulatory approval before retiring these facilities. The FCC found that these conditions are unnecessary because its existing notice rules for network changes provide "adequate safeguards" for CLECs. Thus, ILECs are permitted to retire copper loops and subloops, as long as they comply with the FCC's notice requirements relating to network changes. Other than the notice requirements, the <i>TRO</i> does not impose conditions on an ILEC's right to retire copper facilities. Covad's proposal would</p>	<p>9.1.15 In the event Qwest decides to retire a copper loop, copper feeder, or copper Subloop and replaces it with fiber, Qwest will: (a) provide notice of such planned retirement on its website (www.qwest.com/disclosures); and (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified).</p> <p><u>The e-mail notice provided to each CLEC shall include the following information: city and state; wire center; planned retirement date; the</u></p>	<p>Covad's position with respect to copper retirement generally appears below.</p> <p>Any notice given must be meaningful, and therefore Covad has included in its proposed language what information the notice should include.</p>

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	<p>Replacement with FTTH Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH Loop, Qwest will: (i) provide notice of such planned replacement on its website (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement in accordance with FCC Rules. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in the FCC Rules, unless retirement was explicitly denied (or otherwise delayed or modified. Such notices shall be in addition to any applicable state Commission requirements.</p>	<p>effectively eliminate this important right and should be rejected. Moreover, Covad's proposal would preclude Qwest from recovering the costs it would incur to provide Covad with an "alternative service" upon retiring a copper loop in violation of Qwest's cost recovery rights under the Act.</p> <p>Qwest's proposed language is consistent with the <i>TRO</i> and provides Covad with further protection by establishing that: (1) Qwest will leave copper loops and subloops in service where it is technically feasible to do so; and (2) Qwest will coordinate with Covad the transition to new facilities "so that service interruption is held to a minimum." In addition, since the arbitration hearing in this matter, Qwest has significantly expanded the notice it will provide to CLECs relating to planned copper retirements by agreeing to: (1) provide notice when it intends to retire not just copper loops and subloops, but</p>	<p><u>FDI address: a listing of all impacted addresses in the DA; a listing of all of CLEC's customer impacted addresses; old and new cable media, including transmission characteristics; circuit identification information; and cable and pair information.</u></p> <p><u>9.1.15.1 Continuity of Service During Copper Retirement. This section applies where Qwest retires copper feeder cable and the resultant loop is comprised of either (1) mixed copper media (i.e. copper cable of different gauges or transmission characteristics); or (2) mixed copper and fiber media (i.e. a hybrid copper-fiber loop) (collectively, "hybrid loops"). This section does not apply where the resultant loop is a fiber to the home (FTTH) loop.</u></p> <p><u>9.1.15.1.1 When Qwest retires copper feeder for loops serving CEC-served End User Customers or the CLEC at the time such retirement is implemented, Qwest shall adhere to all regulatory and legal requirements</u></p>	

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		<p>also copper feeder; (2) provide notice not just when a copper facility is being replaced with a FTTH loop, but whenever a copper facility is being replaced with any fiber facility (including fiber feeder); and (3) provide e-mail notice of planned retirements to CLECs.</p> <p>For these reasons, the Commission should adopt Qwest's proposed language relating to copper loop and subloop retirements.</p>	<p><u>pertaining to changes in the Qwest network. Qwest will not retire copper facilities serving CLEC's End User Customers or CLEC, at any time prior to discontinuance by CLEC or CLEC's End User Customer of the service being provided by CLEC, without first provisioning an alternative service over any available, compatible facility (i.e. copper or fiber) to CLEC or CLEC End User Customer. Such alternative service shall be provisioned in a manner that does not degredate the service or increase the cost to CLEC or End User Customers of CLEC. Disputes over copper retirement shall be subject to the Dispute Resolution provisions of this Interconnection Agreement.</u></p> <p>9.2.1.2.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH Loop, Qwest will: (i) provide notice of such planned replacement on its website (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned</p>	

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			retirement to CLECs; and (iii) provide public notice of such planned replacement in accordance with FCC Rules. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in the FCC Rules, unless retirement was explicitly denied (or otherwise delayed or modified. Such notices shall be in addition to any applicable state Commission requirements.	
<p style="text-align: center;">Issue 1</p> <p>9.2.1.2.3.1 9.2.1.2.3.2</p> <p style="text-align: center;">Retirement of Copper Facilities</p>	<p>9.2.1.2.3.1 When infrastructure demand requires Qwest to retire Copper Loops or Copper Subloops, Qwest will leave Copper Loops or Copper Subloops serving CLEC End User Customers in service where it is technically feasible to do so. Should retired copper facilities be replaced by like copper facilities, Qwest and CLEC will jointly coordinate the transition of current working Copper Loops and Subloops to like copper facilities so that service interruption is held to a minimum.</p>	<p>See Qwest position set forth above in connection with section 9.2.1.2.3.</p>	<p>9.2.1.2.3.1 When infrastructure demand requires Qwest to retire Copper Loops or Copper Subloops, Qwest will leave Copper Loops or Copper Subloops serving CLEC End User Customers in service where it is technically feasible to do so. Should retired copper facilities be replaced by like copper facilities, Qwest and CLEC will jointly coordinate the transition of current working Copper Loops and Subloops to like copper facilities so that service interruption is held to a minimum.</p> <p>9.2.1.2.3.2 When Qwest retires</p>	<p>There is no legitimate basis for treating DSL service as an inferior service that may be disrupted as a result of a Qwest construction project. Covad's proposed language merely clarifies that the facilities made available by Qwest will be of a character that will allow continued DSL service to the end user. The FCC's rules are designed to provide adequate safeguards to ensure that competitive LECs can work together with incumbent LECs, such as Qwest, "to ensure competitive LECs maintain</p>

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	<p>9.2.1.2.3.2 When Qwest retires Copper Loops or Copper Subloops and the replacement facilities include the placement of a remote DSLAM, to the extent that space is available, Qwest will offer CLEC Remote Collocation and/or Field Connection Point (FCP) pursuant to this Agreement in order to maintain existing services, including xDSL service provided by CLEC. Qwest and CLEC will jointly coordinate the transition of current working facilities to the new working facilities so that service interruption is held to a minimum.</p>		<p>Copper Loops or Copper Subloops and the replacement facilities include the placement of a remote DSLAM, to the extent that space is available, Qwest will offer CLEC Remote Collocation and/or Field Connection Point (FCP) pursuant to this Agreement in order to maintain existing services, including xDSL service provided by CLEC. Qwest and CLEC will jointly coordinate the transition of current working facilities to the new working facilities so that service interruption is held to a minimum.</p> <p><u>9.2.1.2.3.1 Continuity of Service During Copper Retirement - This section will govern the retirement of copper facilities which are serving CLEC-served End User Customers or CLEC at the time such retirement is implemented, to the exclusion of any other section of this Interconnection Agreement. Qwest shall adhere to all regulatory and legal requirements pertaining to changes in the Qwest network. Qwest will not retire copper facilities serving CLEC's End User</u></p>	<p>access to loop facilities.” <i>Triennial Review Order</i>, ¶ 281. The FCC further clarified that the purpose of the rule changes was to ease restrictions in incumbent LECs “unless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under our rules.” <i>Triennial Review Order</i>, ¶ 282. Access to xDSL capable loops is undeniably required by the FCC’s rules, and the copper retirement scenarios Covad identifies in its proposals would clearly deny Covad access to xDSL capable loops.</p> <p>The FCC also clarified that the intent of their copper retirement rules was not to preempt state commission’s evaluation of any copper retirement plan, or any other existing state legal or regulatory requirements. <i>Triennial Review Order</i>, ¶ 284.</p>

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			<p><u>Customers or CLEC, at any time prior to discontinuance by CLEC or CLEC's End User Customer of the service being provided by CLEC, without first provisioning an alternative service over any available, compatible facility (i.e. copper or fiber) to CLEC or CLEC End User Customer. Such alternative service shall be provisioned in a manner that does not degredate the service or increase the cost to CLEC or End User Customers of CLEC. Disputes over copper retirement shall be subject to the Dispute Resolution provisions of this Interconnection Agreement.</u></p>	
<p>Issue 2 4.0 Definition ("Unbundled Network Element") Unified Agreement – 271 Elements Included</p>	<p>"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to</p>	<p>Covad asks the Commission to exercise authority it does not have by requesting language that would require Qwest to provide network elements under section 271 and to provide elements under state law that the FCC has ruled ILECs are not required to provide. Even if the Commission had the authority Covad assumes, Covad's proposed language requiring Qwest to provide unbundled access to "all</p>	<p>"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, <u>for which unbundled access is required under section 271 of the Act or applicable state law,</u> or for which unbundled access is provided under this Agreement. Unbundled Network</p>	<p>Qwest continues to have obligations to provide network elements on an unbundled basis pursuant to Section 271 and state law. To label these elements as something other than "unbundled network elements" creates confusion and is semantically illogical. In addition, there is no justification for excluding non-251 UNEs from negotiations. To do otherwise</p>

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	Section 271 of the Act.	<p>UNEs required by [§ 271] and [state law]" is highly ambiguous and would inevitably lead to disputes about the parties' rights and obligations. In addition, determinations of which network elements ILECs are required to provide must be based on fact-specific evaluations that focus on each individual element. Covad's undifferentiated request for access to all network elements required under section 271 and state law lacks the specificity needed to make the element-by-element determinations of whether applicable unbundling requirements are satisfied.</p> <p>No provision of the Act authorizes state commissions to impose or enforce obligations under § 271. First, state commission arbitration of disputes regarding the duties imposed by federal law is limited to those imposed by § 251 and does not include the conditions imposed by § 271. Second, § 271 itself confers no authority on state</p>	<p>Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.</p>	<p>would require the Commission to create an entirely new regime to review agreements reached with respect to state unbundling obligations, if not Section 271.</p> <p>After the <i>Triennial Review Order</i>, it is necessary to draw the distinction between unbundled network elements that meet the FCC's impairment standard under Section 251, and unbundled network elements that are available pursuant to Section 271 regardless of impairment analysis and/or state law. Failing to distinguish between types of UNEs now available will lead to confusion, especially with respect to the Parties intent when using the term "unbundled network element."</p>

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		<p>commissions to impose binding obligations. Third, basic principles of federal preemption prevent the Commission from imposing unbundling requirements under Washington law that the FCC has rejected.</p> <p>In addition, as confirmed by its recently issued unbundling <i>Notice of Proposed Rulemaking</i>, the FCC is likely to issue final unbundling rules by the end of 2004. Given the limitations on permissible unbundling established by the D.C. Circuit's rulings in <i>USTA II</i>, it is probable that the FCC's final unbundling rules will provide for more limited unbundling than was required under the <i>TRO</i>. Covad's proposal is headed in precisely the opposite direction, as it would impose virtually unlimited unbundling obligations on Qwest, including unbundling that the FCC specifically rejected in the <i>TRO</i>. These proposals, if adopted, are very likely to conflict impermissibly with the FCC's final unbundling</p>		

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		rules. To avoid these impermissible conflicts with federal law, the Commission should reject Covad's broad unbundling proposals.		
Issue 2 9.1.1 Unified Agreement – 271 Elements Included	Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, shall be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to changes in FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) of the Act and other Applicable Laws. Failure to list a UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.1.1 <u>Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNE combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations.</u> Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including	See above.

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	<p>the state Commission. UNE's shall only be obtained for the provision of Qualifying Services. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set forth in Exhibit A. If it is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest and make alternative service arrangements.</p>		<p>additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, may be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) or Section 271 of the Act, or other Applicable Laws. Failure to list a <u>Section 251, Section 271 or state-mandated</u> UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission.</p> <p>To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set</p>	

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			<p>forth in Exhibit A.</p> <p>UNE's shall only be obtained for the provision of Qualifying Services. If it is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest and make alternate service arrangements.</p>	
<p>Issue 2</p> <p>9.1.1.6</p> <p>Unified Agreement – 271 Elements Included</p>	<p>9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement.</p> <p>a) Ocn Loops;</p> <p>b) Feeder Subloops;</p> <p>c) DS3 Loops in excess of two</p>	<p>See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."</p>	<p><u>9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.</u></p>	<p>See above. It is not necessary to provide a list of products no longer available under Section 251 because many of them are nevertheless available under Section 271 or state law. To the extent any elements are truly no longer available (such as E-UDIT), their absence from the Agreement should be sufficient to demonstrate that Qwest is not obligated to provide them.</p>

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	<p>(2) DS3 Loops per End User Customer location;</p> <p>d) E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Unbundled Dark Fiber) from a Qwest Wire Center to a CLEC Wire Center);</p> <p>e) Ocn UDIT</p> <p>f) DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess of twelve (12) DS3 circuits per route;</p> <p>g) Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P);</p> <p>h) Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN) except in conjunction with Unbundled Switching and UNE-P;</p> <p>i) Packet Switching;</p> <p>j) UDIT and UDF as a part of a Meet-Point arrangement, billed entrance facility;</p>			

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	<p>k) Remote Node/Remote Port</p> <p>l) Line Sharing, in accordance with the Grandfathering and Transition Plan described in Section 9.4.1.2;</p> <p>m) Fiber to the Home, in accordance with Section 9.2.1.2;</p> <p>n) Operator Services and Directory Assistance, except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent;</p> <p>o) Unbundled Switching at a DS1 capacity, pursuant to a transition process described in Section 9.11.2.0;</p> <p>p) Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;</p> <p>q) SONET add/drop multiplexing; and</p>			

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	r) Non-copper distribution Subloop unless required to access Qwest owned inside wire at an MTE.			
Issue 2 9.1.1.7 Unified Agreement – 271 Elements Included	9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, <u>or applicable state law</u> , absent an agreement to the contrary <u>then</u> Qwest shall bill for such <u>UNEs and</u> services <u>using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs in accordance with</u> prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of	Qwest is not entitled to unilaterally impose retail prices for UNEs available pursuant to Section 271 or state law. There are sound public policy reasons to believe that these rates neither comply with Sections 201 and 202 of the Act or state law describing the proper pricing for UNEs. Previously established TELRIC rates offer a less problematic alternative, at least until the Commission decides how these rates should be set in the future so they are compliant with state and federal law.

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			this Agreement.	
<p style="text-align: center;">Issue 2</p> <p style="text-align: center;">9.1.1.7</p> <p style="text-align: center;">Pricing of 271 Elements</p>	<p>9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.</p>	<p>Covad's position regarding pricing of network elements Qwest provides pursuant to § 271 has two basic flaws. First, Covad assumes erroneously that state commissions have authority to set prices for these elements. They do not, as the pricing of § 271 elements is within the FCC's exclusive jurisdiction. Second, Covad claims incorrectly that the FCC has authorized the application of TELRIC-like pricing principles to § 271 elements. The FCC and the D.C. Circuit have both ruled very clearly that TELRIC pricing does not apply to network elements that BOCs provide under § 271 and that the prices for such elements are to be set by the FCC based on the standards in §§ 201 and 202 of the Communications Act of 1934.</p>	<p>9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 <u>or applicable state law</u>, of the Act, absent an agreement to the contrary, <u>then Qwest shall bill for such UNE's and services using the Commission – approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Section 271 or state law required UNEs. in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.</u></p>	<p>Qwest is not entitled to unilaterally impose retail prices for UNEs available pursuant to Section 271 or state law. There are sound public policy reasons to believe that these rates neither comply with Sections 201 and 202 of the Act or state law describing the proper pricing for UNEs. Previously established TELRIC rates offer a less problematic alternative, at least until the Commission decides how these rates should be set in the future so they are compliant with state and federal law.</p>

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<p style="text-align: center;">Issue 2</p> <p style="text-align: center;">9.1.5</p> <p style="text-align: center;">Unified Agreement – 271 Elements Included</p>	<p>9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of</p>	<p>See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements" and "251(c)(3) UNE."</p>	<p>9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. <u>CLEC shall have the right to access UNEs, ancillary services or Network Elements offered pursuant to Section 271 at any technically feasible point as required by 47 C.F.R. 51.311, 47 U.S.C. 251(c)(3) and 47 U.S.C. 271 et seq.</u> Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such</p>	<p>Qwest continues to have obligations to provide network elements on an unbundled basis pursuant to Section 271 and state law. There is no justification for excluding non-251 UNEs from provisions of the agreement describing access to UNEs.</p>

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	elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.		Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.	
Issue 2 9.2.1.3 Unified Agreement – 271 Elements Included	9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User <u>Customer</u> location, Qwest will not provide, and CLEC shall not submit orders for, DS1, DS3, or Dark Fiber Loops, as appropriate, to such specific End User Customer locations. Qwest will maintain on its website a separate listing for DS1, DS3 and Dark Fiber Loops those End User Customer premises for which the Commission has so found. In the event CLEC has DS1, DS3 or Dark Fiber Loops	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location pursuant to Section 251 of the Act, <u>Qwest will provide access to such loops pursuant to Section 271 of the Act and applicable state law.</u> Qwest will maintain on its website a separate listing for DS1, DS3, and Dark Fiber Loops for those End User Customer premises for which the Commission has <u>found non-impairment under Section 251 of the Act.</u> In the event CLEC has DS1, DS3, or Dark Fiber	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.

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	<p>in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with the Qwest Special Access Tariff.</p>		<p>Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements <u>for any records changes, or alternate services, as required by applicable state law, and requested by Qwest.</u> If such alternative arrangements are not in place within sixty (60) days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with <u>Section 9.1.1.7 above.</u></p>	
<p>Issue 2 9.2.1.4 Unified Agreement – 271 Elements Included</p>	<p>9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not required to provide, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location.</p>	<p>See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."</p>	<p>9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not required to provide <u>pursuant to Section 251 of the Act</u>, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location. <u>Notwithstanding the above, CLEC may request such additional loops pursuant to Section 271 of the Act or applicable state law, and will be charged rates for such additional loops in accordance with Section 9.1.1.7 above.</u></p>	<p>See above.</p>

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<p style="text-align: center;">Issue 2</p> <p style="text-align: center;">9.3.1.1</p> <p style="text-align: center;">Unified Agreement – 271 Elements Included</p>	<p>9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of</p>	<p>See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."</p> <p>In addition, in the <i>TRO</i>, after careful consideration of the standards set forth in Section 251(d)(2) and the policies reflected in the Act, the FCC determined that ILECs are not required to provide unbundled access to fiber subloops.¹ Notwithstanding this unequivocal ruling, Covad's proposal would require Qwest to provide access to these facilities. This demand incorrectly assumes that state commissions have authority to require unbundling under Section 271 and can impose unbundling requirements under Section 271 and state law that the</p>	<p>9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection. Remote</p>	<p>Feeder subloops are available as Section 271 elements and must be made available pursuant to 4 CCR 723-39-6.4.</p>

¹ *Triennial Review Order* at ¶ 253.

² *Id.*

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	<p>Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Dark Fiber Subloop which is addressed in Section 9.7.</p>	<p>FCC has specifically rejected. In ruling that ILECs are not required to unbundle feeder subloops, the FCC found that an unbundling requirement for these facilities would undermine the objective of Section 706 of the Act "to spur deployment of advanced telecommunications capability."² The FCC recognized that access to ILECs' fiber feeder may be necessary for CLECs to obtain access to unbundled copper subloops, but it nevertheless did not require feeder unbundling. Instead, it encouraged carriers to negotiate arrangements for obtaining access to copper subloops, stating it "expect[s] that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to</p>	<p>Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis, pursuant to Section 251 of the Act, to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access , pursuant to Section 251 of the Act, to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. <u>Notwithstanding the limitations on subloop unbundling pursuant to Section 251 of the Act described above, Qwest will make remaining feeder subloops available as required by Section 271 of the Act and other Applicable Law.</u> This section does</p>	

³ *Id.*

⁴ *Id.*

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		<p>ensure that competitive LECs have access to copper subloops."³ Importantly, and consistent with its ruling that ILECs are not required to unbundle feeder subloops, the FCC emphasized that "the terms and conditions of such access would be subject to sections 201 and 202 of the Act."⁴</p> <p>Accordingly, Covad's demand for unbundled access to feeder subloops must be rejected. Specifically, as discussed, state commissions are without authority to impose any unbundling or other obligations under Section 271; Covad's request that this Commission require feeder subloop unbundling under that section assumes authority that does not exist. In addition, any attempt to impose feeder subloop unbundling under state law would be preempted by the FCC's clearly expressed finding that unbundling this network element would undermine the federal law and policy reflected in Section 706.</p>	<p>not address Dark Fiber Subloop which is addressed in Section 9.7.</p>	

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Issue 2 9.3.1.2 Unified Agreement – 271 Elements Included	9.3.1.2 Standard Subloops available. b) Intentionally Left Blank	See Qwest position set forth above in connection with section 9.3.1.1	9.3.1.2. Standard Subloops available. b) <u>DS1 Capable Unbundled Feeder Loop</u>	See above.
Issue 2 9.3.2.2 9.3.2.2.1 Unified Agreement – 271 Elements Included	9.3.2.2 Intentionally Left Blank 9.3.2.2.1 Intentionally Left Blank	See Qwest position set forth above in connection with section 9.3.1.1.	9.3.2.2 Feeder Loops 9.3.2.2.1 <u>DS1 Capable Unbundled Feeder Loop is a digital transmission path that is provisioned from a Qwest Central Office network interface, which consists of a DSX-1 panel or equivalent, to the accessible terminal. The DS1 Capable Unbundled Feeder Loop transports bi- directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s.</u>	See above.
Issue 2 9.6 (g) Unified Agreement – 271	9.6 Unbundled Dedicated Interoffice Transport (UDIT) g) UDIT on routes where the Commission has found no CLEC impairment.	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.6 Unbundled Dedicated Interoffice Transport (UDIT) g) UDIT on routes where the Commission has found no CLEC impairment <u>under Section 251 of the</u>	

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Elements Included			<u>Act; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.</u>	
Issue 2 9.6.1.5 Unified Agreement – 271 Elements Included	9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s). Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for the service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s); <u>provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes. Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for the service. If such alternative arrangements are not in</u>	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.

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			place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	
Issue 2 9.6.1.5.1 Unified Agreement – 271 Elements Included	9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has found <u>no impairment under Section 251 and also has not required access under Section 271 or applicable state law.</u> In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) <u>ninety (90)</u> Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.
Issue 2 9.6.1.6	9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section

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Unified Agreement – 271 Elements Included	dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s). Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.		DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s); <u>provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes. Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.</u>	271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.
Issue 2 9.6.1.6.1 Unified	9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has found <u>no impairment under Section 251 and also has not required access under</u>	The list referenced by this section should only have relevance with respect to transport routes that are completely unavailable under

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Agreement – 271 Elements Included	route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff		<u>Section 271 or applicable state law.</u> In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) <u>ninety (90)</u> Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	applicable law, if any.
Issue 2 9.21.2 Unified Agreement – 271 Elements Included	9.21.2 Terms and Conditions On the effective date of a Commission determination that Qwest is no longer required to provide UNE-P Combination services in a market area Line Splitting is also not available in that market area to the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	9.21.2 Terms and Conditions On the effective date of a Commission determination <u>If the Commission determines that Qwest is no longer required to provide UNE-P Combination services in a market area pursuant to Section 251 of the Act, CLEC shall not submit new orders for Line Splitting is also not available in that market area as of the date the Commission rules CLECs are no longer entitled to submit orders for unbundled switching. If, notwithstanding the Section 251</u>	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.

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	<p>Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.</p>		<p><u>determination, Qwest is required to provide access to unbundled switching under Section 271 or applicable state law, then line splitting remains available in that market area. To the extent Qwest is no longer required to provide access to unbundled switching under any applicable law, and To the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.</u></p>	
<p>Issue 3 4.0 Definition ("251(c)(3) UNE", and "Commingling")</p>	<p>"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that</p>	<p>See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements." Further, under the FCC's <i>Interim Unbundling Rules</i>, parties are bound by the terms and</p>	<p><u>"251(c)(3) UNE" means any unbundled network element obtained by CLEC pursuant to Section 251 of the Act.</u> "Commingling" means the</p>	<p>Covad concedes that any commingling arrangement involves the attachment of a UNE obtained pursuant to Section 251(c)(3) with another product. The proposed revisions</p>

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Commingling	<p>a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.</p>	<p>conditions in interconnection agreements as of June 15, 2004 relating to access to enterprise market loops, dedicated transport, and switching. The existing Qwest/Covad agreement that was in effect as of June 15, 2004 does not provide for commingling and, hence, Covad's request for any commingling involving these elements is inconsistent with the <i>Interim Rules</i>.</p> <p>In addition, consistent with the rulings in the TRO relating to commingling, Qwest's proposed language establishes that Covad can obtain from Qwest UNEs and UNE combinations commingled with wholesale services and facilities, and that Covad can request Qwest to perform the functions to provision such commingling.</p> <p>Covad seeks to expand Qwest's commingling obligations beyond what the FCC has required by proposing language that would</p>	<p>connecting, attaching, or otherwise linking of an Unbundled Network Element, 251(c)(3) UNE's or a Combination of Unbundled Network Elements, 251(c)(3) UNE's to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, <u>pursuant to any method other than unbundling under Section 251(c)(3) of the Act,</u> or the combination of an Unbundled Network Element, a 251(c)(3) UNE or a Combination of Unbundled Network Elements, 251(c)(3) UNE's with one or more such facilities or services.</p>	<p>eliminate any confusion with respect to Qwest's obligations to commingle non-UNEs with UNEs available pursuant to Section 271 or state law.</p>

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		<p>obligate Qwest to commingle UNEs and UNE combinations with network elements and services for which unbundling is not required under § 251 but that are provided under § 271. The <i>TRO</i> does not require commingling with elements and services provided under § 271. Imposing such a requirement would violate the FCC's express ruling that ILECs are not required to combine network elements provided under Section 271, as the act of combining and commingling is indistinguishable. Moreover, Covad's language assumes incorrectly that state commissions have authority to determine obligations relating to § 271. As discussed above, states have no decision-making authority under § 271 and therefore cannot order ILECs to provide or commingle § 271 elements or services. In addition, any obligations that Qwest has under § 271 are beyond the scope of this § 252 arbitration, which is expressly limited to issues involving Qwest's duties</p>		

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		under §§ 251(b) and (c).		
Issue 3 9.1.1	See Issue 2, page 5.	See Qwest position set forth above in connection with section 4.0 Definition of "Unbundled Network Elements."	See Issue 2, page 5.	See Covad position set forth above at page 4.
Issue 3 9.1.1.1 Commingling	9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications pursuant to Applicable Law.	See Qwest position set forth above in connection with section 4.0 Definition of "Commingling."	9.1.1.1 <u>Commingling - CLEC may commingle 251(c)(3) UNEs and combinations of 251(c)(3) UNEs with any other services obtained by any method other than unbundling under section 251(c)(3) of the Act, including switched and special access services offered pursuant to tariff and resale. Qwest will perform the necessary functions to effectuate such commingling upon request.</u> This Agreement does not provide for the purchase and/or provision of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications	See above.

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			services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications pursuant to Applicable Law.	
<p style="text-align: center;">Issue 5</p> <p>8.2.1.23.1.4 Regeneration Requirements</p>	<p>8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection.</p>	<p>The FCC does not require Qwest to provide CLEC-to-CLEC connections because Qwest permits collocating CLECs to interconnect with each other in a Qwest central office. Absent the obligation to provide a CLEC-to-CLEC connection, it follows that Qwest has no obligation to provide regeneration on such connection. Despite permitting CLECs to provision their own connections, Qwest offers CLEC-to-CLEC connections as a finished service, and if regeneration is required on such a connection, Qwest charges for same under its FCC 1 Access Tariff.</p> <p>Covad claims that, because Qwest assigns collocation space, it is in a position to maximize efficiencies</p>	<p>8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. <u>Depending on the distance parameters of the combination, regeneration may be required but Qwest shall not charge CLEC for such regeneration, if there does not exist in the affected Premises, another Collocation space whose use by CLEC would not have required regeneration, and such a space would not have existed except for Qwest's reservation of the space for its own future use.</u></p>	<p>Covad should not be charged for the regeneration of circuits connecting multiple collocations within a central office, including CLEC-to-CLEC cross connections. This is consistent with other sections of the Agreement that specify that Covad will not be charged for regeneration between the Qwest network and Covad collocations.</p>

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		<p>for Covad's CLEC-to-CLEC connections, and therefore, Qwest should provide regeneration free of charge if it is required for such connections. Covad seeks to have Qwest extend its agreement to not charge for regeneration in an ILEC to CLEC situation to a CLEC-to-CLEC situation.</p> <p>This argument fails because not only does Qwest not unilaterally determine where a CLEC will place its collocation equipment, but Covad's argument is based on the fundamentally unreasonable notion that Qwest should have the obligation to maximize efficiencies for the benefit of Covad and to the detriment of Qwest and other collocating CLECs. Qwest has no obligation to manage or facilitate Covad's access to or interface with the networks of third party CLECs, and since Covad's regeneration proposal is squarely based on this flawed foundation, its CLEC-to-CLEC regeneration proposal is unreasonable and should be</p>		

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		rejected.		
<p style="text-align: center;">Issue 5</p> <p style="text-align: center;">8.3.1.9</p> <p>Regeneration Requirements</p>	<p>8.3.1.9 Intentionally Left Blank</p>	<p>See Qwest position set forth above in connection with section 8.2.1.23.1.4.</p>	<p>8.3.1.9 <u>Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration Charges shall not apply until the Commission approves Qwest's authentication plan. After approval of the authentication plan, Channel Regeneration Charges shall not apply if Qwest fails to make available to CLEC: (a) a requested, available location at which regeneration would not be necessary or (b) Collocation space that would have been available and sufficient, but for its reservation for the future use of Qwest. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation</u></p>	<p>Even if Qwest is permitted to implement a separate charge for regeneration in the future, it should not apply to collocation arrangements where the regeneration is only required because Qwest reserved more conveniently located space, or otherwise refused to assign Covad space that would have avoided regeneration costs.</p>

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			<u>spaces of the same CLEC or to connect to the Collocation space of another CLEC. Channel Regeneration will not be charged separately for facilities used by CLEC to access Unbundled Network Elements and ancillary services from the Collocation space, but if based on the ANSI Standard for cable distance limitations, regeneration would not be required but is specifically requested by CLEC, then the Channel Regeneration Charge would apply. If Channel Regeneration is required, based on the ANSI standard for cable distance limitations, Qwest will recover the costs indirectly and on a proportionate basis with equal sharing of the costs among all collocators and Qwest. Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B."</u>	
Issue 5 9.1.10 Regeneration	9.1.10 Channel Regeneration. Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements.	See Qwest position set forth above in connection with section 8.2.1.23.1.4.	9.1.10 Channel Regeneration. Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements.	Covad has proposed moving this issue to a new Section 8.3.1.9, and specifying that Qwest will not charge for regeneration for interconnection between any

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Requirements	Channel Regeneration will not be charged separately for Interconnection between a collocation space and Qwest's network. Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".		Channel Regeneration will not be charged separately for Interconnection between a collocation space and Qwest's network. Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".	central office equipment. This would create consistency among various collocation arrangements and comply with FCC rules regarding CLEC to CLEC cross connections.
Issue 8 5.4.1 Payment Due Date	5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date). If the payment due date is not a business day, the payment shall be due the next business day.	Qwest proposes that undisputed amounts payable under the contract be due within 30 days from the date of the invoice. This 30-day period, which applies to all CLECs, balances a CLEC's need for sufficient time to analyze monthly bills with Qwest's right to timely compensation for services rendered. The 30-day due date is the industry standard and, because Qwest offers its bills in a variety of electronic formats that are readily searchable, that period provides a reasonable amount of time for CLECs to review their bills. Indeed, the parties' existing agreement – under which the parties have been operating since 1998 – provides that payments are	<u>5.4.1 Amounts payable for any invoice containing (1) line splitting or loop splitting products, (2) a missing circuit ID, (3) a missing USOC, or (4) new rate elements, new services, or new features not previously ordered by CLEC (collectively "New Products") (hereinafter collectively referred to as "Exceptions") are due and payable within forty-five (45) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date) with respect to the New Products Exception, the forty-five (45) Day time period shall apply for twelve (12) months. After twelve (12) months' experience, such New Products shall be subject to the thirty (30) Day time frame hereinafter</u>	Covad believes its slightly longer time-frames are reasonable for the items enumerated in its proposed language, and balances the interests of the Parties. The review of wholesale invoices is a complicated task, which will become more complicated as line sharing/line splitting arrangements become more commonplace. If the time-frames for payment are unreasonably short, as Qwest proposes, Covad's ability to audit Qwest invoices will be compromised.

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		<p>due within 30 days from the invoice date. This issue was discussed at length during the § 271 workshops, in which Covad actively participated, and ultimately was resolved with the Washington SGAT language that specifies that amounts payable are due within 30 days from the invoice date.</p> <p>Covad's new proposal which includes "Exceptions" to the 30 day payment due date is unworkable from a systems and administrative standpoint. Covad is now proposing that on the same bill some items have a 30 day due date and others have a 45 day due date. To implement the necessary system changes would not only be a major effort but would require billing system logic different from that used by all other Qwest CLEC customers.</p> <p>Even more problematic from a systems standpoint than treating</p>	<p><u>discussed. Any invoice that does not contain any of the above Exceptions are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty calendar Days after receipt of the invoice, whichever is later. If the payment due date is not a business day, the payment shall be due the next business day.</u></p>	

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		<p>different items on the same bill differently, is Covad's request that new products be treated differently for twelve months, then revert back to the 30 day payment period used for previously ordered products. This means that the billing systems must have the capability of determining when a CLEC orders a new product, the capability to treat it differently than everything else on the bill and the capability to turn off the exception treatment at the end of 12 months. The Covad language also begs the question of what constitutes a new product. If a CLEC had been ordering 2 wire unloaded loops and at some point in the future ordered a 2 wire unloaded loop, would this be considered a new product even though there is no difference from a bill presentation and billing validation perspective. Disputes regarding whether a product is a new product would create further confusion for both Qwest and Covad and would require unnecessary effort on the part of</p>		

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		both parties to resolve such confusion.		
Issue 8 5.4.2 Timing for Discontinuing Orders	5.4.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the relevant services, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. The Billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further	Qwest is entitled to timely payment for services rendered and to take remedial action if the risk of nonpayment is apparent. Qwest's proposal provides Covad with 30 days before the billed amount is due and another 30 days before Qwest would discontinue processing orders if Covad failed to pay, thereby giving Covad 60 days from the bill date until Qwest would discontinue processing. Taken together and assuming Covad's "Exceptions" apply, Covad's proposals would prevent Qwest from taking action in cases of non-payment until 105 days after the payment due date because Covad seeks 45 days until payment is due plus an additional 60 days before Qwest could stop processing orders. Allowing Covad to continue to incur debt for months before Qwest can take appropriate action to protect	5.4.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the relevant services, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) <u>sixty (60)</u> calendar Days following the payment due date. The Billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to	Discontinuing the processing of Covad's orders is a relatively drastic remedy. The additional time requested by Covad will avoid the need for additional agreements for payment arrangements, and will allow each party a reasonable amount of time to agree that certain amounts are disputed, or seek other remedies under the agreement to either receive payment or maintain the processing of orders. The extension of this time frame will not lead to a significant increase of risk for Qwest.

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	<p>notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief including injunctive relief and specific performance.</p>	<p>itself is unreasonable. Again, this issue was discussed at length during the § 271 workshops, in which Covad actively participated, and which resulted in consensus language which provided for the 30 day period Qwest proposes here.</p>	<p>resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief including injunctive relief and specific performance</p>	
<p>Issue 8 5.4.3 Timing for Disconnecting Services</p>	<p>5.4.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Calendar Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each resold End User</p>	<p>Qwest is entitled to timely payment for services rendered and to take remedial action if risk of nonpayment is apparent. Qwest's proposal provides Covad with 30 days before the billed amount is due and another 60 days before Qwest would disconnect service for nonpayment, thereby giving Covad 90 days before Qwest would disconnect the service. Taken together and assuming Covad's "Exceptions" apply, Covad's</p>	<p>5.4.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services within <u>ninety (90)</u> calendar Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each resold End User Customer line disconnected pursuant</p>	<p>Covad's proposal affords 90 days after a payment is due until its services could be disconnected. Disconnection is a drastic remedy, and the impact that such disconnection will have on a CLECs' business, as well as innocent third party subscribers, should be balanced against Qwest's right to receive payment in full for services provided. The difference between the Parties' proposals (60 days) ensures that</p>

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	<p>Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party pursuant to this</p>	<p>proposals would prevent Qwest from taking action in cases of non-payment until 135 days after the payment due date because Covad seeks 45 days until payment is due plus an additional 90 days before Qwest could disconnect service. Allowing Covad to continue to incur debt for months before Qwest can take appropriate action to protect itself is unreasonable. Again, this issue was discussed at length during the § 271 workshops, in which Covad actively participated, and which resulted in consensus language which provided for the 60 day period Qwest proposes here.</p>	<p>to this paragraph. The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the</p>	<p>disconnection is never used as leverage in a billing dispute, and the increased risk of nonpayment for Qwest is relatively small.</p>

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	<p>Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>		<p>application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>	