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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of the Petition)
4 for Arbitration of an) DOCKET NO. UT-043045
5 Interconnection Agreement) Volume I
6 Between) Pages 1 - 14
7 DIECA COMMUNICATIONS, INC.,)
8 d/b/a COVAD COMMUNICATIONS)
9 COMPANY)
10 with)
11 QWEST CORPORATION)
12 Pursuant to 47 U.S.C. Section)
13 252(b), and the Triennial)
14 Review Order.)

11

12 A prehearing conference in the above matter
13 was held on June 29, 2004, at 9:34 a.m., at 1300 South
14 Evergreen Park Drive Southwest, Olympia, Washington,
15 before Administrative Law Judge ANN E. RENDAHL.

16 The parties were present as follows:

17 COVAD COMMUNICATIONS COMPANY, by KAREN S.
18 FRAME, Senior Attorney, 7901 Lowry Boulevard, Denver,
19 Colorado 80230; telephone, (720) 670-1069.

19 QWEST CORPORATION, by ADAM L. SHERR, Attorney
20 at Law, 1600 Seventh Avenue, Room 3206, Seattle,
21 Washington 98191; telephone, (206) 398-2507; MARY ROSE
22 HUGHES, Attorney at Law, Perkins Coie, 607 14th Street
23 Northwest, Suite 800, Washington D.C. 20005;
24 telephone, (202) 434-1606; WINSLOW WAXTER (via bridge),
25 Attorney at Law, 1005 17th Street, Suite 200, Denver,
Colorado 80202; telephone, (303) 896-1518.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

0002

1 P R O C E E D I N G S

2 JUDGE RENDAHL: Let's be on the record. Good
3 morning. I'm Ann Rendahl, the administrative law judge
4 and arbitrator presiding over this proceeding. We are
5 here before the Washington Utilities and Transportation
6 Commission this morning, Tuesday, June 29th, 2004, for
7 a prehearing conference in Docket No. UT-043045, which
8 is captioned, In the matter of the petition for
9 arbitration of an interconnection agreement between
10 Dieca -- am I pronouncing that right?

11 MS. FRAME: It's Dieca, but in Washington
12 State, it really should be Covad Communications
13 Company, and I believe that, unfortunately, because of
14 the hurry of the filing -- we were in the middle of
15 some other things -- that the Miller Nash people did
16 not catch it in time, so we will be filing a revised
17 petition anyway because we have been able to resolve
18 some of the issues, so it is Covad Communications
19 Company, Your Honor.

20 JUDGE RENDAHL: For now, I will keep it as
21 is, and then I'll mispronounce it again, Dieca
22 Communications Incorporated, d/b/a Covad Communications
23 Company with Qwest Corporation pursuant to 47 U.S.C.
24 Section 252(b), and the Triennial Review Order.

25 As I explained off the record, the purpose of

0003

1 the prehearing this morning is to take appearances,
2 identify issues and narrow any issues, find out the
3 status of the negotiations, address the need for a
4 protective order, and talk about a procedural schedule,
5 setting a date for hearing and briefings, and unless
6 there are other issues you all think we need to
7 address, I think that about covers it.

8 MR. SHERR: Your Honor, I think we would also
9 like to talk about discovery as well.

10 JUDGE RENDAHL: So let's take appearances
11 before we get any farther, and let's begin with Covad,
12 and again, because this is the first prehearing, the
13 first appearance, we will need full appearance, which
14 means your full name, address, telephone number, fax
15 number, e-mail address.

16 MS. FRAME: Karen, K-a-r-e-n, Shoresman,
17 S-h-o-r-e-s-m-a-n, Frame, senior counsel at Covad
18 Communications Company, 7901 Lowry Boulevard, Denver,
19 Colorado, 80230. The telephone number is (720)
20 670-1069. Fax is (720) 670-3350, and e-mail is
21 kframe@covad.com.

22 In this matter, we will be represented
23 occasionally by David Rice from Miller Nash, and
24 unfortunately, I don't have all of his information with
25 me, but I can get that to you as soon as I get back to

0004

1 Colorado again.

2 JUDGE RENDAHL: If you could just send a
3 letter with his information, I can add him to the
4 representatives list.

5 MS. FRAME: That would be great.

6 JUDGE RENDAHL: For Qwest?

7 MR. SHERR: Adam Sherr, S-h-e-r-r, in-house
8 attorney for Qwest. My address is 1600 Seventh Avenue,
9 Room 3206, Seattle, Washington, 98191. My telephone
10 number is (206) 398-2507. My fax number is (206)
11 343-4040, and my e-mail address is
12 adam.sherr@qwest.com.

13 JUDGE RENDAHL: Thank you.

14 MS. HUGHES: Good morning, Your Honor, Mary
15 Rose Hughes, outside counsel for Qwest. I'm with
16 Perkins Coie. The address is 607 14th Street
17 Northwest, Suite 800, Washington, DC. Zip code is
18 20005-2011. My direct dial phone is (202) 434-1606.
19 My fax number is (202) 434-1690. My e-mail is
20 mhughes@perkinscoie.com.

21 JUDGE RENDAHL: Thank you. And Perkins Coie
22 is all one word all strung together?

23 MS. HUGHES: I'm sorry. Can I correct the
24 e-mail? The e-mail is hughm@perkinscoie.com.

25 JUDGE RENDAHL: Thank you. So let's first

0005

1 talk about --

2 MR. SHERR: I'm sorry, Your Honor. Winslow
3 Waxter is also on the line, and she's an attorney and
4 would probably want to make an appearance as well.

5 JUDGE RENDAHL: I'm sorry. I was thinking,
6 Ms. Waxter, that you were staff, so I apologize.
7 Please go ahead and make your appearance.

8 MS. WAXTER: Winslow Waxter, W-a-x-t-e-r.
9 The address is 1005 17th Street, Suite 200, Denver,
10 Colorado, 80202. The telephone number is (303)
11 896-1518. Fax number is (303) 896-6095. The e-mail
12 address is winslow.waxter@qwest.com.

13 JUDGE RENDAHL: Thank you, and I apologize
14 for overlooking you.

15 MS. WAXTER: No problem.

16 JUDGE RENDAHL: Let's move on to the next
17 issue, which is the issue of any discovery that's
18 necessary and any protective order that's necessary.
19 And so, Mr. Sherr, you had raised that issue off the
20 record. Why don't you go ahead and address that.

21 MR. SHERR: Yes, good morning. I simply
22 wanted to indicate that Qwest would seek to have the
23 ability to do discovery in this matter, so if you need
24 to invoke the discovery rule, we are asking that that
25 be done and also that a protective order be entered as

0006

1 well because we foresee the involvement of confidential
2 information, and I believe the Commission standard
3 protective order would be fine.

4 JUDGE RENDAHL: Ms. Frame?

5 MS. FRAME: Covad has no objection to that,
6 and likewise, there is some confidential information
7 that will be brought before the Commission in this
8 matter.

9 JUDGE RENDAHL: I think we will invoke the
10 discovery rule. It appears to be appropriate, and a
11 protective order will be entered. I'll have my staff
12 put one together and try to get it out early next week.
13 I probably will not be able to get a prehearing
14 conference order out until mid to late next week, given
15 my schedule, but will try to get the protective order
16 out as soon as possible. The Commissioners won't be in
17 the office the week of the 12th, so we will try to get
18 it out before the end of next week.

19 So the next issue, I did note that the
20 parties are continuing to negotiate with one another,
21 and that from my count, it looks like one issue was
22 resolved, Issue 7 having to do with application of
23 maintenance charges. Ms. Frame, are there other issues
24 that have been resolved since Qwest filed its answer?

25 MS. FRAME: Other than that particular issue,

0007

1 no, not at this point. We are looking into whether or
2 not we can take off the table -- unfortunately, not all
3 the issues are the same with respect to what Qwest has
4 filed and what Covad has filed, but it would be a
5 specific section. It's 9.1.1.8, but we are still in
6 the middle of talking about what is going to happen in
7 the State of Washington with respect to that particular
8 issue.

9 JUDGE RENDAHL: Thank you. Looking over the
10 issues, I was wondering if any of these issues, and
11 some of them have several subissues as well, but
12 whether any of these issues are really more appropriate
13 for briefings as opposed to evidentiary hearing, and
14 I'm wondering if we can identify which of those issues
15 you all would prefer to address in briefing rather than
16 in hearing.

17 MS. FRAME: Let me speak to that. Almost all
18 of what we consider to be the Triennial Review issues
19 could possibly be briefed. However, we did conduct an
20 evidentiary hearing last week in the State of Colorado
21 on commingling, which is one of our issues; ratcheting,
22 which is another, quote unquote, TRO issue, and those
23 were very helpful to have an evidentiary hearing on.
24 All the other issues in Colorado, Covad actually
25 withdrew, but that's only in Colorado. We are going to

0008

1 continue forward on those issues in the State of
2 Washington and other states that are arbitrating this
3 interconnection agreement.

4 So we would be open to briefing just on the
5 what we, again, would consider to be the Triennial
6 Review issues with the exception of commingling and
7 ratcheting at this point. Copper retirement, we do
8 believe we need to have an evidentiary hearing on at
9 this point, as well as the bill payment issues, the
10 regeneration issues, the collocation issues, all the
11 other issues, quite frankly, Your Honor.

12 JUDGE RENDAHL: So I was thinking that the
13 one issue that really lent itself to briefing as
14 opposed to hearing was the second issue, which are the
15 issues, the UNE's, under Sections 251 and 252, but also
16 Section 271 in state law, and having reviewed both
17 parties' submissions, it appears those issues truly
18 lend themselves to briefing as opposed to hearing.

19 MS. FRAME: That is correct, Your Honor.

20 JUDGE RENDAHL: I did notice in Qwest's
21 response that they have a witness on those issues, and
22 I was wondering if Karen Stuart is listed as a witness,
23 and I'm wondering if Qwest had intended to present a
24 witness on those issues.

25 MS. HUGHES: At present, Your Honor, I

0009

1 believe that Qwest would present a witness on those
2 issues simply because the way they have been presented,
3 they are inextricably intermingled with certain facts,
4 certain policies and considerations as well as the law.

5 However, responding to Your Honor's general
6 observation that some of these issues could be
7 submitted on the briefing, Qwest agrees with that. Not
8 just on the TRO issues that you've identified but
9 potentially other issues as well. We respectfully
10 submit as the parties were to further develop their
11 prefile testimony for submission based on the prefiled
12 testimony, any relevant discovery, and we submit live
13 cross-examination might not be necessary, but what we
14 would suggest is that we continue to discuss these
15 issues with Covad and present them down the road to
16 Your Honor for approval if we believe they can be
17 submitted on the record.

18 JUDGE RENDAHL: What I'm gathering is that
19 Qwest would still at this point reserve the right to
20 present a witness on the second issue.

21 MS. HUGHES: That's correct, Your Honor. We
22 did present a witness on the second issue in Colorado
23 last week that did go to hearing, and there was some
24 cross-examination of that witness on those issues.

25 JUDGE RENDAHL: Ms. Frame?

0010

1 MS. FRAME: Just for clarification purposes,
2 the witnesses that were presented on what we would
3 consider to be TRO Issue 2, per se, on the unbundling
4 and Section 271 argument, was really toward the
5 commingling issue, the ratcheting issue, and the copper
6 retirement issues, so it wasn't specifically on what I
7 believe Your Honor is addressing here right now.

8 As I said for the record, Covad actually
9 withdrew quite a few of those issues in the State of
10 Colorado because of the situation with the Triennial
11 Review at that time.

12 JUDGE RENDAHL: I will leave it up to the
13 parties to further resolve that, but I would encourage
14 you to reserve addressing any of the purely legal
15 issues on brief and preserve any limited hearing time
16 to factual issues or issues of policy that are
17 appropriate for a witness to address.

18 So let's talk about the procedural schedule.
19 Why don't we go off the record for that and come back
20 and put our schedule on the record. So let's go off
21 the record, and we will be back on when we are done
22 discussing.

23 (Discussion off the record.)

24 JUDGE RENDAHL: Let's be back on the record.
25 While we were off the record, we flushed out a schedule

0011

1 for this arbitration, and as Qwest and Covad noted
2 previously on the record, they have graciously agreed
3 to extend the statutory deadlines in order to
4 accomplish this arbitration proceeding here in
5 Washington as well as other states, so I would just
6 state that we very much appreciate your flexibility on
7 that.

8 The dates that the parties have agreed to are
9 a direct testimony filing date, simultaneous direct
10 testimony filing date of July 15th with a simultaneous
11 responsive testimony filing date of July 29th. Parties
12 agreed to a discovery cutoff of August 12th and that
13 any corrected testimony should be filed with the
14 Commission and all parties by the 19th of August.

15 By noon on August 23rd, the parties need to
16 file with the Commission electronically and to each
17 other any issues matrix that they have agreed upon and
18 developed to assist in the hearing, identify witnesses
19 and identify the order in which those witnesses will
20 appear, identify any cross-examination estimates for
21 other parties' witnesses and provide a list of the
22 exhibits, including cross-examination exhibits, they
23 intend to present at the hearing and provide any copies
24 of any cross-examination exhibits or other exhibits
25 that had not been previously prefiled with paper copies

0012

1 of those documents to be filed with the Commission on
2 the 24th.

3 Then the Commission will hold hearings here
4 in Room 206 on August 26th and August 27th, and the
5 parties agreed to a single simultaneous round of briefs
6 to be due at the Commission on September 24th. In
7 reviewing my schedule, I will enter a report and
8 decision in this arbitration by October 22nd. Based on
9 the arbitrator's report and decision being entered on
10 the 22nd of October, the parties would need to file any
11 petitions for review of that report and decision by
12 November the 22nd and noting that the Thanksgiving
13 holidays fall between the time petitions for review
14 would be filed and any answers would be due, the
15 parties agreed to a date of December 7th for any
16 answers to those petitions and the request for approval
17 of an arbitrated agreement before the Commission.

18 And I will determine, based on reviewing the
19 commissioners' calendars, when the Commission would
20 hold a hearing on the request for an arbitrated
21 agreement, and as I noted off the record, the
22 commissioners are in hearing the last three weeks of
23 December in the PSE rate case here from the 13th
24 through the 30th. I will look at the commissioners'
25 calendars again and confer with the judge handling that

0013

1 case and see if there is any possibility we could have
2 a hearing, either take an afternoon to address this
3 arbitration proceeding, or if, in fact, they need the
4 entire three weeks, and I will let you all know what I
5 find out, because I would hate to wait until the
6 beginning of January to have a commissioners' hearing
7 on this.

8 So that is the schedule. While we were off
9 the record, Ms. Hughes asked if we would allow for all
10 of the filing dates, allow the parties to submit the
11 documents electronically on the filing date and submit
12 a paper copy the following day, and I indicated that is
13 allowed under the Commission's rules, and I will state
14 so in the prehearing conference order that the rule
15 allowing parties to submit documents electronically on
16 the filing date and have a one-day extension for filing
17 the paper copy would be invoked, so that would apply to
18 all the filing dates in this proceeding. With that,
19 having recounted the schedule, is there anything else
20 we need to address this morning?

21 MR. SHERR: No, Your Honor.

22 MS. HUGHES: No, Your Honor. Your Honor,
23 just one minor clarification. With the agreement of
24 the parties and I think the approval of Your Honor, we
25 did agree that issues involving Qwest attorney John

0014

1 Devaney would be taken up on the 27th as opposed to the
2 26th to accommodate a scheduling conflict we have, and
3 I don't envision any problem working that out, but I
4 would like to note that again for the record.

5 JUDGE RENDAHL: I appreciate your bringing
6 that up. So any TRO issues that would be addressed
7 would be addressed on the 27th, and so I guess I was
8 anticipating when you all submitted your witness lists
9 and the order in which you wanted them to appear and
10 what days that you could coordinate that, and that
11 would be my way of knowing who was appearing when, but
12 I appreciate your clarifying that.

13 If there is nothing else, I just ask,
14 particularly for your benefit, Ms. Waxter, if there is
15 anybody who wishes to order a copy of the transcript
16 before we adjourn. If there is nothing else we need to
17 address, then I think we are adjourned, and I will
18 enter a prehearing conference order sometime next week
19 which would list all of these dates, and if there's any
20 concerns you have with the prehearing conference order,
21 you have an opportunity to seek clarification or
22 object. So with that, I think we are adjourned. Thank
23 you very much, and we will be off the record.

24 (Prehearing concluded at 10:30 a.m.)

25