

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**IN THE MATTER OF THE PETITION)
OF COVAD COMMUNICATIONS)
COMPANY FOR ARBITRATION TO) WUTC Docket No. UT-043045
RESOLVE ISSUES RELATING TO AN)
INTERCONNECTION AGREEMENT)
WITH QWEST CORPORATION)
)**

**COVAD COMMUNICATIONS COMPANY'S MOTION FOR LEAVE TO FILE A
REPLY IN SUPPORT OF ITS PETITION FOR RECONSIDERATION**

Covad Communications Company ("Covad") moves for leave to file a reply in support of its petition for reconsideration. A true and correct copy of Covad's reply has been filed contemporaneously with this motion. In support of this motion Covad states as follows:

1 It is imperative that Covad be granted leave to file a reply because, in its response to the motion for reconsideration, Qwest has made grossly inaccurate statements regarding the facts and the law. These errors are not run of the mill or minor errors. They are central to the issue at hand: the availability of line splitting to Covad. If these errors go unanswered, the Commission will have an incomplete record before it in order to adequately consider Covad's motion for reconsideration.

2 Qwest makes the following errors of law and fact:

1. Qwest states, "As Covad itself acknowledges in its petition in the Triennial Review Order, the FCC ruled that the line splitting arrangement Covad seeks is no longer an unbundled network element ("UNE") that ILECs are required to provide under section 251." Qwest Response, ¶5. In addition, Qwest alleges, "The line splitting that Covad seeks in its petition is among the network elements that the FC has "de-listed" from section 251." Qwest Response, ¶14

3 These statements are wrong as a matter of law and fact. First, Covad did not acknowledge that the FCC ruled that the line splitting arrangement Covad seeks is no longer an unbundled network element. Covad merely acknowledged that the “switching portion” of line splitting arrangements is no longer a section 251 UNE. Second, and more importantly, as Qwest itself admits in its Response at footnote 3, the FCC has in fact ruled in the *Triennial Review Order* that ILECs must provide a requesting carrier “with the ability to engage in line splitting arrangements.” *Triennial Review Order*, ¶251. Indeed, as more fully detailed in the attached reply, in a very specific FCC rules adopted pursuant to the *Triennial Review Order*, the FCC has conclusively established that ILECs must permit a requesting carrier to engage in line splitting arrangements with another competing carrier.

4 In addition, the FCC never de-listed line splitting. Rather, to this day, the FCC requires line splitting under both order and rule, as noted above and as more explicitly detailed in the attached reply. The FCC’s line splitting rules were never the subject of appeals of the *Triennial Review Order* and remained intact even under the FCC’s most recent order on remand from the *Triennial Review Order*.

5 2. Qwest states in its response, “Notwithstanding any legal obligation to provide line splitting Covad seeks, Qwest will consider a request for line splitting from Covad *if* Covad eventually enters into a QPP agreement or similar agreement with Qwest.” Qwest response, ¶18. (emphasis in text)

6 This statement from Qwest cannot be accurate in light of Qwest’s representations in the QPP agreement. In reality, this statement reinforces the discriminatory nature of Qwest’s position on line splitting. In the QPP agreement, Covad makes the glaring admission that line splitting is available pursuant to interconnection agreements. But, in

reality, it is not. The QPP agreement explicitly provides that the CLEC can order a loop (including line splitting) pursuant to interconnection agreements. However, the interconnection agreement the Commission approved in Order No. 6 prohibits Covad from ordering line splitting. This irresolvable dichotomy simply cannot be allowed to stand. If Covad is not permitted to order line splitting elements from Qwest (apart from entering into a QPP agreement with Qwest), CLECs purchasing QPP, and their customers, will have no choice but to partner with Qwest for the provision of DSL. In short, Qwest is favoring its DSL offering (contrary to law) over the DSL offering of Covad.

7 Moreover, if, as Qwest concedes at paragraph 18 of its response, Qwest will consider a line splitting arrangement with Qwest only if Covad enters into a QPP agreement, this puts Covad at a tremendous competition disadvantage. There is no basis in law or fact to require Covad to enter into a QPP agreement in order to obtain line splitting off of a Qwest loop as a prerequisite to offering Covad DSL service. The law unequivocally requires Qwest to provision line splitting to requesting carriers and accordingly the Commission should revisit Order No. 6 on this issue and adopt Covad's proposed language on line splitting.

8 3. Qwest alleges that "the factual premise of Covad's petition is also flawed. Specifically, the petition relies on Covad's representations that it must have line splitting to take advantage of a QPP agreement. What Covad fails to disclose, however, is that it has not entered into a QPP agreement with Qwest." Qwest response, ¶16

9 This allegation is false. First, Covad never represented in its motion that it must have line splitting to take advantage of a QPP agreement. A careful examination of the motion will bear out Qwest's falsehood. Moreover, Qwest's statement that Covad has not entered into a QPP agreement is also false. On the contrary, on the same day Qwest

filed its response (March 9, 2005), Covad executed QPP agreements for all 14 states in the Qwest service territory. Copies of the signature pages of the two QPP agreements Covad executed (one for WA and OR and another for the remaining 12 Qwest states) are attached hereto as Exhibit 1.

10 4. Qwest alleges that Covad's petition is procedurally improper because Covad is raising the issue of line splitting "for the first time in this arbitration through a petition for reconsideration filed many months after the close of the evidentiary record and long after the briefing in this case concluded." Qwest response, ¶2.

11 This statement is false and Qwest knew the statement was false when it was made. From the very inception of this arbitration, Covad directly and openly raised the issue of line splitting in both its petition for arbitration and in the draft interconnection agreement both parties presented to the Commission. Moreover, the parties collectively raised the issue of line splitting before the Commission in the Joint Disputed Issues List admitted into the record at the hearing as Exhibit 70. Even after the hearing, Qwest submitted an updated Joint Disputed Issues List that continued to contain recognition of a dispute over line splitting. Covad's proposed line splitting proposal (section 9.21.2) was redlined in the draft interconnection agreement during the entire course of this arbitration. In its response, Qwest ignores the petition, the two separate Joint Disputed Issues Lists and the interconnection agreement and, instead, resorts to false allegations in an attempt to defeat Covad's motion. As more fully described in the reply, the Commission should not countenance such tactics.

12 WHEREFORE, for the reasons stated above and the reasons articulated in the attached reply, the Commission should grant leave to Covad to file a reply in support of its petition for reconsideration.

Dated this 14th day of March, 2005.

Respectfully submitted,

By: 

Gregory Diamond, WSBA #28025
Senior Counsel
Covad Communications Company
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gdiamond@covad.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **Covad Communications Company's Motion for Leave to File Reply in Support of Its Petition for Reconsideration** was served via electronic service and deposited into the United States Postal system, postage prepaid, on the 14th day of March, 2005, to the following:

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adam.sherr@qwest.com

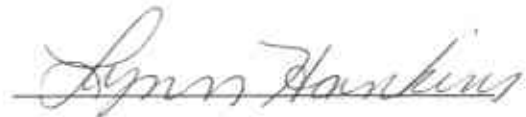
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QWEST MASTER SERVICES AGREEMENT V 2-1

This Master Services Agreement, which includes this signature page, the subsequent general terms and conditions, the Rate Sheet for each applicable state, Exhibit 1 (Qwest Platform Plus Service Version 2-1 or "QPP"), and Attachment A to Exhibit 1 (Performance Metrics) attached hereto or incorporated herein by reference (collectively the "Agreement") is entered into between Qwest Corporation ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. dba Covad Communications Company ("CLEC"), a Virginia corporation, (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties"), on behalf of itself and its Affiliates. This Agreement may be executed in counterparts. This Agreement shall become effective on the Effective Date. The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement.

Qwest Corporation:

DIECA Communications, Inc. dba Covad Communications Company:

By: _____
[Name]: _____
[Title]: _____
Date: _____

By: J. A. Kirkland
[Name]: JAMES A. KIRKLAND
[Title]: SVP & GENERAL COUNSEL
Date: 3/9/2005

NOTICE INFORMATION: All written notices required under the Agreement shall be sent to the following:

Qwest Corporation:

DIECA Communications, Inc. dba Covad Communications Company:

1801 California Street, Suite 2420
Denver, CO 80202
Phone #: 303-965-3029
Facsimile #: 303-896-7077
E-mail: Intagree@qwest.com
Attention: Manager-Interconnection

7901 Lowry Blvd.
Denver, CO 80230
Phone #: 720-670-1069
Facsimile #: 720-670-3350
E-mail: gdiamond@covad.com
Attention: Gregory Diamond, Senior Counsel

With copy to: Qwest
c/o 1801 California Street, 10th floor
Denver, Colorado 80202
Attention: Corporate Counsel, Wholesale
Reference: MSA for Qwest Platform Plus Service

APPLICABLE SERVICES:

APPLICABLE STATES:

Qwest agrees to offer and CLEC intends to purchase the Services indicated below by CLEC's signatory initialing on the applicable blanks:

Qwest agrees to offer and CLEC intends to purchase Qwest Platform Plus ("QPP") service in the states indicated below by CLEC's signatory initialing on the applicable blanks:

 x Exhibit 1 - Qwest Platform Plus Service

- X Arizona
- X Colorado
- X Idaho
- X Iowa
- X Minnesota
- X Montana
- X Nebraska
- X New Mexico
- X North Dakota
- Oregon
- X South Dakota
- X Utah
- Washington
- X Wyoming

The Parties may amend the Qwest Master Services Agreement in writing from time to time to include additional products and services.

February 25, 2005/msd/DIECA dba Covad
AZ-CDS-050224-0030, CO-CDS-050224-0031, IA-CDS-050224-0032, ID-CDS-050224-0033, MN-CDS-050224-0034,
MT-CDS-050224-0035, ND-CDS-050224-0036, NE-CDS-050224-0037, NM-CDS-050224-0038, SD-CDS-050224-0040,
UT-CDS-050224-0041, WY-CDS-050224-0043
Qwest MSA

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Qwest Corporation:

Covad Communications Company:

By: _____
[Name]: _____
[Title]: _____
Date: _____

By: [Signature]
[Name]: JAMES A. KIRKLAND
[Title]: SVP & GENERAL COUNSEL
Date: 3/9/2005

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