

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**CARL J. KUNASEK**

**Chairman**

**JIM IRVIN**

**Commissioner**

**WILLIAM A. MUNDELL**

**Commissioner**

IN THE MATTER OF THE )  
INVESTIGATION INTO )  
US WEST COMMUNICATION, ) **DOCKET NO. T-00000A-97-0238**  
INC.'S COMPLIANCE WITH )  
THE § 271 OF THE )  
TELECOMMUNICATIONS ACT )  
OF 1996 )

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**COVAD COMMUNICATIONS COMPANY'S BRIEF ON THE LIBERTY DATA  
RECONCILIATION REPORT**

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Covad Communications Company ("Covad") respectfully submits this Brief on the Liberty Data Reconciliation Report for Arizona. As grounds in support of this Brief, 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 to the Commission that it satisfies, in both paper and practice, the competitive checklist,<sup>1</sup> and that the Arizona local services market is fully and irreversibly open<sup>2</sup> to competition. Careful review and critical scrutiny of Qwest's and CLECs'

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<sup>1</sup> *SBC Texas 271 Order*, ¶52.

<sup>2</sup> *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*").

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.

## 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.<sup>3</sup> Qwest thus must provide "actual evidence demonstrating its present compliance with the statutory conditions for entry,"<sup>4</sup> which require, among other things, that Qwest provide nondiscriminatory access to unbundled network elements,<sup>5</sup> 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.<sup>6</sup>

This Commission is charged with the critical function of determining to a reasonable degree of certainty that Arizona's local markets are open to competition.<sup>7</sup> 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 ensure that Qwest has provided sufficient evidence to prove, by a preponderance of the

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<sup>3</sup> *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*").

<sup>4</sup> *BANY 271 Order*, ¶ 37.

<sup>5</sup> 47 U.S.C. § 271(a)(2)(B)(ii).

<sup>6</sup> *BANY 271 Order*, ¶ 37.

<sup>7</sup> 47 U.S.C. § 271(d)(2)(B).

evidence, that it has fully implemented<sup>8</sup> 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."<sup>9</sup>

## **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 Arizona 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 Arizona. 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 PID, any sub-measure, any state and any time period. Although Arizona is not part of the ROC, it was included for purposes of the data reconciliation. To manage this

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<sup>8</sup> *BANY 271 Order*, ¶ 44.

<sup>9</sup> *Id.*, ¶ 47.

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 (deferred to December 10, 2001 for Arizona); and (3) completion of the Liberty reconciliation and production of a report thereon on or before October 31, 2001 (deferred to December 3, 2001 for Arizona).

While Qwest complained, without basis, that two of the three CLECs participating in the audit had expanded the scope of the data to be audited after the September 28, 2001 deadline, in fact it was Qwest itself that completely ignored the agreed-upon deadlines. Covad did not receive from Qwest most of the data for the PIDs, states and months Covad had identified until Friday, October 19, 2001, when Qwest provided some of the data for the states, PIDs and months identified by Covad (Qwest refused to provide the remainder).<sup>10</sup> Qwest's untimely "data dump" placed Covad at a significant disadvantage in the reconciliation process because it was been deprived of three weeks' worth of work time in which to review and evaluate Qwest's data.

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

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<sup>10</sup> Qwest failed and refused to provide any data to Covad for the MR PIDs it identified for reconciliation. Further, Qwest failed and refused to provide the underlying data for Covad's 2-wire non-loaded shared loops for OP-4, and for non-loaded and line shared loops for OP-5.

results, Covad went back over the data to determine whether there were any anomalies in the data and, where appropriate, corrected such anomalies.

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

**a. Liberty Committed Numerous Errors in the Arizona Report that Render the Conclusion Reached Unreliable.**

After almost two months of work and over one month after the original completion due date, Liberty produced its Data Reconciliation Report for Arizona, attached hereto as *Exhibit 1*. Far from vindicating Qwest's claims of data accuracy, the Report raised far more questions than it answered. Indeed, the Liberty Report 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 Act, 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 & 5.

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. Attached hereto as *Exhibit 2* is a redlined copy of the Liberty Report containing Covad's comments.

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 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.

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.

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 Report. 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 1.* 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; and (2) the vast majority of Covad's orders, at least, were determined to be inconclusive. *See Exhibit 1.*<sup>11</sup>

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, *see Exhibit 1*, at no point did Liberty bother to specify percentages or to correlate what percentage of error would be acceptable or unacceptable -- even after repeated questioning on this topic by CLECs during the workshop on performance data. Even more egregiously, during the workshop, Bob Stright of Liberty failed to provide any percentage or range of percentage Liberty would consider to be unacceptably high even as he acknowledged that, at some point, error or mistake would render Qwest's performance reporting materially inaccurate. Thus, although recognizing both that (1) Qwest's reported performance is far from perfect or even documented, and (2) the net result of honest or intentional error is the same, Liberty deprived Staff, the Commission and CLECs of any method by which to 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

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<sup>11</sup> With respect to the specific results of the Covad-Qwest reconciliation, the spread sheets containing that information were provided by Covad to Staff in December 2001.



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 Report Is Particularly Deficient in Connection With the Covad-Qwest Data Reconciliation.**

**i. PO-5 (FOCs on Time)**

The actual results of Liberty's data reconciliation for Covad underscore the fact that there is no basis upon which Liberty could have rendered any opinion – either positively or negatively – regarding the accuracy of Qwest's performance data reporting. Consequently, the Commission cannot rely upon the Liberty Report.

The inconsistency of Liberty's treatment of CLEC and Qwest data is nowhere more evident than in connection with the reconciliation for Covad's PO-5 orders. Specifically, Qwest never provided any underlying documentation to support its treatment of Covad's PO-5 orders, choosing instead to provide only a written analysis.<sup>12</sup> Under these circumstances, and consistent with its practice in other portions of the data reconciliation, 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

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<sup>12</sup> Plainly, Qwest had great concern regarding the manner by which it treated Covad's orders for purposes of PO-5 reporting. Otherwise, it would not have conditioned its offer to provide underlying documentation on the provision by Covad of its underlying documentation for PO-5.

parties' electronic data. Liberty failed to follow that process with respect to PO-5. Thus, there was no evidence before Liberty that would have permitted any finding other than "inconclusive" for the entirety of PO-5. Needless to say, a 100% finding of inconclusive prevents Liberty from rendering any opinion as to the accuracy of Qwest's reported data.

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 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. While Mr. Stright agreed, on behalf of Liberty, to investigate this matter, no response has yet been provided. See Email from M. Doberneck to Arizona 271 distribution list, dated January 2, 2002.

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.

Finally, the analysis provided by Qwest was limited just to the PO-5 orders for May line shared loops and June unbundled loops. Thus, even assuming that Qwest's analysis was the equivalent of underlying documentation (which it is not, as demonstrated above), at best, Liberty could assess results for two out of the six months included for PO-5 (three months each for line shared loops and unbundled loops). Thus, for four of the months at issue, the results on every order were inconclusive. It is impossible, therefore, for Liberty to render any opinion as to accuracy of Qwest's performance reporting to any degree of reasonable certainty or professional reliability given that 66.67% of orders (at a minimum) on which Liberty based its conclusion were deemed inconclusive. Indeed, as even Mr. Stright admitted, a finding of "inconclusive" cast a "cloud of doubt" over the opinions issued by Liberty in connection with the Arizona data reconciliation.

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.<sup>13</sup> 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.

**ii. OP-4 (Installation Interval)**

The 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 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.

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<sup>13</sup> 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

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.

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

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electronic data.

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.

### **iii. Liberty Failed to Complete the Arizona Data Reconciliation**

The final nail in the Liberty Report coffin comes from the fact that Liberty failed and refused to complete the Arizona data reconciliation. More specifically, during a status call regarding the reconciliation project following the issuance of the Report, Liberty stated that it would accept additional information from Covad. However, Liberty did not include that information in its Report even though it had represented that it would do so.

## **2. The Arizona Commission Should Look at the Data Reconciliation Reports from Other States Because They Appear to Provide Much More, and More Useful, Information Regarding Qwest's Performance Reporting.**

Given the remarkable inutility of Liberty's Report for Arizona, the Commission should look at the results of the data reconciliation from other states in order to "fill in" the very significant gaps in the Arizona Report. Those reports should provide useful and accurate information regarding Qwest's performance reporting. Unfortunately for Qwest, however, they are fatal to its claim that its performance satisfies its obligations under Section 271.

Liberty's Data Reconciliation Report for Colorado (the Washington report has not yet been issued) underscores what CLECs have known all along and what should have been reflected in the Liberty Report for Arizona – that Qwest's reported performance is

not what CLECs experience in reality, and thus that Qwest's reported performance data is unreliable and inaccurate. As Liberty first pointed out in the section relating to the Covad data reconciliation, 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);
- (2) improperly double-counting up to 22% of Covad's 2-wire non-loaded loop orders in consecutive months (again inflating performance results);
- (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
- (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. Attached hereto as *Exhibits 4 through 10* are the Observations that correlate to each error documented by Liberty during the Colorado data reconciliation.

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 agreed 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.

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 first should accept Covad's data as the more accurate reflection of the commercial experience in Colorado and, then find that Qwest has not satisfied its obligation under Section 271. Rather than repeat that data here, however, Covad incorporates herein as if fully set forth below the data it reported in Covad Communications Company's Combined Response to Qwest Corporation's Performance Data Filings and Submission of Data Regarding Qwest's Commercial Performance for Covad in the State of Arizona, and Covad Communications Company's Supplemental Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona.

Dated this 10<sup>th</sup> day of January, 2002

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY

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