

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3) Docket No. UT-003022
4 **In the Matter of the Investigation Into**)
5 **U S WEST Communications, Inc.'s**)
6 **Compliance With Section 271 of the**)
7 **Telecommunications Act of 1996**)
8 _____)

9) Docket No. UT-003040
10 **In the Matter of U S WEST**)
11 **Communications, Inc.'s Statement of**)
12 **Generally Available Terms Pursuant to**)
13 **Section 252(f) of the Telecommunications**)
14 **Act of 1996**)
15 _____)

16 COVAD COMMUNICATIONS COMPANY'S COMMENTS
17 ON QWEST'S PROPOSED REVISED STATEMENT OF GENERALLY
18 AVAILABLE TERMS AND CONDITIONS RELATING TO COLLOCATION
19 _____)

20 Covad Communications Company ("Covad") respectfully submits these comments on
21 Qwest's proposed revised Statement of Generally Available Terms and Conditions relating to
22 collocation. As grounds in support of these Comments, Covad states as follows:

23 **I. BACKGROUND**

24 On or about April 20, 2001, Qwest filed with the Washington Utilities and Transportation
25 Commission (the "Commission") the revised Section 8 of its Statement of Generally Available
26 Terms and Conditions ("SGAT") relating to collocation. Revised Section 8 purportedly "reflects
27 the changes to the provisions concerning collocation that would be required if all of the
28 recommendations contained in the Administrative Law Judge's ("ALJ") Draft Order on
29 Collocation were in fact ordered by the Washington Commission."

30 Covad does not address here all of the findings and conclusions contained in the ALJ's
31 Draft Order on Collocation ("*Draft Order*"). Rather, Covad limits its comments to the

1 identification of additional changes to the SGAT that are necessary to conform Section 8 of the
2 SGAT to the plain language and intent of the *Draft Order*.

3 **II. COMMENTS**

4 **A. NEW COLLOCATION PRODUCTS**

5 As the ALJ made clear in Paragraph 67 of the *Draft Order*,

6 it is not a reasonable solution to require that any new collocation arrangement be
7 offered “under terms and conditions already set forth in the SGAT.” Even within
8 the eight types of collocation already in the SGAT, there are some terms and
9 conditions that are specific to certain arrangements. There is no reason to expect
10 the existing terms and conditions will apply neatly to every new arrangement. *See*
11 *Draft Order*, ¶ 67 (citations omitted).

12 By this language, the ALJ clearly contemplated that new, additional forms of
13 collocation – in addition to the eight types of collocation identified in the SGAT – would be
14 offered. Further, the ALJ appropriately recognized that such new offerings would not
15 necessarily be subject to the existing terms and conditions contained in the SGAT. *Id.*

16 Despite that clear and unambiguous language, there is no indication within Qwest’s
17 proposed revised SGAT that a CLEC can obtain any technically feasible form of collocation,
18 over and above the eight forms of collocation identified by Qwest in its SGAT. Equally absent
19 from the SGAT is any language indicating that a new collocation offering will not necessarily be
20 subject to Qwest’s existing terms and conditions. Because Qwest has failed to implement in the
21 SGAT the plain language and intent of paragraph 67 of the *Draft Order*, Qwest must further
22 revise the SGAT to make clear that Qwest must permit all technically feasible forms of
23 collocation, in addition to the eight forms of collocation currently specified, and make clear that
24 such new arrangements are not necessarily subject to “all existing terms and conditions
25 contained in the SGAT.”

26 **B. USE OF EXTRA-CONTRACTUAL DOCUMENTS TO CREATE OBLIGATIONS NOT CONTAINED IN THE SGAT OR APPLICABLE INTERCONNECTION AGREEMENT.**

The ALJ also recognized in the *Draft Order* that:

1 Regarding the use of written policies and performance requirements, the Joint
2 Intervenor rightly contend that any such document must be consistent with
3 interconnection agreements and the SGAT. The SGAT makes no reference to any
4 requirement that the CLEC agree to policies or performance requirements.
5 Qwest's practice of requiring CLECs to sign such documents is inconsistent with
6 the SGAT. Qwest cannot be found in compliance with Checklist Item 1
7 concerning collocation until it demonstrates that its collocation polices and
8 performance requirements conform to its interconnection agreements and the
9 SGAT. *See Draft Order*, ¶ 68.

10 Yet again, it is not apparent in the revised proposed SGAT submitted by Qwest that it has
11 incorporated any language documenting the fact that Qwest may not, through the use of policies,
12 methods of procedure or performance requirements, impose any obligations different from,
13 additional to, or inconsistent with, those obligations contained in the SGAT or applicable
14 interconnection agreement. Qwest thus must make clear in the SGAT its commitment to
15 adhering to the prohibition on the use of extra-contractual documents that impose obligations on
16 CLECs that are not contained in the SGAT or the applicable interconnection agreement.

17 **C. REMOTE VIRTUAL COLLOCATION**

18 The ALJ also stated that Qwest must permit CLECs to virtually collocate at remote
19 terminals. *See Draft Order*, ¶ 79. Although Qwest has made several implementing changes,
20 further revisions to the SGAT are necessary to make it fully consistent with the *Draft Order*.
21 These changes include:

22 **SGAT §§ 8.1.1.1; 8.2.2.2; and 8.2.2.3.** Qwest must revise these paragraphs to
23 include a reference to both “Qwest Premises” and Qwest “Remote Premises.”
24 Because Qwest differentiates at other points within the SGAT between Qwest’s
25 Premises and Qwest’s Remote Premises, *see* SGAT § 8.2.7.1, Qwest should make
26 such usage consistent throughout the SGAT to ensure that there is no dispute
regarding CLECs’ ability to virtually collocate at remote terminals.

SGAT 8.2.1.10. In this SGAT section, which applies generally to all forms of
collocation, Qwest creates the presumption that CLECs may order cageless or
virtual collocation only if caged physical collocation is not available. This
presumption is impermissible and improper. First, with respect to cageless
collocation, the FCC has made clear that cageless collocation is not an alternative
form of collocation available only where caged collocation is not an option, *see*
47 C.F.R. ¶ 51.323(k)(2), but rather it is an independent form of collocation that
must always be available to CLECs – regardless of whether caged collocation also
is available. Second, with respect to virtual collocation, the *Draft Order* makes
equally clear that CLECs’ ability to virtually collocate at remote terminals is not

1 contingent upon an inability to remotely physically collocate, but rather a distinct
2 form of collocation that must always be available to CLECs – regardless of
3 whether remote physical collocation also is available. Qwest must revise this
4 SGAT section to eliminate the improper presumption created.

5 **D. REGENERATION CHARGES**

6 The *Draft Order* also prohibits Qwest from charging CLECs for regeneration. While
7 SGAT § 8.2.1.23.1.4 states that Qwest will provide regeneration, if necessary, it does not make
8 clear the fact that Qwest will provide such regeneration at no charge. Moreover, because Qwest
9 may not impose a regeneration charge, any reference to regeneration should be eliminated from
10 all sections setting forth the rate elements for Qwest’s standardized collocation offerings. *See,*
11 *e.g.,* SGAT § 8.3.1.9.

12 Dated: May 22, 2001.

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