

1
2
3
4 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

5 In the Matter of the Investigation Into
6 U S WEST COMMUNICATIONS, INC.'s
7 COMPLIANCE WITH SECTION 271 OF
8 THE TELECOMMUNICATIONS ACT OF
9 1996.

Docket Nos. UT-003022 and UT-003040
COVAD COMMUNICATIONS
COMPANY'S MOTION TO STRIKE
TESTIMONY OF ROBERT L. STRIGHT

10
11 Covad Communications Company ("Covad") hereby submits this Motion to Strike the
12 Testimony of Robert L. Stright. As grounds in support of this Motion, Covad states as follows:

13 1. Pursuant to the 27th Supplemental Order, dated February 8, 2002, Qwest was
14 instructed to file its direct testimony on performance data and the Liberty data reconciliation
15 project on or before March 8, 2002. Parties were given until March 22, 2002 to file responsive
16 testimony and redlined data reconciliation reports. Qwest then was given until April 5, 2002 to
17 file rebuttal testimony and its February 2002 performance data.

18 2. On March 15, 2002, Qwest filed the Direct Testimony of Robert L. Stright.¹
19 Thus, the Stright testimony was filed in direct violation of the express and unambiguous
20 requirement that Qwest file its direct testimony no later than March 8, 2002. Compounding
21 Qwest's violation of the filing deadlines was Qwest's failure to provide any explanation as to
22 why the Stright testimony was being filed; provide any justification for its out of time filing; or
23 even to accompany the Stright testimony with a motion for leave to file it.

24 3. The Commission should reject Qwest's untimely filing. Filing deadlines are just
25 that – deadlines. Failure to enforce these deadlines eliminates any incentive on the part of any

26 ¹ Covad notes that, while there is no designation of the party on whose behalf Mr. Stright is providing testimony, it is apparent that the testimony is provided on behalf of Qwest since it is Qwest that filed it.

1 party to comply with Commission deadlines and filing requirements. Moreover, while a party
2 may provide good cause justifying the untimely filing, Qwest here has provided no explanation
3 or excuse, nor has it pointed to any exigent circumstances justifying its failure to comply with
4 the 27th Supplemental Order, the terms of which Qwest agreed to during the prehearing
5 conference on February 6, 2002. Thus, in order to ensure that the filing deadline remain
6 meaningful, Qwest should not be permitted to disregard, without excuse and free of any
7 ramification, the filing deadlines set in the 27th Supplemental Order. The Stright testimony
8 should be struck.

9 4. It bears repeating that, throughout these proceedings, Qwest has advocated,
10 without exception, for more aggressive and shorter deadlines for filing papers and completing the
11 proceedings that stand between it and its goal of Section 271 relief. CLECs have complied at all
12 times with these deadlines, despite the tremendous burden it placed on them. Qwest now should
13 be required to live with the stringent deadlines for which it has pushed, and the Stright testimony
14 should be struck.

15 **WHEREFORE**, for the reasons set forth more fully above, Covad Communications
16 Company respectfully requests that the Commission enter an order striking the Direct Testimony
17 of Robert L. Stright, filed by Qwest Corporation with the Commission on March 15, 2002.

18
19 DATED this 22nd day of March, 2002.
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY

By: _____

K. Megan Doberneck
Senior Counsel
7901 Lowry Boulevard
Denver, CO 82030
720-208-3636
720-208-3256 (facsimile)
e-mail: mdoberne@covad.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

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

Please see attached Service List

by the following indicated method or methods:

- By **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers shown above, which are the last-known fax numbers for the attorneys' offices, on the date set forth below. The receiving fax machines were operating at the time of service and the transmissions were properly completed, according to the attached confirmation reports.
- By **mailing** full, true, and correct copies thereof in sealed, first-class postage-prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of the attorneys, and deposited with the United States Postal Service at Seattle, Washington, on the date set forth below.
- By sending full, true and correct copies thereof via **overnight courier** in sealed, prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of the attorneys, on the date set forth below.
- By causing full, true and correct copies thereof to be **hand-delivered** to the attorneys at the attorneys' last-known office addresses listed above on the date set forth below.
- By **e-mailing** to the e-mail addresses as noted on attached service list

Those parties marked with an asterisk were sent a confidential copy via U.S. Mail.

DATED this 22nd day of March, 2002.

Adrienne M. Anderson

SERVICE LIST
DOCKET NO. UT-003022

1
2
3 Lisa Anderl*
4 Qwest
5 1600 7th Avenue, Rm. 3206
6 Seattle, WA 98101
7 PH: (206) 345-1574
8 FX: (206) 343-4040
9 e-mail: landerl@qwest.com

Dennis Ahlers, Senior Attorney*
Eschelon Telecom, Inc.
730 Second Avenue S., Suite 1200
Minneapolis, MN 55402
PH: (612) 436-6249
FX: (612) 376-4411
e-mail: ddahlers@eschelon.com

8 Robert E. Cattanach*
9 Dorsey & Whitney, LLP
10 Pillsbury Center South
11 220 South Sixth Street
12 Minneapolis, MN 55402
13 PH: (612) 340-2873
14 FX: (612) 340-2807
15 e-mail: cattanach.robert@dorseylaw.com

Arthur A. Butler*
Ater Wynne
5450 Two Union Square
601 Union Street
Seattle, WA 98101-2327
PH: (206) 623-4711
FX: (206) 467-8406
e-mail: aab@aterwynne.com

13 K. Megan Doberneck*
14 Covad Communications Company
15 7901 Lowry Boulevard
16 Denver, CO 80230
17 PH: (720) 208-3636
18 FX: (720) 208-3256
19 e-mail: mdoberne@covad.com

Eric S. Heath*
Sprint
MS: NVLSVB0207
330 S. Valley View Blvd.
Las Vegas, NV 89107
PH: (702) 244-6541
FX: (702) 244-7380
e-mail: eric.s.heath@mail.sprint.com

19 Michel Singer Nelson
20 WorldCom, Inc.
21 707 17th Street, Suite 4200
22 Denver, CO 80202
23 PH: (303) 390-6106
24 FX: (303) 390-6333
25 e-mail: michel.singer_nelson@wcom.com

Gregory J. Kopta*
Davis Wright Tremaine
2600 Century Square, 1501 Fourth Avenue
Seattle, WA 98101-1688
PH: (206) 622-3150
FX: (206) 628-7699
e-mail: gregKopta@dwt.com

1 Mary B. Tribby*
2 AT&T Law Department
3 1875 Lawrence St., Suite 1500
4 Denver, CO 80202
5 PH: (303) 298-6508
6 FX: (303) 298-6301
7 e-mail: mbtribby@att.com

Shannon Smith
Assistant Attorney General
Attorney General's Office
1400 South Evergreen Park Dr., SW
P. O. Box 40128
Olympia, WA 98504-0128
PH: (360) 664-1192
FX: (360) 586-5522
e-mail: ssmith@wutc.wa.gov

7 Robert Cromwell*
8 Assistant Attorney General
9 Public Counsel
10 900 4th Avenue, Suite 2000
11 Seattle, WA 98164
12 PH: (206) 389-2055
13 FX: (206) 389-2058
14 e-mail: robertc1@atg.wa.gov

Martha Allbright
Mpower Communications Corp.
5711 So. Benton Cr.
Littleton, CO 80123
PH: (716) 218-6556
FX: (716) 218-0165
e-mail: mallbright@mpowercom.com

12 Michael B. Hazzard
13 Kelley Drye & Warren, LLP
14 Representing Z-Tel Communications
15 1200 19th Street, NW, Fl. 5
16 Washington, D.C. 20036
17 PH: (703) 918-2316
18 FX: (703) 918-2450
19 e-mail: mhazzard@kelleydrye.com

17
18
19
20
21
22
23
24
25
26