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**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  
QWEST'S APRIL 5, 2002 COMPLIANCE  
FILING

Covad Communications Company ("Covad"), respectfully submits these Comments on Qwest Corporation's April 5, 2002 Compliance Filing:

**I. PRELIMINARY STATEMENT**

Covad commends Qwest on its attempt to incorporate and reflect the mandates of, *inter alia*, the 20<sup>th</sup> and 28<sup>th</sup> Supplemental Orders in its Compliance Filing. However, Qwest has not gone far enough. Accordingly, until further changes are made consistent with the comments set forth more fully below, Qwest may not be deemed in compliance with its obligations under Checklist Items 2 and 4 of Section 271 of the Telecommunications Act of 1996 (the "Act").

**II. COMMENTS**

**1. Regeneration (13<sup>th</sup> Supp. Order, Para. 264)**

Covad requests clarification from Qwest as to the import of the phrase "CLEC is responsible for ... transmission design work including regeneration requirements." SGAT Section 9.6.2.1. Specifically, is it Qwest's position that the CLEC need only inform Qwest of

1 any regeneration requirements that Qwest will then provide, and with the costs of such required  
2 regeneration distributed indirectly across all users of the CO, including Qwest?

3  
4 **2. Obligation to Build (28<sup>th</sup> Supp. Order, Para. 245)**

5 Covad concurs in AT&T's comments on Qwest's compliance filing on this issue.

6  
7 **3. Obligation to Build Documentation (28<sup>th</sup> Supp. Order, Para. 245)**

8 In the 28<sup>th</sup> Supplemental Order at paragraph 21, the Commission ordered Qwest to  
9 "modify the SGAT to provide a reference to its retail building policies, and provide a method for  
10 CLECs to gain access to that information." Although Qwest does make a reference to its retail  
11 policies and the method by which CLECs may obtain them in SGAT Section 9.1.2.1.5, Qwest's  
12 proposed compliance language contains flaws. First, in Section 9.1.2.1.5, Qwest states that  
13 CLECs will treat the retail build policies consistent with Section 5.16. By its terms, however,  
14 Section 5.16 cannot apply to the retail build policies because Section 5.16 applies only to  
15 information "dealing with business or marketing plans End User Customer *specific*, facility  
16 *specific*, or usage *specific* information." SGAT Section 5.16.1 (emphasis added). Moreover,  
17 certain sections of Section 5.16, including Sections 5.16.9.1 and .2 simply cannot apply to the  
18 build documentation since those sections apply specifically to forecasts. Thus, generic build  
19 policies (since the Commission agreed that Qwest is not obligated to provide job by job  
20 analyses) not only do not fall within the scope of Section 5.16, but also a reference to Section  
21 5.16 creates an internal inconsistency within the SGAT.

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23  
24 Second, the protections contained in Section 5.16 are overly broad for the documentation  
25 that Qwest presumably will be providing to CLECs. Clearly, the concern addressed by Section  
26

1 5.16 is the protection of competitively sensitive information that might provide an advantage to  
2 any competitor receiving it. Such likely is not the case for Qwest's retail build policies which, as  
3 Covad understands it, are generic descriptions of the factors that Qwest will take into account  
4 when considering whether to build for retail customers. Thus, invocation of the restrictions  
5 imposed by Section 5.16 is akin to swatting a fly with a sledgehammer.  
6

7 While Covad is not opposed to protecting confidential information provided by Qwest,  
8 there is no indication as to whether, first, such information actually is confidential, and second,  
9 what level of protection is required. The burden is on Qwest to outline why this information is  
10 confidential (much as CLECs~~S~~ did when discussing forecasting requirements) and then for the  
11 parties to determine what level of protection must be accorded to that documentation. This is not  
12 an insignificant issue. In order for CLECs to take advantage of the contractual requirement of  
13 Qwest's obligation to build, there may be situations when individuals involved in "strategic  
14 planning" personnel (such as capacity, network, and hardware management) would require  
15 access to this type of information in order to ensure that Covad is capable of provisioning orders  
16 when and if facilities are built pursuant to this policy. Strict application of Section 5.16,  
17 however, would preclude such individuals from reviewing the build policies. Thus, Covad is  
18 concerned that the provision of documentation may become meaningless if Covad is unable to  
19 plan and prepare for additional network facilities over which services can be provided.  
20 Therefore, Covad requests that Qwest strike the reference to Section 5.16 from its "compliant  
21 SGAT" until Qwest demonstrates that the confidential designation is required and that Section  
22 5.16 in its entirety should be applied.  
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1 **4. Access to Loop Qualification Information (28<sup>th</sup> Supp. Order, Paras. 248 and 249)**

2 Covad concurs in AT&T's comments on Qwest's compliance filing on these issues.

3  
4 **5. Held Order Policy (20<sup>th</sup> Supp. Order, Para. 79)**

5 While Qwest alleges that it complies with the Supplemental Orders regarding Qwest's held  
6 order policy, *see* ~~Redlined~~ SGAT, filed April 5, 2002, fn. 44, its proposed language  
7 does not come close to satisfying the requirements of the 20<sup>th</sup> and 28<sup>th</sup> Supplemental Orders. In  
8 the 20<sup>th</sup> Supplemental Order, the ALJ made clear that Qwest must amend the SGAT to "permit  
9 CLEC orders to remain open, *or* pending availability of facilities, at parity with retail  
10 customers." 20<sup>th</sup> Supplemental Order, ~~para~~Para. 79 (emphasis added). In its SGAT,  
11 ~~however~~however, Qwest states that "delayed orders will remain open, pending availability of  
12 facilities at parity with retail customer orders." *See* SGAT Section 9.1.2.1.3.2. Clearly, Qwest  
13 missed the disjunctive "or" contained in the 20<sup>th</sup> Supplemental Order.  
14

15 Second, Qwest's chosen language is ambiguous. Specifically, Qwest states that it will send  
16 the CLEC "an indication" that there is a lack of available facilities. *See* SGAT Section  
17 9.1.2.1.3.2. Qwest should be required to use a more defined and more suitable word (such as  
18 notification) instead of "an indication."  
19

20 Third, Covad requests that Qwest clarify whether the order will remain open indefinitely, or  
21 at least until the CLEC informs Qwest that it is canceling that order. As currently drafted, SGAT  
22 Section 9.1.2.1.3.2 contains no mention of how long the order will remain held and open, or the  
23 process by which the order will be cancelled/rejected.  
24

25 Fourth, Qwest injects an additional requirement regarding held CLEC orders that is directly  
26 contrary to the 20<sup>th</sup> Supplemental Order. As the ALJ correctly recognized in that Order, Qwest's

1 held order policy “allows Qwest to fulfill orders for its own customer when facilities become  
2 available.” 20<sup>th</sup> Supplemental Order, Para. 78. Rather than include language in SGAT Section  
3 9.1.2.1.3.2 that would result in held CLEC orders being filled at parity with Qwest held orders as  
4 facilities become available, however, Qwest states that, following notification of the order going  
5 held due to the lack of facilities, the “CLEC may submit a request to build UNEs . . . .” The  
6 clear import of Qwest’s chosen language is that, rather than CLEC and Qwest orders in held  
7 status being filled on a first come, first serve basis as facilities become available and as implicitly  
8 required by the 20<sup>th</sup> Supplemental Order, only Qwest orders will be filled as facilities become  
9 available while CLEC orders will be filled only if Qwest agrees to build additional UNEs.  
10

11 In light of the clear non-compliance and infirmities in Qwest’s proposed language, Covad  
12 suggests that the Commission incorporate the following language instead:  
13

14 **9.1.2.1.3.2.** In the event Qwest notifies CLEC that facilities  
15 ordered are not available from Qwest at the time of the order or  
16 that there will be a delay in filling the order, Qwest shall maintain  
17 the order as pending at parity with retail customer orders. Where  
18 the order is held due to lack of facilities, if facilities become  
19 available to fill the order at any time prior to cancellation of the  
20 order by the CLEC, Qwest shall notify the CLEC of such  
21 availability. CLEC and Qwest acknowledge that the availability of  
22 facilities hereunder is on a first come, first served basis. Any  
23 facility orders placed by any other provider, including Qwest,  
24 which predate CLEC’s order shall have priority in any facilities  
25 made available under the terms of this section.  
26

21 Finally, there is an additional problem with Qwest’s SGAT language on held orders. In  
22 SGAT Section 9.2.2.3.2, Qwest states that “if no copper facility capable of supporting the  
23 requested service is available, then Qwest will reject the order.” This sentence of Section  
24 9.2.2.3.2 should be deleted because it is inconsistent with requirement, as set forth in both the  
25  
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1 20<sup>th</sup> and 28<sup>th</sup> Supplemental Orders, that Qwest hold CLEC orders that are delayed, or for which  
2 facilities currently are not available, at parity with retail customer orders.

3 **6. Conversion of Interoffice Facilities (28<sup>th</sup> Supp. Order, Para. 253).**

4 Covad believes that Qwest technically adhered to the ruling in the 28<sup>th</sup> Supplemental  
5 Order requiring Qwest to redesignate IOF to loop facilities. Qwest, however, goes one step  
6 beyond that requirement to provide that, to the extent an IOF is removed from transport service  
7 to loop service, then it will be made available to “Qwest and CLEC alike.” SGAT Section  
8 9.1.14. While Covad applauds Qwest’s willingness to comply with both the spirit and the letter  
9 of the 28<sup>th</sup> Supplemental Order, it is concerned that the loop made available will not be made  
10 available in a time and manner that will benefit any party other than Qwest. Indeed, much like  
11 Qwest’s held order policy, the IOF-loop availability policy may result in Qwest use of such  
12 facilities without notice to, or opportunity for, use by CLECs. Qwest should be required to  
13 revise SGAT Section 9.1.14 to ensure parity of notice and availability. Covad recommends the  
14 following language:  
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18 9.1.14 .... in the event Qwest removes from interoffice service, an entire  
19 copper IOF cable that is capable of supporting Telecommunications  
20 Services, Qwest will make that facility available as Loop facilities to fill  
21 any order currently in the held order queue on a first come, first served  
22 basis for Qwest and CLEC alike.

23 **7. Loop Conditioning Refund (20<sup>th</sup> Supplemental Order, Para. 695).**

24 By the 20<sup>th</sup> Supplemental Order, Qwest was ordered to extend the credits associated with  
25 ~~conditioning~~ conditioning of loops immediately and not as part of the billing dispute process.  
26 Despite that unambiguous directive, Qwest nowhere includes in SGAT Section 9.2.2.4.1 any

1 reference that credits will be applied automatically to the CLEC's next bill rather than as part of  
2 the dispute resolution process. Qwest should be required to include in Section 9.2.2.4.1 the  
3 requirement that "[A]ny credit to which a CLEC is entitled under this provision will be  
4 automatically credited by Qwest to the CLEC's next bill."

## 6 **8. CLEC Splitters on the MDF**

7 In SGAT Section 9.4.2.3.1, Qwest purports to comply with the 20<sup>th</sup> Supplemental Order,  
8 which required that Qwest permit CLECs to mount their splitters on the MDF unless there is  
9 frame exhaust. 20<sup>th</sup> Supplemental Order, Para. 177. Rather than comply with that  
10 straightforward language, Qwest provides the following terms for splitter collocation on the  
11 MDF:  
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13 . . . at CLEC's direction, on the COSMIC/MDF, where is space is available  
14 on the COSMIC/MDF and priced on an ICB basis, or in some other  
15 appropriate location such as an existing Qwest relay rack or bay.

16 Qwest's proposed language plainly does not comply with the 20<sup>th</sup> Supplemental Order.  
17 First, rather than incorporate directly the language regarding frame exhaust, Qwest relies upon  
18 "space availability." However, these do not equate to the same limitation on a CLEC's right to  
19 mount its splitter on the MDF. Second, Qwest also apparently deviates from the requirements of  
20 the 20<sup>th</sup> Supplemental Order because, as currently phrased, Qwest appears to be free to choose  
21 "some other appropriate location" even if the CLEC requests that its splitter be mounted directly  
22 on the MDF. In order to eliminate that possibility, but to provide Qwest with flexibility in the  
23 event that a CLEC cannot collocate its splitter in its location of choice, Covad proposes the  
24 following language:  
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1 . . . at CLEC's direction, on the COSMIC/MDF, where is space is available  
2 on the COSMIC/MDF and priced on an ICB basis. **In the event that the**  
3 **option selected by the CLEC is not available, Qwest may place the**  
4 **CLEC's in some other appropriate location such as an existing Qwest**  
5 **relay rack or bay.**

6 **III. CONCLUSION**

7 For the reasons set forth more fully above, Qwest may not be found to be in compliance  
8 with the 20th and 28th Supplemental Orders at this point in time. As a consequence, the  
9 Commission should not endorse Qwest's application for Section 271 relief in this State until such  
10 time as Qwest is in fully compliance with the 20th and 28th Supplemental Orders.

11 Dated: April 16, 2002.

12 Respectfully submitted,

13 COVAD COMMUNICATIONS COMPANY

14 By: \_\_\_\_\_

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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:

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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  
confirmation reports.

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10 prepaid envelopes, addressed to the attorneys as shown above, the last-known  
11 office addresses of the attorneys, and deposited with the United States Postal  
Service at Seattle, Washington, on the date set forth below.

12  by sending full, true and correct copies thereof via **overnight courier** in sealed,  
13 prepaid envelopes, addressed to the attorneys as shown above, the last-known  
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15 attorneys at the attorneys' last-known office addresses listed above on the date set  
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16  By **e-mailing** to the e-mail addresses as noted on attached service list

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

19 DATED this 16th day of April, 2002.

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