BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996.	Docket No. UT-003022 and UT-003040 COVAD COMMUNICATIONS COMPANY'S COMMENTS ON THE LIBERTY DATA RECONCILIATION REPORTS AND QWEST'S PERFORMANCE DATA

Covad Communications Company ("Covad") respectfully submits these Comments on the Liberty Data Reconciliation Report for Washington and Qwest's performance data. As grounds in support of these Comments, Covad states as follows:

I. INTRODUCTION

The Commission cannot forward to the FCC an affirmative endorsement of Qwest's application for relief pursuant to Section 271 unless and until Qwest demonstrates, by a preponderence of evidence, to the Commission that it satisfies, in both paper and practice, the competitive checklist, and that the Washington local services market is fully and irreversibly open[1] to competition. Careful review and critical scrutiny of Qwest's performance data thus is both appropriate and necessary to permit the Commission to determine whether Qwest has fulfilled these absolute prerequisites to Section 271 relief. For the reasons set forth more fully below, it is clear that Qwest has failed to sustain its burden of proof. Thus, the Commission should not approve Qwest's Section 271 relief at this time.

II. ARGUMENT

A. APPLICABLE LEGAL PRINCIPLES

A necessary prerequisite to the approval of Qwest's application to provide inter-LATA long distance service is proof that Qwest has "fully implemented" the § 271 competitive checklist, thereby presumptively opening its local telecommunications markets to competition.[2] Qwest thus must provide "actual evidence demonstrating its present compliance with the statutory conditions for entry,"[3] which require, among other things, that Qwest provide nondiscriminatory access to unbundled network elements,[4] such as unbundled loops. Promises of future performance are irrelevant to whether Qwest currently is satisfying its obligations under Section 271; Qwest must demonstrate *current* compliance with the statutory conditions for entry.[5]

This Commission is charged with the critical function of determining to a reasonable degree of certainty that Washington's local markets are open to competition.[6] Because the FCC relies heavily upon a state's rigorous factual investigation, review and analysis of Qwest's compliance, or not, with a particular checklist item, this Commission's review of the performance data before it may not be undertaken lightly. To the contrary, before approving Qwest's request for §271 relief, the Commission must

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[1] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Mem. Op. and Order, CC Docket No. 99-295, FCC 99-404 (Dec. 22, 1999), ¶423 ("*BANY 271 Order*").

[2] *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket Nos. 96-978 & 95-185 (Rel. Aug. 8, 1996), ¶ 3 ("*Local Competition Order*").

[3] *BANY 271 Order*, ¶ 37.

[4] 47 U.S.C. § 271(a)(2)(B)(ii).

[5] *BANY 271 Order*, ¶ 37.

ensure that Qwest has provided sufficient evidence to prove, by a preponderance of the evidence, that it has fully implemented[7] each checklist item. The ultimate burden of proof as to its commercial performance on all checklist items lies with Qwest, even if "no party files comments challenging compliance with a particular requirement."[8]

B. THE LIBERTY DATA RECONCILIATION REPORT

1. Background on the Liberty Data Reconciliation Process

From the outset of the OSS checklist item workshops, CLECs regularly and repeatedly have complained that Qwest's actual commercial performance in the State of Washington has been far from optimal. Although several parties submitted performance data during the course of a number of these OSS checklist item workshops, the data issues were never formally and finally resolved. Rather, the Commission's ultimate conclusion regarding Qwest's actual commercial performance was deferred until such time as OSS testing was concluded and data workshops were convened.

Where data has been provided or testimony given regarding Qwest's actual commercial performance, a significant issue of dispute between Qwest, on the one hand, and CLECs, on the other, was whose data reflected more accurately the CLECs' commercial experience in Washington. In order to resolve those types of issues and to minimize the burden placed on state commissions with responsibility for discerning whether Qwest's actual commercial performance complies with its obligations under Section 271, the Regional Oversight Committee authorized the retention of Liberty Consulting Group to undertake a data reconciliation of Qwest and CLEC data for any

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[6] 47 U.S.C. § 271(d)(2)(B).
[7] *BANY 271 Order*, ¶ 44.
[8] *Id*., ¶ 47.

PID, any sub-measure, any state and any time period.[9] To manage this undertaking, the ROC approved a number of key milestones: (1) production of all data by all parties on or before September 28, 2001; and (2) exchange of comments on or before October 15, 2001 (eliminated after the Arizona report); and (3) completion of the Liberty reconciliation and production of a report thereon on or before October 31, 2001 (deferred to March 2, 2002 for Washington).

In preparing its data for the performance data workshop, Covad first compiled data for the months of April/May through July, 2001 for unbundled 2-wire non-loaded loops and line shared loops for the PO-5, OP-4 and OP-5 measurements. Covad also reviewed May-July 2001 data for unbundled 2-wire non-loaded loops for the MR-3 and MR-6 metrics. Covad then applied the business and other rules contained in the PIDs for those measures for which Covad sought reconciliation and, finally, generated its performance results accordingly. Following the generation of the performance data results, Covad went back over the data to determine whether there were any anomalies in the data and, where appropriate, corrected such anomalies.

2. The Liberty Reports Demonstrates that Qwest's Data Cannot Be Relied Upon to Show That Its Commercial Performance Data for the State of Washington Is Reliable or Sufficient to Satisfy Its Obligations Under Section 271.

As an initial matter, Liberty has indicated in the four reports it has produced thus far (Arizona, Colorado, (including the Colorado update), Nebraska and Washington), that it believes (1) the reports are cumulative; and (2) each report provides information that will be of use to the individual state commissions in determining whether Qwest's reported performance is accurate, correct and reliable. Liberty has also stated that, to the

[9] Although Arizona is not part of the ROC, it was included for purposes of the data reconciliation.

extent that issues were identified in an earlier report, they were not repeated in later reports. Thus, because of the interwoven nature of these reports and the "building block" approach Liberty has utilized, Covad comments on each of the first three reports to the extent they bear on the Washington report and the reliability of the conclusions contained therein.

Attached hereto as *Exhibit 1* are Covad's redlined comments on the Liberty data reconciliation report for Arizona; *Exhibit 2* is Covad's Brief on the Liberty Data Reconciliation (without exhibits); *Exhibit 3* is the Liberty data reconciliation report for Colorado; *Exhibit 4* are excerpts from the Second Technical Conference before the Colorado Public Utilities Commission; and *Exhibit 5* are Covad's redlined comments on the Liberty data reconciliation report for Washington. Attached as *Exhibit*s *6* and *7* are the Nebraska and Colorado update reports.

a. Liberty Committed Numerous Errors in the Preparation of the Various State Reports that Render Liberty's Conclusions Unreliable.

Far from vindicating Qwest's claims of data accuracy, the Liberty Reports raised far more questions than they answered. Indeed, the Liberty Reports failed entirely to resolve any disputes between the parties as to whether Qwest accurately and correctly reports its performance data.

As an initial matter, Liberty's approach to the data reconciliation was driven by a fundamental misunderstanding of the burden of proof imposed on Qwest by the Telecommunications Act of 1996, which lead to incorrect and skewed results. More specifically, the Act imposes on Qwest the burden of establishing its *prima facie* case of compliance with the statutory conditions for entry into the interLATA market. Part and parcel of that burden is a demonstration by Qwest that its performance data is correct and accurate. Despite that, Liberty did not hold Qwest to this standard and require it to prove that its performance data was materially accurate. Instead, Liberty foisted the burden on CLECs not only to prove that there was a discrepancy in the parties' data, but also to affirmatively prove that Qwest had treated an order incorrectly:

> Does any of the information provided by the participating CLECs demonstrate inaccuracy in Qwest's reporting of its performance results under the measures defined in the PID?
>
> ****
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> The information provided by CLECs for the state of Arizona did not demonstrate that Qwest reports of its performance are materially inaccurate. *Exhibit 1*, pp. 1 and 6.

However, consistent with the FCC's requirement that Qwest establish a *prima facie* compliance case, the more appropriate method to resolve discrepancies is to require that Qwest affirmatively prove that it treated orders correctly. Liberty's first error, therefore, was to apply an improper burden of proof which corrupted the results and conclusions it reached for every state in which it issued a reconciliation report.

Compounding the burden of proof error was the unequal and inconsistent criteria and standards Liberty applied when evaluating discrepant data, as the parties made clear during the Arizona workshop on performance data. Examples of the fact that Liberty failed to apply criteria consistently are legion. First, where the parties' electronic data conflicted, Liberty assumed that Qwest either treated an order correctly or the information was inconclusive. The conclusion would only shift to a finding that Qwest incorrectly treated an order where the CLEC provided underlying documentation (such as work order logs) confirming its position. The same requirement was not imposed on Qwest. *See Exhibit 1, pp. 6-7.*

Second, where the parties did not agree an order should be included and Qwest stated that it should be included, Liberty opined that the CLEC had failed to prove that Qwest's treatment was incorrect. Conversely, where the parties did not agree an order should be included and the CLEC believed it should be included, Liberty opined that the information was inconclusive. Thus, upon the same set of facts, Liberty reached different conclusions. *Id.*

Taken in tandem, these two errors on the part of Liberty resulted in an incorrect focus on whose data is at issue here, and ultimately undermined the credibility of Liberty's Reports for all four states. In large part, Covad's data is completely irrelevant to whether Qwest should receive Section 271 relief; the burden is on Qwest to prove that relief appropriately should be granted by this Commission. Covad's data impacts that analysis only to the extent that it suggests Qwest has not met its burden of proof. The question then becomes why there is a discrepancy, which requires an examination of *both* parties' data.

Rather than examine both parties' data, however, Liberty focused solely on CLEC data and what it does or does not show, thereby missing the mark. The net result of Liberty's misunderstanding both of its role and what is required of Qwest under the Act thus is the issuance of a conclusion that is *not* based upon the evidence presented by Qwest, but rather upon a "negative" deductive inference. As such, it is insufficient to support a finding that Qwest's reported performance data is materially accurate.

b. By Failing to Define or Establish Standards for Key Terms, Liberty Has Made It Impossible to Validate Liberty's Conclusions.

Another issue raised by Liberty's conclusion of no material inaccuracy/material accuracy in Qwest' reported performance data flows from Liberty's failure to define, first, what constituted "materially accurate" or "materially inaccurate," and, then, from what standpoint (*i.e.*, percentage of orders, etc.) materiality was determined. *See, e.g., Exhibit, pp. 7-9.*. Equally problematic is the fact that Liberty never indicated what constituted sufficient proof of either accuracy or inaccuracy. *Id.* These points are particularly important given the fact that (1) Liberty assumed some degree of human error was inevitable and actually acceptable, *see, e.g., Exhibits 1, 3 and 5*; (2) a material percentage of Covad orders in every state were deemed inconclusive because the parties' electronic and underlying paper documentation fully conflicted, *Id.*; and (3) for Covad's Washington line sharing orders, there was human intervention on every single one of those orders, as evidenced by Qwest's RSOR data produced in response to Liberty data requests.

The significance of these issues may not be underestimated. Despite recognizing that Qwest's performance reporting was far from perfect and, in fact, has built in sources of error and areas in which its data was undocumented, at no point did Liberty bother to specify percentages or to correlate what percentage of error would be acceptable, unacceptable or would render the Qwest data materially inaccurate -- even after repeated questioning on this topic by CLECs during the Arizona workshop on performance data. The net result of Liberty's tacit acceptance of honest or intentional error on the part of

Qwest is the deprivation of any method by which Staff, the Commission or CLECs can validate Liberty's conclusions.

Liberty's failure to define or establish criteria for materiality, accuracy and sufficiency of proof becomes even more egregious in light of the fact that it eliminates any ability on the part of CLECs, Staff or the Commission to determine whether and when Qwest's performance reporting has shifted from allegedly materially accurate to materially inaccurate. Particularly because the body of data that this Commission and the FCC will look at in connection with Qwest's application for Section 271 relief will be different than the data reviewed during the Liberty reconciliation, it was incumbent upon Liberty to provide the Commission with a "road map" as to the manner by which it rendered the conclusions that it did. Liberty completely failed to do this, rendering its Report essentially useless as a tool for the Commission to utilize in considering Qwest's application for Section 271 relief.

c. Liberty's Reports On the Covad-Qwest Data Reconciliation Fully Demonstrate that Qwest's Data Is Neither Accurate Nor Reliable.

i. The Arizona Report

The inconsistency of Liberty's treatment of, and application of criteria to, CLEC and Qwest data is nowhere more evident than in connection with the reconciliation for Covad's Arizona PO-5 orders. First, Qwest never provided any underlying documentation to support its treatment of Covad's PO-5 orders, choosing instead to provide only a written analysis. Under these circumstances, and consistent with its practice in other portions of the data reconciliation as well as the process to which it adhered in Colorado, Nebraska and Washington, Liberty should have treated every order as inconclusive. It did not do so. Presumably, of course, the requirement of underlying documentation in order to shift the Liberty conclusion from inconclusive to something else was predicated on the fact that such documentation would permit Liberty to verify the accuracy and correctness of the parties' electronic data. Liberty failed to follow that process with respect to Covad's PO-5 orders in Arizona.

Second, to the extent Liberty relied on the Qwest analysis in rendering an opinion as to those orders to which the analysis applied, such reliance was inappropriate in light of the fact that Qwest's analysis was inaccurate. For example, Qwest's analysis of Covad's Arizona orders claimed that seventy-two orders should be excluded from the PO-5 analysis because they were unbundled loop products. Liberty accepted Qwest's analysis and concluded that Qwest correctly had excluded those orders. As Covad pointed out during the performance data workshop, however, that analysis was flat out wrong. Although Qwest correctly identified those orders as being for unbundled loops, the flaw in Qwest's conclusion that they should be excluded is the fact that the product category evaluated by Qwest *was* unbundled loops. Consequently, those orders appropriately belonged in the PO-5 unbundled loop denominator.

Further work by Covad reflected additional flaws in Qwest's analysis. For instance, Qwest identified a number of orders that should have been excluded on the basis that they were orders for a state other than Arizona. When Covad compared twenty-five of those orders to its order log information (which Liberty initially stated it would accept but then later refused to do so), it determined that, for each and every order, the end user was located in Arizona and was being provided service out of an Arizona central office.

Third, the specific results for the two months for which Liberty did reach conclusions on individual orders are insufficient for the basis of any opinion at all. More particularly, for May PO-5 line sharing, Qwest and Covad only agreed on a total of five out of several hundred orders. The magnitude of this discrepancy, standing alone, undercuts Liberty's ability to render an opinion. Further, on only 25% of the May line shared loop orders was Liberty able to conclude that Covad had failed to prove that Qwest's treatment of those orders was incorrect; for the remaining 75%, Liberty stated that the data was inconclusive.[10] Stated in practical terms, therefore, Liberty's opinion of supposed material accuracy in Qwest's reporting performance is predicated on a potential margin of error of 75% since it was unable to determine correctness or incorrectness of treatment on 75% of the orders. Liberty's conclusion, therefore, cannot stand.

For June PO-5 unbundled loops, Qwest and Covad only agreed on a total of four out of several hundred orders. The magnitude of this discrepancy, standing alone, undercuts Liberty's ability to render an opinion. Further, on only 30% of the June unbundled loop orders was Liberty able to conclude that Covad had failed to prove that Qwest's treatment of those orders was incorrect; for the remaining 70%, Liberty stated that the data was inconclusive. Stated in practical terms, therefore, Liberty's opinion of supposed material accuracy in Qwest's reporting performance is predicated on a potential 70% margin of error since it was unable to determine correctness or incorrectness of treatment on 70% of the orders. Liberty's conclusion, therefore, cannot stand.

Liberty's results for OP-4 likewise provide no basis upon which Liberty could render any conclusion regarding Qwest's performance data reporting in light of the

[10] With respect to the orders labeled as "inconclusive," Covad started randomly at line item 6 and then checked the next ten orders. For those ten orders, Covad's underlying documentation matched exactly its

enormous percentage of orders on which Liberty opined that the data was inconclusive. For line shared loops, the parties agreed upon only 1.5% of the orders for May, 13% of the orders in June, and 23.5% of the orders in July. Liberty agreed that this extraordinary discrepancy between the parties raised a "red flag." From Covad's perspective, that red flag completely undercuts Liberty's ability to render any conclusion at all as to the accuracy of Qwest's OP-4 reporting.

Moreover, as with PO-5, the OP-4 calculation for Covad's line shared loops was dominated by a finding that the information on the orders was "inconclusive" -- 36% of the orders in May were inconclusive, 22% were inconclusive in June, and a whopping 44% were inconclusive in July. Further undermining the validity of Liberty's finding of material accuracy is the fact that Liberty was able to conclude that there was no evidence that Qwest treated the order incorrectly on 49% of the orders; in other words, through negative inference, Liberty concluded on only 49% of the orders that Qwest affirmatively treated the order correctly. Tellingly, Liberty's conclusion also suggests that Qwest did *not* treat an order correctly 51% of the time. With potentially half of Covad's orders being treated incorrectly, it was impossible for Liberty to render a conclusion that Qwest's performance data reporting was materially accurate in light of the evidence before it.

For unbundled loops, the parties agreed upon only 25% of the orders for May, 39% of the orders in June, and 30% of the orders in July. Liberty agreed that this extraordinary discrepancy between the parties raised a "red flag." From Covad's perspective, that red flag completely undercuts Liberty's ability to render any conclusion at all as to the accuracy of Qwest's OP-4 reporting.

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electronic data.

Similar to the line shared loops, the OP-4 calculation for Covad's unbundled loops was dominated by a finding that the information on the orders was "inconclusive" -- on average, 20% of the Covad orders were deemed inconclusive. Further undermining the validity of Liberty's finding of material accuracy is the fact that Liberty was able to conclude that there was no evidence that Qwest treated the order incorrectly on 50% of the orders; in other words, through negative inference, Liberty concluded on only 50% of the orders that Qwest affirmatively treated the order correctly. Tellingly, Liberty's conclusion also suggests that Qwest did not treat an order correctly 50% of the time. With potentially half of orders being treated incorrectly, it was impossible for Liberty to render a conclusion that Qwest's performance data reporting was materially accurate in light of the evidence before it.

ii. The Colorado Report

Liberty's Data Reconciliation Report for Colorado first pointed out in the section relating to the Covad data reconciliation that there are "several problems" with Qwest's data reporting processes, including:

> (1) improperly including its own retail voice orders with Covad's wholesale line shared loop orders thus increasing by at least 5% the number of orders reported (thereby inflating performance results);
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> (2) improperly double-counting up to 22% of Covad's 2-wire non-loaded loop orders in consecutive months (again inflating performance results);
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> (3) improperly excluding up to 70% of the line shared orders Covad included in the denominator when calculating the OP-4 results because of faults in the Qwest data environment; and
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> (4) improperly excluding up to 66.67% of Covad's line shared and non-loaded loop orders that Covad included in the denominator when calculating PO-5 because of faults in the Qwest data environment. *See also Exhibit 4* (CO trans.), p. 11.

Because of their numerosity and impact, Liberty concluded that these errors "significantly affected" Qwest's reported data performance results. *See Exhibit 3*, p. 4.

Setting aside the material errors that dominate Qwest's reported performance data, the Liberty Report also amply demonstrates that Qwest has not met its burden of proof of showing that its commercial performance is acceptable, as reflected by reliable performance data. More particularly, Qwest was able to affirmatively prove that its treatment of Covad's non-loaded loops for purposes of OP-4 reporting was *correct in only 61%* of the orders sampled. Even more egregiously, Qwest's performance reporting was affirmatively *incorrect on 31%* of the orders. Finally, 8% of the orders were inconclusive or in direct conflict since the underlying documentation of both parties supported their respective positions.

The unreliability and inaccuracy of Qwest's reported performance only increases when turning to OP-4 for line shared loops. Qwest was able to affirmatively prove that its treatment of Covad's line shared loops for purposes of OP-4 reporting was *correct in only 55%* of the orders sampled. Even more egregiously, Qwest's performance reporting was *incorrect on 26%* of the orders. Finally, 19% of the orders were inconclusive or in direct conflict since the underlying documentation of both parties supported their respective positions.

Qwest's reported performance data continues to deteriorate when looking at the PO-5 results. Qwest was able to affirmatively prove that its treatment of Covad's orders for purposes of PO-5 reporting was *correct in only 44%* of the orders sampled. Even more egregiously, Qwest's performance reporting was *incorrect on 38%* of the orders.

Finally, 18% of the orders were inconclusive or in direct conflict since the underlying documentation of both parties supported their respective positions.

It is beyond dispute that Qwest has failed to meet its burden of proof in light of Liberty's conclusion that Qwest affirmatively treated at least 26% (and up to almost 40%) of Covad's orders incorrectly. Further compounding the inaccuracy of Qwest's reported performance data is the significant percentage of orders on which Liberty could not render a conclusion because of the direct conflict between the parties' data. Liberty concluded that, on average, 15% of the Covad orders could not be reconciled since the documentation provided by both parties supported their respective positions. Thus, there is an automatic 15% margin of error built into Qwest's reported performance data that is simply unacceptable. Because the parties have agree in the ROC to a number of fixed percentage benchmarks (i.e., OP-4 is 90% for 2 wire non-loaded loops and 95% for line shared loops), the Commission may not deem acceptable Qwest's reported performance data that would permit Qwest to deviate by as much as 15% from an agreed upon standard but yet appear to be in compliance due to reporting inaccuracies.

iii. The Washington Report.

The most notable thing about Liberty's Washington Report is the remarkable dearth of detail and analysis in the document. Of even greater concern is the fact that Liberty deliberately masked what Qwest's true performance is. Specifically, Liberty states that 53% of the line shared orders fell into three categories (1) Covad did not prove Qwest's treatment was incorrect, (2) Qwest correctly treated an order; or (3) the parties information conflicted. Depending on how these categories break down by percentage, however, radically different pictures of Qwest's performance will result. For example, assume that Qwest affirmatively proved that it correctly treated an order only 1% of the time. This Commission thus would be faced with data in which there was evidence that Qwest correctly treated Covad's line shared orders correctly for purposes of OP-4 only 25% of the time (the 24% of the orders on which the parties agreed plus the 1% Qwest proved it treated correctly). Conversely, if Qwest proved it treated orders correctly 52% of the time, then the data would show that Qwest treated orders correctly 76% of the time (the 24% of the orders on which the percents agreed plus the 52%). By failing to provide this kind of detailed, yet highly relevant and material breakdown, Liberty did a great disservice to Qwest, CLECs and this Commission as they grapple with the issue of whether Qwest's data is reliable.

Setting aside that issue, however, and the serious ramifications that flow from Liberty's decision to muddy the Commission's analysis, much like the Colorado Report, Liberty's conclusion that Qwest's performance data is not materially inaccurate is unreasonable and is without any rational basis. More particularly, Qwest was able to affirmatively prove that its treatment of Covad's orders for purposes of OP-4 line shared loop reporting was *correct in, at most 77%* of the orders sampled. Even more egregiously, Qwest's performance reporting for Covad's line shared loops for OP-4 was affirmatively *incorrect on at least 23%* of the orders.

The unreliability and inaccuracy of Qwest's reported performance also exists when looking at OP-4 for unbundled loops. Qwest was able to affirmatively prove that its treatment of Covad's line shared loops for purposes of OP-4 reporting was *incorrect on at least 4%* of the orders, and very likely many more.

Qwest's reported performance data continues to deteriorate when looking at the PO-5 results. Qwest was able to affirmatively prove that its treatment of Covad's orders for purposes of PO-5 reporting was *correct in, at most 72%* of the orders sampled. Even more egregiously, Qwest's performance reporting was *incorrect on at least 28%* of the orders.

It is beyond dispute that Qwest has failed to meet its burden of proof in light of Liberty's conclusion that Qwest affirmatively treated a materially significant percentage of Covad's orders incorrectly. Further compounding the inaccuracy of Qwest's reported performance data is the significant percentage of orders on which Liberty could not render a conclusion because of the direct conflict between the parties' data. Thus, there is an automatic margin of error built into Qwest's reported performance data that is simply unacceptable. Because the parties have agree in the ROC to a number of fixed percentage benchmarks (i.e., OP-4 is 90% for 2 wire non-loaded loops and 95% for line shared loops), the Commission may not deem acceptable Qwest's reported performance data that would permit Qwest to deviate by any amount from an agreed upon standard but yet appear to be in compliance due to reporting inaccuracies.

In conclusion, no weight may be given to Qwest's data nor may the Commission assume that Qwest's data is "more valid" than Covad's data. To the contrary, Qwest bears the burden of proof as to all components of its Section 271 case. Because it has failed to meet that burden of proof, the Commission cannot currently approve Qwest's application for Section 271 relief.

C. Additional Problems with Qwest's Data

Erroneous State Reporting. Qwest's data is suspect because it is simply inaccurate. For example, Qwest reports fairly significant preorder activity for Covad in the states of Nebraska, North Dakota and South Dakota even though Covad has neither entered those markets nor even undertaken the first step (collocating at a central office) in any of those states. *See Exhibit 8*.

Unbundled and Conditioned Loop Reporting. Of critical concern to Covad is the method by which Qwest artificially is improving its 2 wire non-loaded, ISDN and conditioned loop performance for purposes of OP-3 (installation commitments met) and OP-4 (average installation interval). More particularly, Covad discovered that, according to the Washington Covad-specific PID Report Covad's unbundled loop order volume (2 wire non-loaded and ISDN loops) plummeted precipitously beginning in September 2001, and dropped to near zero levels in the most recent month reported (January 2002).[11] *See Exhibit 9*, pp. 30-31, 33, 38. At the same time that its non-loaded and ISDN loop order volume dropped, however, hundreds of Covad orders began showing up on a monthly basis in the OP-3 and OP-4 conditioned loop submeasures. *Id.*, p. 32, 34 and 39. Tellingly, this is not mere coincidence; during the March 7, 2002 ROC TAG call, Qwest admitted that there was an issue with its unbundled loop reporting in that loops that did not requiring conditioning nonetheless were being counted in the conditioned loop category.

By eliminating almost all of Covad's order volume from product categories in which the benchmark is six days to a product category in which the benchmark is over ten business days longer, at 16.5 days, Qwest artificially and improperly improves its OP-

[11] According to Covad's data, attached hereto as *Exhibit 10*, its order volume has remained constant for unbundled loops since September 2001 and, in fact, has remained level in the last three months.

3 and OP-4 performance reporting under all three measures. Making matters worse, because Qwest undertook a bulk deloading project for the central offices from which the bulk of Covad's lines in service in this State are provided, conditioning rarely should have been required thus giving Qwest hundreds of "easy makes" every month for Covad loop orders. Thus, in light of the significant errors in Qwest's reported OP-3 and OP-4 unbundled loop performance data, the Commission should reject that data and find that Qwest has failed to prove that its unbundled loop commercial performance satisfies its obligations under Section 271.

Line Sharing Performance. Qwest's line sharing performance casts into doubt Qwest's commitment to competition in this state. To provide some context, it is clear that Qwest currently really only has one competitor in the DSL market -- Covad. *Compare Exhibits 9, pp. 27, 29, 35 and 37 and 11, pp. 167-169.*. Perhaps unable to resist its monopolistic tendencies now that only one competitor is left standing, Qwest is not providing CLECs – and particularly Covad – with a meaningful opportunity to compete.

On the provisioning side, Qwest did not meet the benchmark in one of the two months reported for OP-3A and failed to meet the benchmark in either month reported for OP-4A. *Exhibit 11*, p. 167. The same performance was provided for Covad specifically. *See Exhibit 9*, p. 27 and 35.

Line sharing maintenance and repair is equally problematic for Qwest's bid to gain interLATA relief.[12] For instance:

[12] For some reason, Qwest chose not to provide Covad with any information as to whether it performed at parity when acting upon line sharing trouble tickets opened by Covad in the Covad-specific PID Report. Thus, Covad cannot determine whether Qwest is providing even poorer service with respect to Covad specifically when repairing line shared loops.

MR-4C. Qwest failed to perform at parity in the most recent month reported and in four of the seven months reported. *Exhibit 11*, p. 177.

MR-6A. Qwest failed to perform at parity in one of the three most recent months reported. *Id.*, p. 173.

MR-6C. Qwest failed to perform at parity in two of the four most recent months reported. *Id.*, p. 177.

MR 7A. Line shared loops have an inordinately high percentage of repeat troubles, ranging from 21% to as high as 50% in the most recent four months reported. *Id.*, pp. 174. Covad likewise experiences an extraordinarily high percentage of loops on which there were repeat troubles. *See Exhibit 9*, p. 80

MR 7B. 50% to 75% of line shared loops experienced a repeat trouble in November and December 2001 respectively. *Exhibit 11*, p. 176.

MR-7C. Line shared loops had chronic repeat trouble rates, ranging from a low of 15.79% of orders experiencing a repeat trouble to almost 48% of orders experiencing a repeat trouble. *Id.*, p. 178. Covad likewise experience an extraordinarily high percentage of loops on which there were repeat troubles. *See Exhibit 9*, p. 82.

MR-8. Qwest failed to perform at parity in the most recent month reported and in three of the seven most recent months reported. *Exhibit 11*, p. 179.

D. The Liberty Observations and Exceptions

As set forth more fully in Covad's redlined comments on the Washington data reconciliation report, *see Exhibit 5*, Covad disagrees with Liberty's decision to close most of the Observations and Exceptions on the basis of simple assertion and code review. As Liberty conceded in the Colorado workshops on performance data, good auditing practice is not to rely on simple assertion, but to actually investigate whether a fix is in place. *See Exhibit 4*, p. 30. Liberty, however, did not comply with this self-described "good auditing practice." Specifically, as Liberty made clear, it closed Observations 1026, 1027, 1029 and 1030 without ever reviewing Qwest's proposed code fixes or OSS updates against actual commercial data. *Exhibit 4*, p. 75-77, 79, 83, and 87-88.[13] Thus, Liberty never took the time to confirm whether the code fix would actually do what Qwest opined it would do or that such code changes would not impact other elements or components of Qwest's performance reporting data.

Liberty's decision to ignore this final step in its analysis is particularly egregious in light of the facts that (1) Liberty did not uncover the data problems identified in the reconciliation Observations and Exceptions in its initial "code audit" of the PIDs and thus can have no assurance that an audit of "fixed code" will correct the errors uncovered; and (2) Liberty was fully aware of the fact that code changes can and have impacted the accuracy of other areas of Qwest's reported performance data. *Exhibit 4*, p. 75-76; and, further, that the error leading to Observation 1029 ("CLEC unknown") was caused by a different code change/fix. *Id.; see also* pp. 84-85 (Q: … coding or programming changes created another set of problems? A: That's right."). Indeed, with respect to point (2), Liberty admitted that it was entirely possible that the code changes implemented by Qwest as a result of errors uncovered by Liberty during the reconciliation could have unintended consequences that create other errors in Qwest's reported performance. Ultimately, Liberty passed the buck on performing a complete reconciliation on performance data, suggesting instead that observations closed on the basis of some supposed code fix be listed as "candidates" for ongoing audit work. *Id.*, pp. 77-78.

[13] Covad also notes that Qwest's supposed code fix for Observation 1026 could not correct the data prior to July 2001. Thus, all PIDs impacted by the error identified in Observation 1026 remain inaccurate for the performance reported prior to July 2001. *Exhibit 4*, pp. 37-38.

Liberty's decision to close other Os and Es on the basis of additional training provided by Qwest is equally problematic. More particularly, in Observation 3086, KPMG expressed the opinion that the process and/or training utilized by Qwest to ensure that orders are provisioned correctly is suspect given Qwest's heavy reliance on additional training to correct problems detected by KPMG or HP. Rather than heed the opinion of the third party tester, Liberty blithely assumed, without basis and, indeed, contrary to the opinion of the third party tester, that in this instance additional training was sufficient. Of course, Liberty never confirmed whether that training took place or if it was efficacious.

E. Response to Supplemental Direct Testimony of Michael Williams

By and large, the purpose of the Williams Supplemental Direct Testimony on line sharing is to create the suggestion that Qwest is unfairly being held to a POTS parity standard rather than parity with Qwest DSL when looking at the repair and maintenance of CLEC line shared loops. *See* Williams Supplemental Direct Testimony at pp. 71-74. This argument, however, is the height of disingenuousness. It was Qwest – and no one else – that proposed that the standard for the line sharing M&R PIDs be parity with BUS and RES POTS. *See Exhibits 12 and 13* attached hereto. In fact, Qwest originally proposed a parity with Qwest DSL standard but then subsequently decided that the POTS parity standard was more accurate. Thus, Qwest made the decision to select that standard and cannot now distance itself from its decision simply because its performance is no longer up to snuff. The Commission should not accept Qwest's explanations for why it is not performing at parity when Qwest itself, in reliance on almost two years worth of line sharing data (CLECs and its own), made the informed decision to propose and agree to an M&R PID parity standard of RES and BUS POTS.

III. CONCLUSION

Qwest bears the burden of proof as to all components of its Section 271 case. Because, as set forth more fully above, it has failed to meet that burden of proof, the Commission should find that Qwest has not satisfied its obligation under Section 271.

Dated this 21st day of March, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

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