

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**IN THE MATTER OF THE PETITION OF )  
DIECA COMMUNICATIONS, INC., D/B/A ) Docket No. UT-043045  
COVAD COMMUNICATIONS )  
COMPANY, FOR ARBITRATION TO )  
RESOLVE ISSUES RELATING TO AN )  
INTERCONNECTION AGREEMENT )  
WITH QWEST CORPORATION )**

**RESPONSIVE TESTIMONY OF  
MEGAN DOBERNECK**

**FILED ON BEHALF OF  
COVAD COMMUNICATIONS COMPANY**

July 29, 2004

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1 **Q. ARE YOU THE SAME MEGAN DOBERNECK THAT FILED DIRECT**  
2 **TESTIMONY IN THIS MATTER?**

3 A. I am.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMOY?**

5 A. The purpose of this round of testimony is to respond to the testimony of Qwest witness  
6 Karen Stewart on the copper retirement issue as well as the issues of commingling,  
7 combinations, and ratcheting; and to Qwest witness William Easton on the billing time  
8 frame issues.

9 **I. ARBITRATION ISSUES**

10 **ISSUE 1: COPPER RETIREMENT: SHOULD QWEST BE PERMITTED TO**  
11 **RETIRE COPPER FACILITIES SERVING COVAD'S END USERS IN A**  
**WAY THAT CAUSES THEM TO LOSE SERVICE?**

12 **Q. MS. STEWART DISCUSSES THE “NEED” TO ADDRESS THE TRO AND *USTA***  
13 ***II* IMPACTS.<sup>1</sup> WHAT IS YOUR RESPONSE?**

14 A. I do not think that there is anything to address. In the first place, Qwest's access and  
15 pricing obligations remain unchanged until there has been a change in law. That is to  
16 say, Qwest is under a clear legal obligation to provide access to all UNEs that were  
17 available prior to February 2003 at cost-based TELRIC rates. Those obligations remain  
18 firmly and fully intact until there is a change in law. Importantly, there will be no change  
19 in law until the FCC adopts permanent UNE rules. My understanding is that the interim  
20 rules will be released shortly and that the permanent rules are expected to be in place  
21 approximately six (6) months after the interim rules become effective. To the extent the  
22 permanent rules effectuate any change in law, only at that time may Qwest seek  
23 modification of its access and TELRIC-pricing obligations.

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26 <sup>1</sup> Direct Testimony of Karen Stewart, July 15, 2004, p. 3. (“Stewart Direct”).

1 **Q. PLEASE CORRECT MS. STEWART'S MISUNDERSTANDING REGARDING**  
2 **QWEST'S RIGHT TO RETIRE COPPER LOOPS.**

3 A. Certainly. Ms. Stewart appears to espouse the position that Qwest is free to retire copper  
4 loops without restriction.<sup>2</sup> That is just not correct. First, as I discussed at pages 21-23 of  
5 my Direct Testimony, the FCC has very much circumscribed an ILEC's ability to retire  
6 copper unilaterally. Moreover, because of the economic and consumer impacts that flow  
7 from copper retirement (which I also discuss in my Direct Testimony), the Commission  
8 must carefully scrutinize these impacts to ensure that consumers are not harmed by  
9 Qwest's unilateral retirement of copper feeder plant.

10 Then, Ms. Stewart suggests that the copper retirement issue is somehow tied to  
11 the investment incentive issue.<sup>3</sup> Again, that is not correct. As I explained in my Direct  
12 Testimony, there is absolutely no way that the Covad proposal would impact at all, much  
13 less in a negative manner, Qwest's incentive to invest in fiber feeder facilities.

14 Next, Ms. Stewart mistakenly suggests that Covad's copper retirement proposal  
15 was already rejected by the FCC.<sup>4</sup> That also is not correct. If you actually look at the  
16 copper retirement proposals rejected by the FCC in the TRO, you will see that they are  
17 very different than the proposal that Covad makes, and go far beyond what Covad  
18 requests here. For example, the High Tech Broadband Coalition, among other  
19 commenters, proposed that an ILEC only be allowed to retire copper if and only if the  
20 ILEC provided access over those fiber broadband facilities for both new and existing  
21 customers to the fiber broadband facilities via a commercial agreement that would be  
22 available on a non-discriminatory basis to all carriers. That is a far cry from what Covad  
23 proposes here. Allegiance went even farther, arguing that ILECs should not be allowed

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<sup>2</sup> Stewart Direct, p. 5.

25 <sup>3</sup> *Id.*

26 <sup>4</sup> *Id.*, pp. 5-7.

1 to retire copper loops at all. Clearly, Covad’s proposal is much more limited in scope,  
2 purpose, and duration. Because of the consumer and competitive good inherent in the  
3 Covad proposal, it should be adopted by the Commission.

4 Finally, Ms. Stewart states that any state copper retirement policies should be  
5 consistent with federal policies encouraging the deployment of fiber. This is a  
6 misleading and inaccurate accounting of what the FCC stated in the TRO. Contrary to  
7 Ms. Stewart’s suggestion, the FCC in no way intimated, much less stated, that state  
8 copper retirement rules needed or even had to be consistent with the FCC’s desire to  
9 incent investment in fiber facilities. To the contrary, the FCC made very clear that “any  
10 state requirements that currently apply to an incumbent LEC’s copper loop or copper  
11 subloop retirement practices will continue to apply.”<sup>5</sup> Thus, the FCC has made clear that  
12 Washington’s copper retirement rules and policies take precedence over any and all  
13 policies emanating from inside the Beltway.

14 Keep in mind that the FCC is not concerned about the retirement of copper and  
15 fiber deployment for the sake of such activity alone. Rather, the purpose of the  
16 investment incentive regime that the FCC established is to accomplish the goals of  
17 Section 706 of the Act – the widespread deployment of broadband facilities (whether  
18 fiber or copper) in order to ensure that all Americans have access to broadband. Here, the  
19 Covad proposal applies where consumers and businesses already have broadband, so the  
20 deployment of fiber, or not, in no way furthers or effectuates the purposes of Section 706  
21 because access to broadband already exists.

22 **Q. MS. STEWART FOCUSES ON THE IMPORTANCE OF ENSURING THAT THE**  
23 **INCENTIVES REMAIN FOR THE DEPLOYMENT OF FIBER TO THE HOME**

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26 <sup>5</sup> TRO, ¶ 271.

1           **(“FTTH”) LOOPS AT PAGES 8-9 OF HER DIRECT TESTIMONY. PLEASE**  
2           **EXPLAIN WHY THE FTTH ISSUE IS NOT GERMANE HERE.**

3    A.     It is clear that Qwest has no intention of deploying FTTH loops any time in the near  
4           future. According to Richard Notebaert, Qwest’s chairman and chief executive officer,

5            You have to look at the economics of fiber to the home and ask yourself if  
6            other technologies such as wireless data transmission don't redefine the  
7            economic model for that huge capital investment in fiber. I question if, in  
            our country, we will run fiber to every home. I think the economics of fiber  
            aren't there.

8            How does one go into Boulder, Colo., or apartment buildings in New York  
9            City that have been there for so long, rip everything out and put in new  
10           wires? That won't be easy. It is hard for us to look at the economic model  
11           and invest in fiber to the home....There are lower-cost alternatives to fiber.  
12           There is going to be commercial availability of 802.16 (a wireless  
            technology that can transmit large quantity of data at broadband speed in a  
            limited area) probably by late next year. We're looking at that as an  
            alternative.<sup>6</sup>

13           Based on the public statements of Qwest’s highest ranking office, no amount of incentive  
14           will cause Qwest to invest in fiber to the home. If that is the case, in addition to all the  
15           compelling reasons I laid out in my Direct Testimony, there is no reason *not* to adopt the  
16           Covad proposal.

17    **Q.     MS. STEWART DISCUSSES AT PAGE 6 OF HER DIRECT TESTIMONY THE**  
18           **REMOTE DSLAM ALTERNATIVE “AVAILABLE” TO COVAD IF QWEST**  
19           **RETIRES FIBER AND REPLACES IT WITH COPPER. CAN YOU EXPLAIN**  
20           **WHY THIS IS AN INSUFFICIENT ALTERNATIVE?**

21    A.     As I explained in my Direct Testimony, the economics simply do not support the decision  
22           to deploy a remote DSLAM to support a handful of customers for some months. Equally  
23           important, as I alluded to in my Direct Testimony, it appears that there is *no* way Covad  
24           could get the traffic from a remote terminal back to the central office. Qwest took the  
25           position in Colorado that it will not provide access to the fiber sub loop running from the

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26    <sup>6</sup> Wall Street Journal, January 20, 2004.

1 remote terminal back to the central office. So, Qwest's proposed solution is neither  
2 economically viable nor even technically accomplishable because in the copper  
3 retirement scenario at issue here, Qwest has retired the copper, replaced it with fiber, and  
4 left no copper for CLECs to use to transport traffic from the remote terminal back to the  
5 central office.

6 **Q. MS. STEWART ALSO COMPLAINS AT PAGE 9 OF HER DIRECT**  
7 **TESTIMONY THAT COVAD'S PROPOSAL REGARDING ALTERNATIVE**  
8 **SERVICE WILL NOT ALLOW QWEST TO RECOVER ITS COSTS. HOW DO**  
9 **YOU RESPOND?**

10 A. My first response is "show me the money." Ms. Stewart, and other Qwest witnesses have  
11 made this type of claim time and again. Yet, to date, Qwest has provided no evidence at  
12 all in this proceeding that it will not fully recover its costs to provide Covad with access  
13 to an alterative service.

14 Second, Qwest apparently focuses on the differences in payment it would receive  
15 if it received payment for that service from a wholesale customer versus a retail  
16 customer. I do not believe that that difference necessarily supports a claim that Qwest is  
17 not recovering its costs. As the Commission well knows, retail rates are not based on the  
18 cost of just providing that service. Rather, retail rates reflect not only the cost of actually  
19 providing the service, but also costs associated with the acquisition of a retail customer,  
20 costs relating to the overhead necessary to support the retail customer, costs relative to  
21 retail marketing expenses, plus some markup in order to ensure the maximum profit  
22 possible in light of what the market will bear. There is a marked difference then, between  
23 the revenue Qwest receives and the costs it incurs in providing the service. And because  
24 Covad would continue paying the TELRIC costs it has always paid in order to provide  
25  
26

1 service to that customer, presumably Qwest would be recovering its costs, because  
 2 TELRIC ensures that Qwest will recover its costs and generate a “reasonable profit.”<sup>7</sup>

3 **ISSUE 3: SHOULD QWEST BE REQUIRED TO FOLLOW THE FCC’S**  
 4 **DIRECTIVES REGARDING THE COMMINGLING OF FACILITIES,**  
 5 **COMBINATION OF UNEs, AND RATCHETING ESTABLISHED IN THE**  
 6 **TRO?**

7 **Q. PLEASE DESCRIBE WHY QWEST’S PROPOSAL TO INCLUDE EEL**  
 8 **ELIGIBILITY CRITERIA IN THE INTERCONNECTION AGREEMENT**  
 9 **SHOULD BE REJECTED.**

10 **A.** Because EELs are not part of the interconnection agreement terms and conditions, there  
 11 is no need to include usage restrictions, which is an entirely legitimate, not to mention  
 12 reasonable, reason to exclude superfluous language from the IA.

13 Additionally, while Qwest maintains that the restrictions should be included in  
 14 order to limit another carrier’s ability to opt into Covad’s IA without the EELs usage  
 15 restrictions, such concern is misplaced in light of the FCC’s decision to eliminate the pick  
 16 and choose rules and to require adoption of the entirety of an arbitrated agreement. If a  
 17 carrier can only take the entirety of the Covad IA, in addition to the “benefit” of having  
 18 no restrictions on usage of high capacity EELs, it would have no EEL ordering rights at  
 19 all, which would seem to defeat the purposes of that carrier. Even prior to the FCC’s  
 20 announcement of its new “all or nothing” rule under section 252(i), CLECs were required  
 21 to take all “legitimately related” terms and conditions when exercising their pick and  
 22 choose rights. I can’t imagine this, or any other, Commission ruling that the FCC’s stated  
 23 eligibility criteria were not legitimately related to terms providing for the ordering of  
 24 high-capacity EELs.

25 **Q. HAS COVAD MADE ANY EFFORTS TO RESOLVE THIS ISSUE WITH**  
 26 **QWEST?**

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<sup>7</sup> 47 U.S.C. 252(d)(1).



1 A. We have. By email dated July 22, 2004, Covad requested that language regarding both  
2 the availability of high-capacity EELs and the service eligibility criteria be re-inserted  
3 into the Parties' Agreement. Covad has proposed that Qwest's own language be used.  
4 This proposal was made too recently to be addressed in Ms. Stewart's testimony. Given  
5 Covad's evolving business needs Covad has determined that it would in fact like to  
6 include high-capacity EELs in the Agreement, along with Qwest's proposed eligibility  
7 criteria, modeled on the FCC's language in the *Triennial Review Order*. Of course, if  
8 Qwest rejects Covad's proposal to include high capacity EELs, Covad will continue to  
9 oppose the inclusion of the eligibility criteria, as the criteria would still be restrictions in  
10 search of a product.

11 **Q. PLEASE DISCUSS THE DISPUTE SURROUNDING THE COMMINGLING OF**  
12 **SECTION 251 UNES AND NON-SECTION 251 UNES AS SET FORTH IN MS.**  
13 **STEWART'S TESTIMONY AT PAGES 17 AND 18.**

14 A. In a nutshell, Qwest is just trying to duck the obligations the FCC imposed upon it in the  
15 TRO. With respect to the commingling of Section 251 UNEs with other network  
16 elements, the FCC stated that Qwest must commingle "facilities or services that a  
17 requesting carrier has obtained at wholesale from an incumbent LEC pursuant *to any*  
18 *method other than unbundling under Section 251(c)(3) of the Act...*"<sup>8</sup>, which includes,  
19 without doubt, access to network elements under Section 271 of the Act. Consistent with  
20 this unambiguous FCC directive, therefore, Covad's proposed language in the  
21 definitional section (Section 4) states that "[c]ommingling means the connecting,  
22 attaching, or otherwise linking of a 251(c)(3) UNE, or a combination of 251(c)(3) UNEs,  
23 to one or more facilities or services that a requesting Telecommunications Carrier has  
24 obtained at wholesale from Qwest pursuant to any method other than unbundling under  
25

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26 <sup>8</sup> TRO, ¶ 579.

1 Section 251(c)(3) of the Act....” Covad’s proposed language for Section 9.1.1 similarly  
2 states that “CLEC may commingle 251(c)(3) UNEs and combinations of 251(c)(3) UNEs  
3 with any other services obtained by any method other than unbundling under Section  
4 251(c)(3) of the Act ...”

5 Nothing in the TRO changes Qwest’s obligations to commingle 251(c)(3) UNEs  
6 with all other network elements, which includes Section 271 network elements. While  
7 Ms. Stewart correctly quotes TRO footnote 1990 on commingling obligations related to  
8 Section 271, she conveniently ignores the fact that the FCC was discussing the  
9 commingling of *only* Section 271 network elements. In other words, with TRO footnote  
10 1990, the FCC stated that, where a CLEC requests Qwest to commingle two or more  
11 elements available only under Section 271 elements, no obligation to do so exists.  
12 However, where a CLEC requests the commingling or combining of a Section 271  
13 element with a Section 251 element, the commingling/combining obligation exists, as  
14 could not be made clearer by the FCC in Paragraph 579.

15 The errata likewise in no way changes Qwest’s obligations. In paragraph 579, the  
16 FCC made very clear that Qwest must commingle or combine Section 251 elements with  
17 Section 271 elements. While the errata did eliminate the reference to Section 271 from  
18 paragraph 584 of the TRO, that deletion was simply to clarify that the purpose of  
19 Paragraph 584 was to discuss the ILEC’s commingling obligations relative to resold  
20 service. This is evident from a “stare and compare” of the original and amended  
21 Paragraph 584. The deletion in Paragraph 584 in no way altered or impacted what the  
22 FCC made clear in the very first substantive paragraph on Qwest’s commingling  
23 obligations – that it is required to commingle Section 251(c)(3) UNEs with all other  
24 network elements obtained at wholesale pursuant to any method other than unbundling  
25 pursuant to Section 251 of the Act.  
26

1 **Q. MS. STEWART TAKES ISSUE WITH THE PURPORTED “VAGUENESS”**  
2 **SURROUNDING COVAD’S PROPOSED LANGUAGE FOR THE**  
3 **COMMINGLING OF RESOLD SERVICE. PLEASE RESPOND.**

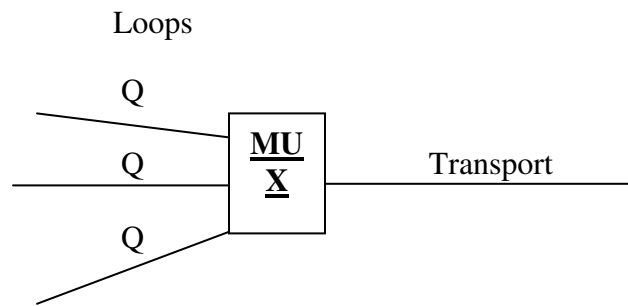
4 A. The Parties have agreed not to include any resale products in their Agreement. There is  
5 no need, therefore, to list certain products that do not exist in the Agreement as ineligible  
6 for resale commingling. As I understand it, the products Qwest lists are not properly  
7 considered resale products anyway, or at least are not resold telecommunications services  
8 covered by section 251(c)(4). They are clearly not subject to the FCC’s commingling  
9 rules. If the Parties were to go about listing each and every potential product, as well as  
10 each combination and configuration of those products are NOT included in the  
11 Agreement, the Agreement would be filled with meaningless passages. Covad believes a  
12 reasonable line is to describe which products are in fact available, and on what terms.

13 **Q. PLEASE EXPLAIN WHY QWEST’S RATCHETING LANGUAGE SHOULD BE**  
14 **REJECTED.**

15 A. The most significant downside to Qwest’s language, which Ms. Stewart skips over, is the  
16 fact that the language does not account for a situation in which a single facility – say a  
17 DS0 loop – may carry both qualifying and non-qualifying service. Where the DS0 loop  
18 carries both qualifying and non-qualifying services, it is ordered and priced as a UNE.  
19 Under the Qwest language, unfortunately, because that scenario is not accounted for, the  
20 DS0 facility would improperly be considered mixed use and billed at tariff rates, which is  
21 not consistent with the FCC’s ratcheting rules.

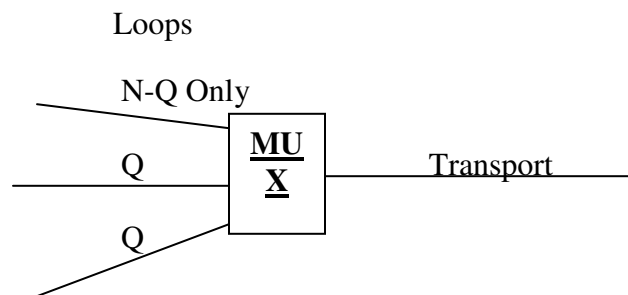
22 Any language that properly implements the FCC’s rules regarding the pricing of  
23 network elements, as Covad’s language does, must account for the fact that the FCC  
24 stated in the *Triennial Review Order* that the determining factor for a network element’s  
25 UNE eligibility is whether that element is used to provide a qualifying service. No  
26 element that is used to provide a qualifying service should affect the pricing of other

1 elements, including downstream transport elements. The FCC’s statement that ratcheting  
 2 is not required is meant to address the aggregation of UNEs with elements providing  
 3 solely non-qualifying services, therefore creating a “mixed-use” facility. While such  
 4 aggregation is permitted, the aggregated facilities need not be offered at blended rates,  
 5 based on the use of the input circuits. Perhaps the following diagrams are instructive:



12 In the above diagram, each loop attached to the multiplexer is used to provide a  
 13 qualifying service, “Q”. Regardless of whether those loops provide both qualifying and  
 14 non-qualifying service, their use does not impact the pricing of the multiplexer and  
 15 transport in the arrangement, which should be ordered and billed as UNEs if they are  
 16 otherwise available. Qwest’s proposal seems to suggest that any non-qualifying use of  
 17 one of these loops would disqualify each element in the arrangement from UNE pricing.  
 18 This is not a rule against ratcheting at all, but rather a novel “disqualification rule” which  
 19 is inconsistent with the *Triennial Review Order*.

20 In contrast, the following diagram:



1 In this scenario, one of the three input loops in the arrangement provides no qualifying  
 2 service. Rate Ratcheting would require Qwest to bill the multiplexer and transport in this  
 3 arrangement at a blended rate, such as 2/3 of the UNE rate for each element, and 1/3 the  
 4 rate for finished service. Covad's language clarifies that, while the input loops carrying  
 5 qualifying services are still eligible for UNE pricing, the loop carrying solely non-  
 6 qualifying service is not, and likewise the multiplexer and transport must be ordered as  
 7 finished services.

8 **Q. WHAT ABOUT MS. STEWART'S CLAIM THAT COVAD'S LANGUAGE**  
 9 **DOESN'T ALLOW QWEST TO CONVERT TO TARIFFED PRICING IF THE**  
 10 **FACILITY PROVIDES SOLELY A NON-QUALIFYING SERVICE?**

11 A. I disagree. The Covad language is designed is to make clear that well identified criteria  
 12 must be met in order for UNE pricing to apply. The necessary corollary to the Covad  
 13 proposed language is that, if the criteria are not met, then UNE pricing does not apply.  
 14 That gives Qwest the right it seeks, which is to charge the tariffed rates for a facility that  
 15 provides only non-qualifying services. Nothing in Covad's language can be read to allow  
 16 Covad to change the character of the use of the facilities while maintaining inappropriate  
 17 pricing. To the contrary, the language specifically says that each element must be used to  
 18 provide a qualifying service for UNE pricing to apply:

19 9.1.1.4.2 In the event CLEC commingles services obtained by any  
 20 method other than Section 251(c)(3) of the Act with 251(c)(3) UNEs, and  
 21 all services so commingled are used to provide a Qualifying Service, such  
 22 commingling will not affect the pricing of the UNEs involved in the  
 commingling arrangement, which Qwest will provide at the rates set forth  
 in Exhibit A.

23 **ISSUE 8: TIME FRAME FOR PAYMENT OF BILLS, DISCONTINUANCE OF**  
**ORDERING, AND DISCONNECTION OF SERVICE**

24 **Q. PLEASE EXPLAIN WHY MR. EASTON'S ASSUMPTION REGARDING**  
 25 **COVAD'S SUPPOSED DISINTEREST IN THE "TERMS GOVERNING**  
 26

1           **PAYMENT FOR SERVICES RENDERED BY QWEST” IS NOT WELL-**  
2           **FOUNDED.**

3    A.     As I discussed in my Direct Testimony, Covad has a significant interest in the terms  
4           governing payment for services rendered by Qwest. First, because of the burden that the  
5           deficiencies in Qwest’s bills place on Covad, the terms necessarily dictate whether Covad  
6           has the time to undertake a meaningful and thorough review. As I explained, we do not.  
7           Second, because non-payment creates significant, material exposure and liability for  
8           Covad, the terms and conditions surrounding bill payment are critical to its successful  
9           functioning as a competitor, and integral to a smooth working relationship with Qwest.

10 **Q.   MR. EASTON ALSO COMPARES THE PROPOSED BILL PAYMENT TIME**  
11 **FRAME HERE TO THE SGAT AND ITS TARIFF PROVISIONS. PLEASE**  
12 **RESPOND.**

13   A.     With respect to the SGAT, I discussed at length in my Direct Testimony the facts that  
14           have given rise to Covad’s request here, and why the Section 271 proceedings (which  
15           established the vast majority of the current SGAT terms and conditions) were neither the  
16           time nor the place for Covad to raise that issue.

17                 With respect to the tariff provisions, what you are talking about, fundamentally,  
18           are terms and conditions surrounding access products ordered and paid for by the large  
19           IXCs. And as the Commission well knows, the IXCs and the ILECs have had over  
20           twenty (20) years to correct errors and deficiencies in the billing media and format used  
21           for the billing of access services. There are industry standards and standard billing  
22           formats that have been in use for decades for companies ordering access services, and the  
23           years of experience and work by industry stake holders probably have resulted in a billing  
24           process that would allow adequate billing review within a thirty-day time frame.

25                 Unfortunately, the wholesale competitive market place has not yet had the years  
26           “under its belt” to get to the same place and, consequently, additional time is required in

1 order to permit adequate bill review. As it stands today, at least twelve (12) Covad  
2 employees have involvement in the review and verification of the monthly bills that we  
3 receive from Qwest, as well as employees of the independent contractor Covad has  
4 retained to investigate other Qwest and ILEC billing issues.

5 **Q. MR. EASTON ALSO CLAIMS THAT COVAD'S PROPOSAL WILL HAVE AN**  
6 **IMPACT ON QWEST'S CASH FLOW. PLEASE EXPLAIN WHY THAT IS A**  
7 **RED HERRING.**

8 A. The only impact that Covad's proposed billing time frames would have on Qwest's cash  
9 flow would be if Covad failed to pay its final bill. In that circumstance, there would be  
10 an additional fifteen (15) days before Qwest would learn of that failure. Short of that  
11 final bill, though, Qwest would be able to continue to bill and receive payment from  
12 Covad every thirty (30) days after the first bill is received and paid.

13 **Q. MR. EASTON CLAIMS THAT COVAD CAN DISPUTE A BILL PAST THE**  
14 **FIFTEEN DAYS PROVIDED FOR IN SECTION 5.4.4. PLEASE RESPOND.**

15 A. Based on the language of the proposed IA, it appears to Covad that the only type of  
16 billing disputes that it can permissibly raise beyond the fifteen days provided for in  
17 Section 5.4.4 are limited to billing disputes relating to inaccuracies in rates billed. As the  
18 last sentence of Section 5.4.4 makes clear, "Nothing in this Section shall be construed to  
19 restrict the Parties' right to recover amounts paid in excess of lawful charges, which shall  
20 be subject to the time limits set forth in Section 5.18.5." Consequently, for a number of  
21 deficiencies/errors that lead to Covad bill disputes, these types of claims would be barred.

22 Equally important, the procedural safeguards that surround the billing dispute  
23 section appear to apply only to the disputes raised within fifteen (15) days of the payment  
24 due date. Without these safeguards or mechanisms, which are designed to drive  
25 resolution, the ability to simply say "we dispute a bill" accomplishes nothing. And use of  
26 other mechanisms, like the audit right contained in the interconnection agreement or just

1 blindly disputing billings in order to buy time to review a bill, are relatively costly and  
2 time consuming for both parties. By far the most effective way to ensure that Covad pays  
3 what it owes and raises only legitimate billing disputes is to accord Covad more time to  
4 review its bills.

5 **Q. MR. EASTON DISMISSES THE NOTION THAT LINE OR LOOP SPLITTING**  
6 **BILLING POLICIES SHOULD RESULT IN ANY ACCOMODATION ON**  
7 **QWEST'S PART. PLEASE RESPOND.**

8 A. What's interesting about Mr. Easton's thinking in this particular section of his testimony  
9 is that the billing mechanisms relating to line and loop splitting were set up precisely to  
10 make it easier on Qwest and to keep Qwest out of the billing relationship between the  
11 line/loop splitting CLECs. Yet, even as it accomplished its goal of making line/loop  
12 splitting billing as easy as possible for itself, Qwest is unwilling to take any steps to allow  
13 those CLECs to adequately review their bills and to raise only legitimate billing claims.  
14 Covad and its business partners have every incentive to have an efficient billing  
15 relationship between them because the flow of revenue and expenses between the CLECs  
16 impacts them just as much as the flow of revenue and expenses between and with Qwest.  
17 In other words, what works best for the CLECs will ultimately result in the best result for  
18 Qwest – timely payment and the raising only of legitimate billing disputes.

19 **Q. PLEASE STATE WHY QWEST'S POSITION ON DISCONTINUANCE OF**  
20 **ORDERING PROCESSING IS UNREASONABLE.**

21 A. As I discussed in my Direct Testimony, Covad does not dispute Qwest's right to  
22 discontinue processing orders, but only the time at which such discontinuance can occur.  
23 As I explained more fully in my Direct Testimony, because of the impact Qwest's  
24 decision to discontinue processing Covad orders can have on Covad's ability to conduct  
25 business; because of the mixed motivations Qwest has when dealing with wholesale  
26 customers; and because of the difficulty in getting Qwest to acknowledge what are,



1 indisputably, legitimate billing disputes, additional time should be accorded to Covad  
2 before Qwest can invoke its draconian rights.

3 **Q. DOES THE SAME REASONING APPLY TO COVAD’S REQUEST FOR AN**  
4 **EXTENSION OF THE TIME FRAMES FOR THE DISCONNECTION OF**  
5 **SERVICES AND A DETERMINATION OF “REPEATED DELINQUENCY” AS**  
6 **FOR DISCONTINUANCE OF ORDER PROCESSING?**

7 A. Yes, it does.

8 **II. CONCLUSION**

9 **Q. DOES THIS CONCLUDE YOUR RESPONSIVE TESTIMONY?**

10 A. This concludes my Responsive Testimony; however, I anticipate being presented for  
11 cross examination at the hearing on the merits.