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David L. Rice  
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June 9, 2003

**VIA FEDERAL EXPRESS**

Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
Post Office Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, Washington 98504-7250

Subject: Covad Communications Company; Petition for Waiver of  
WAC § 480-120-139

Dear Ms. Washburn:

Enclosed for filing are an original and 19 copies of Covad Communications Company's Petition for Waiver. Please return a conformed copy in the self-addressed, stamped envelope provided.

Very truly yours,



David L. Rice

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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of:

COVAD COMMUNICATIONS COMPANY

Petition for Waiver of WAC § 480-120-139

Docket No.

UT-030908

PETITION FOR WAIVER

**I. PETITIONING PARTY**

1. Covad Communications Company ("Covad") is a telecommunications company registered to provide local service in Washington and regulated as a competitive carrier. Order, Docket UT-970553 (1997). Covad currently provides facilities-based, high-speed DSL services to more than 381,000 residential and business customers across the U.S., including Washington. Covad is incorporated in California. Please direct all questions and correspondence regarding this Petition to Covad's attorneys:

Brooks E. Harlow  
David Rice  
Miller Nash LLP  
4400 Two Union Square  
601 Union Street  
Seattle, Washington 98101  
Phone: (206) 622-8484  
Fax: (206) 662-7485

With a copy to:

Megan Doberneck  
Covad Communications Company  
7901 Lowry Boulevard  
Denver, Colorado 80230  
Phone: (720) 208-3636  
Fax: (303) 208-3350

1 **II. RULES AND STATUTES AT ISSUE**

2 2. This Petition concerns WAC § 480-120-139, known as the "slamming"  
3 rule, and RCW 80.36.320(2).

4 **III. SUMMARY OF REQUEST**

5 3. In this Petition, Covad requests the Commission to grant a waiver of the  
6 "slamming" rule. WAC § 480-120-139. The slamming rule provides that "a local exchange or  
7 intrastate toll carrier . . . may not submit a change order for a local exchange or intrastate toll  
8 service until the order is confirmed" in accordance with specified procedures that insure prior  
9 customer approval of the change. WAC 480-120-139(1). Covad is requesting this waiver to  
10 facilitate its acquisition of the DSL customers of Qwest Communications Corporation and Qwest  
11 Interprise America, Inc. (collectively "Qwest") , as explained below. Alternatively, Covad  
12 requests the Commission to disclaim jurisdiction over this transaction.

13 **IV. FACTUAL BACKGROUND**

14 4. Qwest provides DSL services to customers in Washington and other states  
15 across the country. Covad and Qwest have entered into an agreement whereby Covad will  
16 acquire Qwest's customer base of small and medium-sized businesses receiving bundled DSL  
17 and internet access service. These customers are located outside the service area of Qwest  
18 Corporation, a local exchange carrier affiliated with Qwest. Under the agreement, Qwest will  
19 transfer its customer accounts and account information to Covad. Next, Covad will send a notice  
20 to all affected customers explaining the transaction. See Attachment A. Covad will then contact  
21 each customer directly to explain service options and to confirm that they are willing to transfer  
22 their service from Qwest to Covad. Neither Qwest nor Covad will require customers to switch  
23 their DSL services to Covad. Covad will transition customers to its network upon obtaining their  
24 approval. Covad plans to offer these customers DSL service at the same rates Qwest charges.  
25 Covad estimated that closing will occur in June, 2003.

1           5.       The Commission's slamming rule, excerpted above, would require Covad  
2 to obtain authorization from each affected customer prior to completing the transaction. Covad  
3 has not obtained customer authorization at this time.

4                           **V. A WAIVER IS IN THE PUBLIC INTEREST**

5           6.       The Commission should grant Covad's request for a waiver of the  
6 slamming rule. The Commission has the authority to waive rules and statutes affecting  
7 competitively classified carriers when a waiver is in the public interest. RCW 80.36.320(2). The  
8 Commission has held that it is in the public interest to grant waivers of WAC 480-120-139 in the  
9 past. Order, In the Matter of Petition of GE Capital Communications Services Corporation,  
10 Docket UT-010789 (2001); Order, In the Matter of the Petition of Touch America, Inc., Docket  
11 UT-010491 (2001).

12          7.       Covad's waiver request is in the public interest for several reasons. First,  
13 Covad's proposed acquisition of Qwest's DSL customer base will not adversely affect any  
14 customers. In fact, it will be virtually transparent to them, except for the fact that they will  
15 receive a notice explaining the changes. See Attachment A. After the acquisition, Covad will  
16 offer Qwest's customers the same rates and services as they currently receive. All former Qwest  
17 customers may choose another DSL carrier unless they signed a long-term contract that was  
18 assigned to Covad. To minimize any service disruptions, Covad has developed a special  
19 program called "Covad Safety Net" to help members of the customer base transition to Covad's  
20 network. Qwest will serve its customers until they have migrated to Covad's network in a  
21 seamless manner. Customers will receive the same high quality service with no assessment of  
22 transition fees or charges.

23          8.       Second, the slamming rule would impose unnecessary costs on the parties  
24 and ultimately their customers, if the Commission does not waive it. It would be very  
25 cumbersome and time consuming for Covad to obtain prior customer approval in accordance  
26 with WAC 480-120-139. This step would delay the completion of the transaction without any

1 associated benefit to consumers. Under these circumstances, the Commission should grant  
2 Covad's request for a waiver.

3 9. Alternatively, the Commission should hold that it lacks jurisdiction over  
4 the proposed transaction. The FCC has held that "internet access services are appropriately  
5 classified as information, rather than telecommunications services." Report to Congress, 13 FCC  
6 Rcd 11,501 at ¶ 73 (1998); see also Declaratory Ruling and Notice of Proposed Rulemaking, 17  
7 FCC Rcd 4,798 at ¶ 38 (2002). Because bundled DSL and internet access service is an  
8 information service, it is not regulated by this Commission, and the slamming rules do not apply  
9 to Covad's proposed transaction. Although Covad believes that this is the case, it is still seeking  
10 approval of this transaction out of an abundance of caution.

11 **VI. RELIEF REQUESTED AND CONCLUSION**

12 10. For the foregoing reasons, Covad requests the Commission to grant a  
13 waiver of WAC 480-120-139 in connection with its acquisition of Qwest's DSL customers, as  
14 described in this Petition, or alternatively hold that it has no jurisdiction over the transaction.

15 DATED this 9<sup>th</sup> day of June, 2003.

16 MILLER NASH LLP

17 

18 \_\_\_\_\_  
19 Brooks E. Harlow  
20 WSB No. 11843  
21 David L. Rice  
22 WSB No. 29180

23 Attorneys for Covad  
24 Communications Company  
25  
26

**ATTACHMENT A**

**Covad Communications Company  
Customer Notification**

June \_\_\_, 2003

Dear Customer:

Covad Communications Company is pleased to announce that it has agreed to provide DSL service to you and other current customers of Qwest Communications Corporation and Qwest Interprise America, Inc. Covad currently provides state-of-the-art, broadband DSL services to thousands of satisfied customers across the country. Now, Covad can provide the same high quality services to you.

Under Covad's agreement with Qwest, you will continue to receive the same dependable and affordable DSL services you now receive. Covad's agreement with Qwest will not affect in any way the service you currently receive or the prices you pay for them, nor will it affect your ability to select another DSL provider should you choose to do so, subject to the terms of any service contracts you may have with Qwest. Covad has informed the Washington Utilities and Transportation Commission of this agreement.

In the near future, a Covad sales representative will contact you to explain the new services that Covad can provide to you. In the meantime, if you have questions or need assistance with your service, please call \_\_\_\_\_.

\_\_\_\_\_  
President  
Covad Communications Company

\_\_\_\_\_  
President  
Qwest Communication Corporation  
and Qwest Interprise America, Inc.