

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration
of an Interconnection Agreement Between
DIECA COMMUNICATIONS, INC.,
d/b/a COVAD COMMUNICATIONS
COMPANY with QWEST
CORPORATION Pursuant to 47 U.S.C.
Section 252(b), and the *Triennial Review
Order*

DOCKET NO. UT-043045

QWEST CORPORATION'S MOTION
FOR LEAVE TO FILE SURREPLY
AND SURREPLY IN OPPOSITION TO
COVAD COMMUNICATION
COMPANY'S PETITION FOR
RECONSIDERATION

- 1 Qwest Corporation ("Qwest") respectfully requests that the Commission grant leave for Qwest to file this surreply in connection with Covad Communication Company's ("Covad") petition for reconsideration. In its reply in support of its petition, Covad asserts that Qwest misrepresented certain facts in its response. Qwest seeks to file this surreply for the limited purpose of demonstrating that it did not misstate any facts to the Commission.
- 2 In its response, Qwest opposed Covad's petition for reconsideration, in part, on the basis that Covad had not previously raised the issue of line splitting in this arbitration in any meaningful way. As Qwest argued, Covad's attempt to raise the issue at the reconsideration stage of this proceeding – including its attempt to introduce Qwest's Platform Plus ("QPP") agreement into the record – is untimely and prejudicial. If Covad had presented its

arguments relating to line splitting and offered the QPP agreement during the arbitration, Qwest would have been able to respond with evidence and argument of its own. By waiting until the reconsideration stage, Covad has denied Qwest that opportunity and violated basic rules of adjudicative proceedings.

3 Covad responds to this argument by asserting that it has been raising the issue of line splitting "from the inception of this docket."¹ However, Covad does not contest that it never raised the issue in pre-filed testimony, during the arbitration hearing, or in its post-hearing brief. Nor does it contest that it never attempted to present the QPP agreement until the close of evidence at the reconsideration stage. Indeed, it is undisputed that Covad did not discuss line splitting or present the QPP agreement at any of these stages in the proceeding, and Qwest's description of that fact is therefore accurate.²

4 Covad also asserts in its reply that Qwest falsely stated in its response that Covad had not entered into a QPP agreement with Qwest.³ Covad states that it executed QPP agreements for all 14 states in Qwest's region on March 9 – the same day that Qwest filed its response – and implies that Qwest knew that when it filed its response.⁴ However, Qwest did not know that Covad had executed a QPP agreement on March 9. Covad did not provide Qwest with an executed signature page for the QPP agreement until March 11. Accordingly, based on the knowledge it had at the time, Qwest accurately represented in its March 9 response that Covad had not entered into a QPP agreement.

¹ Covad Br. at 5.

² Covad did use the term "line splitting" in its arbitration petition and proposed ICA language relating to line splitting. However, its proposed language differs sharply from the new position it takes in its petition for reconsideration. In any case, those references to the issue are not a substitute for evidence and briefing relating to the issue and do not give Covad license to raise its first substantive arguments on the topic in a petition for reconsideration.

³ Covad Motion for Leave at 3-4.

⁴ Covad Motion for Leave at 3-4.

5 In sum, Qwest's response brief is accurate. For the reasons stated in that brief, the Commission should deny Covad's petition for reconsideration.

DATED this _____ day of March, 2005.

Respectfully submitted,

Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
QWEST CORPORATION
1600 Seventh Avenue, Room 3206
Seattle, WA 98191
(206) 345-1574
(206) 343-4040 (facsimile)

John M. Devaney
PERKINS COIE LLP
607 Fourteenth Street, N.W., Suite 800
Washington, D.C. 20005-2011
(202) 628-6600
(202) 434-1690 (facsimile)

Attorneys for Qwest Corporation