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2 **BEFORE THE WASHINGTON UTILITIES AND**  
3 **TRANSPORTATION COMMISSION**

4 IN THE MATTER OF THE CONTINUED  
5 COSTING AND PRICING OF UNBUNDLED  
6 NETWORK ELEMENTS, TRANSPORT,  
7 TERMINATION, AND RESALE

Docket No. UT-003013  
(Part B)

COVAD COMMUNICATIONS  
COMPANY'S COMBINED PETITION FOR  
RECONSIDERATION AND REQUEST  
FOR CLARIFICATION

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10 Covad Communications Company ("Covad"), pursuant to the Thirty-Second  
11 Supplemental Order, dated June 21, 2002, respectfully submits this Combined Petition for  
12 Reconsideration and Request for Clarification. As grounds in support of this Combined Petition  
13 and Request, Covad states as follows:

14 **I. INTRODUCTION**

15 Covad accepts, in large part, the findings and conclusions contained in the Commission's  
16 Thirty-Second Supplemental Order. However, there are a few issues for which Covad requests  
17 reconsideration and/or clarification. These issues include the Commission's decisions with  
18 respect to line splitting, future proceedings relating to line sharing over digital loop carrier  
19 ("DLC") and unbundled packet switching, and loop extenders.

20 **II. ARGUMENT**

21 **A. Line Splitting**

22 In its Supplemental Order, the Commission ruled that a separate proceeding will be  
23 opened to determine the terms, conditions and rates pursuant to which Qwest and Verizon will be  
24 required to provide line splitting in this State. *See* Thirty-Second Supplemental Order, ¶ 34.  
25 Between the time the hearings in Part B completed and the issuance of the Supplemental Order,  
26 however, the parties negotiated all the terms and conditions relating to the Qwest line and loop

1 splitting offerings in connection with the combined docket addressing Qwest's SGAT and its  
2 application for Section 271 relief in this State. Indeed, SGAT Sections 9.21 and 9.24, *et seq.*  
3 spell out the agreed-upon terms and conditions in accordance with which Qwest will provide line  
4 (unbundled loop) and loop (UNE-P) splitting to CLECs. Further, as Qwest stated in a separate  
5 costing and pricing proceeding in Minnesota, the charges and rates for line splitting are identical  
6 to those for line sharing and thus no charges, other than those already assessed for CLECs  
7 ordering line sharing, should or will be assessed when a CLEC orders line splitting.<sup>1</sup>

8 In light of these developments, Covad requests clarification as to whether there is any  
9 necessity for opening a new docket to address the terms and conditions for Qwest's line and loop  
10 splitting offerings. Further, the only issue that appears to remain open with respect to Qwest is  
11 the pricing for its loop splitting product. Covad therefore urges the Commission to reconsider its  
12 decision to open a separate docket to address this single pricing issue, and to include it instead in  
13 the Part E proceedings since the terms and conditions have already been agreed upon by the  
14 parties.

15 With respect to Verizon, additional proceedings are required since neither the  
16 Commission nor the parties in this State have had the opportunity to review Verizon's proposed  
17 terms and conditions. However, because a great deal of work has already been completed and  
18 agreement reached on many terms and conditions in connection with the New York collaborative  
19 on line splitting, from Covad's perspective there are only a few issues remaining as to terms and  
20 conditions (which also impact costing and pricing assumptions), which will then permit the  
21 Commission to set prices for the Verizon line splitting product. Covad believes that the most  
22 efficient method to resolve the remaining terms, conditions and pricing would be in the context  
23 of Part E. Covad therefore requests that the Commission reconsider its decision to open a  
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26 <sup>1</sup> See Minnesota Pub. Utils. Comm'n, Docket No. P-421/CI-01-1375, Rebuttal Testimony of Kathryn Malone, dated April 18, 2002.

1 separate proceeding and to include in Part E the remaining terms, conditions and pricing for the  
2 Verizon line splitting product.

3 **B. Line Sharing Over Digital Loop Carrier and Unbundled Packet Switching**

4 Covad urges the Commission to reconsider its decision to delay opening a docket to  
5 determine the method by which ILECs must provide line sharing over fiber. See Thirty-Second  
6 Supplemental Order, ¶¶ 43-44. First, the Commission's decision in this regard may result in  
7 inconsistent decision-making. As the Commission stated in the 20<sup>th</sup> Supplemental Order in  
8 Docket Nos. UT-003022 and UT-003040, it will consider unbundled packet switching and  
9 collocation of remote line cards in an appropriate proceeding. See Docket Nos. UT-003022 and  
10 UT-003040, Twentieth Supplemental Order, ¶¶ 250 and 259. The Commission did not indicate,  
11 in that combined proceeding, that it wanted to wait until the conclusion of some other  
12 proceeding. Thus, Covad requests clarification of the Commission's decision because of the  
13 potential for inconsistent decisions.

14 Second, while Covad appreciates the magnitude of the Commission's workload, Covad  
15 believes that the competitive necessity underlying an examination of the terms, conditions and  
16 rates pursuant to which Qwest must provide line sharing over fiber via an architecture other than  
17 the DA Hotel, requires immediate attention. The reality is that, even if the Commission opens  
18 today a new proceeding to determine the terms, conditions and rates pursuant to which line  
19 sharing over fiber must be provided, no decision on these issues will be rendered until late 2003  
20 or even 2004. Thus, by delaying any investigation into rates, terms and conditions for line  
21 sharing over fiber, the Commission necessarily ensures that Qwest will continue to enjoy  
22 exclusive control over, and a consequent ability to lock up, a large portion of the advanced  
23 services market in this State for at least another year and a half, if not longer. Covad therefore  
24 urges the Commission to reconsider its ruling that it will delay its individual investigation into  
25 the continued deployment of advanced services, such as xDSL, in this State. Instead, Covad  
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1 requests that the Commission open a docket immediately to determine the rates, terms and  
2 conditions pursuant to which Qwest must provide line sharing over fiber/DLC.

3         If the Commission remains reluctant to open a proceeding at this time, the Commission  
4 should clarify that it will promptly open its own proceeding following the conclusion of the line  
5 sharing over fiber proceeding in the State of Minnesota.<sup>2</sup> Currently, Qwest, Covad, the  
6 Minnesota Department of Commerce, as well as other interested parties such as AT&T and  
7 WorldCom (the “MN Parties”), are litigating the terms, conditions and rates under which Qwest  
8 is obligated to provide a single end-to-end UNE over which CLECs can provide line shared loop  
9 xDSL services even where fiber is present in the loop. Much like the initial rollout of line  
10 sharing in the Qwest region, the Minnesota proceeding will develop and resolve all the factual,  
11 network/technical architecture, and OSS issues associated specifically with the provision of line  
12 sharing over fiber by Qwest. Further, the parties will be pricing the end-to-end broadband UNE  
13 on a TELRIC basis which will also facilitate the development of both interim and final rates for  
14 line sharing over fiber in this State. Thus, in light of the identity of the factual, technical and  
15 pricing issues between the Minnesota proceeding and that contemplated by the Commission, the  
16 Commission will have a solid record already developed on these issues. Therefore, the  
17 Commission should clarify the Thirty-Second Supplemental Order that it will open its own  
18 proceeding upon the conclusion of the Minnesota proceeding.

19         The Commission also ruled, at Paragraph 435 of the Thirty-Second Supplemental Order,  
20 that it would consider the rates, terms and conditions under which Verizon must provide  
21 unbundled packet switching in Part E of this proceeding. Further, the Commission stated it  
22 would consider in Part E whether additional unbundling of UPS should be ordered beyond the  
23 limited conditions under which the FCC currently requires ILECs to provide UPS. *Id.*, ¶438.  
24 While Covad believes that the unbundling and provision of UPS and the requirement to provide  
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<sup>2</sup> See Minn. Pub. Utils. Comm’n Docket No. P-421/CI-02-293.

1 line sharing over fiber are distinctly different legal and technical issues, there is some overlap  
2 between those issues because of the manner in which both Verizon and Qwest have chosen to  
3 deploy their networks. Additionally, in proceedings in other states, both Verizon and Qwest  
4 have argued that an end-to-end broadband UNE over which xDSL services can be provided is  
5 nothing more than packet switching. Thus, from an efficiency standpoint, Covad believes it  
6 would be prudent to address line sharing over fiber and the further unbundling of UPS in a single  
7 proceeding to be opened immediately or, alternatively, upon the completion of the Minnesota  
8 line sharing over fiber proceeding. Covad therefore requests that the Commission reconsider its  
9 decision to adjudicate UPS in Part E and rule instead that the UPS issues be decided in the  
10 separate proceeding to be opened on the line sharing over fiber issues.

11 **C. Loop Extenders**

12 In Part B, Verizon sought to establish a rate for a 2 wire loop extender. That is, Verizon  
13 sought, and the Commission approved, a rate in connection with the placement of technology on  
14 a loop in order to bring it up to technical specifications. See Thirty-Second Supplemental Order,  
15 ¶393. By allowing Verizon to charge for 2 wire extension technology, however, the Commission  
16 creates a pricing disparity between ILECs.

17 In SGAT Section 9.2.2.5, which has gone into effect in this State, Qwest states that it will  
18 not charge CLECs for 2 wire extension technology when such technology is necessary to bring  
19 the loop up to technical specifications. Qwest will charge CLECs for extension technology,  
20 however, if the extender is ordered for a purpose other than to bring the loop up to technical  
21 specifications.

22 By permitting Verizon to charge for extension technology under any and all  
23 circumstances, the Commission creates a pricing disparity. In order to resolve that disparity, the  
24 Commission should revise its Thirty-Second Supplemental Order to permit Verizon to charge for  
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1 extenders only where that technology is requested for a purpose other than to bring the loop up to  
2 technical specifications.

3 This kind of limitation makes eminent good sense for a wholly independent reason. A  
4 loop extender charge to bring a loop up to technical specifications is not consistent with  
5 TELRIC, which recently was confirmed unequivocally by the United States Supreme Court as  
6 the law of the land. Under a TELRIC regime, loops would meet all applicable technical  
7 specifications without the addition of any type of extension technology. Indeed, there is no  
8 dispute that the Verizon and Qwest loop cost models are designed to produce rates for “good”  
9 loops. Allowing Verizon to charge for extension technology to make the loop a “good” one thus  
10 not only violates TELRIC, but also requires the CLEC to pay more than the Commission-  
11 approved rate for specific types of loops. Thus, the Commission should revise its Thirty-Second  
12 Supplemental Order to make clear that Verizon can only charge the loop extender rate when  
13 extension technology is ordered for a reason other than to bring the loop up to technical  
14 specifications.

### 15 III. CONCLUSION

16 For the reasons set forth more fully above, Covad Communications Company  
17 respectfully requests that the Commission modify its Thirty-Second Supplemental Order to (1)  
18 include the resolution of the remaining terms, conditions and pricing for the Verizon line  
19 splitting offering and the Qwest loop splitting offering in Part E of this proceeding; (2) require  
20 the immediate opening of a new docket to address the provision of line sharing over fiber by  
21 Verizon and Qwest, Verizon packet switching rates, and the further unbundling of packet  
22 switching by both Verizon and Qwest; and (3) make clear that Verizon can only charge for loop  
23 extension technology where ordered for a purpose other than to bring the loop up to technical  
24 specifications.

1 DATED this 1<sup>st</sup> day of July, 2002.

2 Respectfully submitted,

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4 COVAD COMMUNICATIONS COMPANY

5 By: \_\_\_\_\_

6 K. Megan Doberneck  
7 Senior Counsel  
8 7901 Lowry Boulevard  
9 Denver, CO 82030  
10 720-208-3636  
11 720-208-3256 (facsimile)  
12 e-mail: [mdoberne@covad.com](mailto:mdoberne@covad.com)

1 I hereby certify that I served a true and correct copy of the foregoing on the  
2 following:

3 *Please see attached Service List*

4 by the following indicated method or methods:

- 5  By **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers  
6 shown above, which are the last-known fax numbers for the attorneys' offices, on  
7 the date set forth below. The receiving fax machines were operating at the time of  
8 service and the transmissions were properly completed, according to the attached  
9 confirmation reports.
- 10  By **mailing** full, true, and correct copies thereof in sealed, first-class postage-  
11 prepaid envelopes, addressed to the attorneys as shown above, the last-known  
12 office addresses of the attorneys, and deposited with the United States Postal  
13 Service at Seattle, Washington, on the date set forth below.
- 14  By sending full, true and correct copies thereof via **overnight courier** in sealed,  
15 prepaid envelopes, addressed to the attorneys as shown above, the last-known  
16 office addresses of the attorneys, on the date set forth below.
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18 attorneys at the attorneys' last-known office addresses listed above on the date set  
19 forth below.
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21 **Those parties marked with an asterisk were sent a confidential copy via U.S.  
22 Mail.**

23 DATED this 1<sup>st</sup> day of July, 2002.

24 \_\_\_\_\_  
25 Adrienne M. Anderson  
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